

**BID DOCUMENTS**

**FOR**

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**PROJECT NO.:** \_\_\_\_\_



**TAMPA BAY WATER**  
A Regional Water Supply Authority  
2575 ENTERPRISE ROAD  
CLEARWATER, FLORIDA 33763-1102

**COPY NO.** \_\_\_\_\_

**BID DOCUMENTS**

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**Request for Bids**

1. **BIDS** - TAMPA BAY WATER, A Regional Water Supply Authority will receive sealed BIDS addressed to the RECORDS DEPARTMENT at the offices of TAMPA BAY WATER, 2575 Enterprise Road, Clearwater, Florida 33763-1102, \_\_\_\_\_ .m., local time, on \_\_\_\_\_, \_\_\_\_\_. All BIDS that have been timely received will be opened publicly.
2. **PROJECT Description** - The Name of the PROJECT is \_\_\_\_\_.  
**Project No.:** \_\_\_\_\_
3. **Location** - The PROJECT is located in \_\_\_\_\_ County, Florida.
4. **General - Description of WORK** - The WORK contemplated consists of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
5. **Defined Terms** - All defined terms are found in the Definitions Section of the General Conditions.
6. **Bid Documents** - Complete sets of BID DOCUMENTS are available for review or purchase beginning \_\_\_\_\_, \_\_\_\_\_ at the office of TAMPA BAY WATER’s ENGINEER, \_\_\_\_\_. A payment of \_\_\_\_\_ **dollars and No/cents (\$\_\_\_\_\_)** in check payable to \_\_\_\_\_ will be required to purchase each complete set of the BID DOCUMENTS. These payments represent reproduction, handling, and postage costs and are non-refundable.
7. **BID SECURITY** - BID SECURITY in the amount of five percent (5%) of the PROPOSED TOTAL CONTRACT PRICE must accompany each PROPOSAL in accordance with the Instructions to Bidders.
8. **Pre-Bid Conference** – A pre-bid conference will be held at Tampa Bay Water’s \_\_\_\_\_, \_\_\_\_\_, Florida \_\_\_\_\_ **on** \_\_\_\_\_, \_\_\_\_\_ **at** \_\_\_\_\_ .m. **Attendance at the pre-bid conference is mandatory** and all prospective BIDDERS are required to attend the conference. TAMPA BAY WATER may issue ADDENDA as necessary in response to questions arising at the conference.
9. **ADMINISTRATIVE REMEDY** - Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120,

Florida Statutes. This includes, but is not limited to, any objection to or protest of the form and content of the **BID DOCUMENTS** and/or the actions of **TAMPA BAY WATER**.

10. **PUBLIC ENTITY CRIMES STATEMENT** – Pursuant to Subsections 287.133(2) and (3), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO, for a period of 36 months following the date of being placed on the convicted vendor list.
11. **DISCRIMINATION** - Pursuant to Subsection 287.134(2)(a), Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Dated at \_\_\_\_\_, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Project No.: \_\_\_\_\_

Request for Bids

**Pre-Bid Conference Location**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Instructions to Bidders**  
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**Instructions To Bidders**

**I. General Description of the Project**

1.1. A general description of the WORK to be performed is contained in the Request For Bids. The scope of the WORK is more completely described in the CONTRACT DOCUMENTS.

**II. Qualification of Bidders**

2.1. Each BID shall contain evidence of the BIDDER'S authority to perform the type of WORK under the CONTRACT DOCUMENTS in accordance with LAWS AND REGULATIONS and local, county and municipal licensing requirements, or if not domiciled in the State include the BIDDER'S covenant to obtain such qualifications prior to award of the CONTRACT.

2.2. As part of the BID, each BIDDER shall provide all information required in the BID section of the BID DOCUMENTS, to evidence its qualifications to perform the WORK for the CONTRACT PRICE, within the CONTRACT TIME, and in accordance with the requirements of the CONTRACT DOCUMENTS.

2.3. A Preliminary PROGRESS SCHEDULE indicating the BIDDER'S proposed schedule for the WORK, without specific dates, BIDDER'S most current financial statement, and any additional information specifically identified in the Supplementary Conditions or requested by TAMPA BAY WATER or ENGINEER shall be submitted by each BIDDER whose BID is being considered within two (2) days after opening of the BIDS or as may otherwise be specifically requested. The financial statement shall be certified by a Certified Public Accountant.

2.4. Failure, neglect or refusal by a BIDDER to deliver the above noted documents or other evidence of its qualifications, as requested by TAMPA BAY WATER, within the required period (or within a reasonable time thereafter, if agreed to by TAMPA BAY WATER), may result in the rejection of that BIDDER'S PROPOSAL for being non-responsive and constitute proof that the BIDDER has abandoned all of its rights and interests in the subject award.

2.5. Each BIDDER whose BID is to be considered for acceptance and award of the CONTRACT shall have an authorized representative in attendance at the Pre-Bid Conference.

**III. Bidder's Understanding**

3.1. Complete sets of the BID DOCUMENTS shall be used in preparing the BID; neither TAMPA BAY WATER nor the ENGINEER assume any responsibility for errors or misinterpretations resulting from the BIDDER'S use of incomplete sets of BID DOCUMENTS.

3.2. Each BIDDER must inform itself of the conditions relating to the execution of the WORK, and each BIDDER shall have the responsibility to inspect the PROJECT site and make itself thoroughly familiar with all of the BID DOCUMENTS. Failure to do so will not relieve the successful BIDDER of its obligation to enter into the CONTRACT and complete the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

PROJECT NO.: \_\_\_\_\_

## Instructions To Bidders

3.3. BIDDERS should refer to the "Information To Bidders" section of the BID DOCUMENTS, for identification of various reports of explorations and tests of subsurface conditions and drawings and other documents relating to existing surface and subsurface structures and underground utilities owned by TAMPA BAY WATER. Those reports, drawings and other documents ("Existing Condition Documents") are not part of the CONTRACT DOCUMENTS.

3.4. No oral agreement or conversation with any officer, agent, or employee of TAMPA BAY WATER or ENGINEER, either before or after the execution of the CONTRACT, shall affect or modify any of the terms or obligations contained in the CONTRACT DOCUMENTS. All changes, modifications, and/or amendments, must be made in accordance with the procedures provided in the CONTRACT DOCUMENTS.

3.5. The BIDDER'S submittal of its BID shall constitute an acknowledgment by that BIDDER that it has thoroughly examined the Existing Condition Documents and PROJECT site in order to familiarize itself with the physical condition on the ground, including, but not limited to, the soil borings and has satisfied itself that the number of borings and their locations are adequate. BIDDERS are encouraged to physically examine the PROJECT site and, subject to the conditions noted below, to make any additional soil tests or borings if they feel the number, type, or location of those provided by TAMPA BAY WATER are inadequate or incomplete.

3.6. If requested by a BIDDER in writing within a reasonable time in advance of the date of the opening of the BIDS, TAMPA BAY WATER will make a good faith attempt to provide or obtain access to the PROJECT site to allow the BIDDER to conduct those reasonable explorations and tests the BIDDER deems necessary for submission of a BID (subject to a review by TAMPA BAY WATER and the ENGINEER). If access is granted, the BIDDER shall clean up and restore any disturbed area to its former condition upon completion of such explorations and tests. In consideration of TAMPA BAY WATER arranging and permitting access to the PROJECT site, BIDDER acknowledges that by entering the PROJECT site, BIDDER shall be deemed to have agreed that BIDDER shall defend, indemnify and hold TAMPA BAY WATER, ENGINEER and their consultants harmless from any loss, expense, damage, injury, claim or suit arising out of or relating to BIDDER's entry, exploration and testing upon the PROJECT site. As a condition to any BIDDER being provided access to the PROJECT site, that BIDDER will be required to execute and deliver to TAMPA BAY WATER a Release and Indemnification Agreement, the form of which is attached hereto as Schedule I. BIDDER'S failure to comply with the terms of this paragraph may cause the BIDDER'S BID to be rejected.

3.7. Each BIDDER shall have the responsibility to inform itself of, and the successful BIDDER awarded the CONTRACT shall comply with, all LAWS AND REGULATIONS. Examples of such LAWS AND REGULATIONS include, but are not limited to, those relating to minimum wages, nondiscrimination in employment, protection of public and employee safety and health, environmental protection, building codes, fire protection, airport operation and safety, grading and drainage, use of explosives, vehicular traffic, access to streets and highways, restoration of lands and property under the control of the State or a Political Subdivision, nuisance control, taxes, permits, licensing, and fees.

3.8. BIDDERS shall, upon discovery of any conflict, ambiguity, error or omission in the BID DOCUMENTS, the PROJECT site or any other general, local or prevailing conditions, make a



PROJECT NO.: \_\_\_\_\_

**Instructions To Bidders**

written request for interpretation or clarification to the ENGINEER. Such written requests shall be delivered to the office of the ENGINEER at least ten (10) business days prior to the BID submittal date:

**TAMPA BAY WATER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

3.9. Any interpretation, clarification, correction, addition or deletion to the BID DOCUMENTS will be binding only if given by written ADDENDA.

3.10. Prior to submission of its BID, each BIDDER must ascertain that it has received a complete and accurate set of BID DOCUMENTS, including all ADDENDA issued. Each BIDDER shall list all ADDENDA and agrees that its BID is based on the complete BID DOCUMENTS, including all ADDENDA, which shall be binding on said BIDDER.

**IV. Type of Bid**

4.1. The BID for the WORK is to be submitted as either a UNIT PRICE or a LUMP SUM PRICE or a combination of such, as called for in the REQUEST FOR BIDS. UNIT PRICE or LUMP SUM PRICE amounts must be submitted on all items of WORK set forth in the BID. The PROPOSED TOTAL CONTRACT PRICE shall equal the sum of all LUMP SUM PRICES, UNIT PRICES, ALLOWANCES and ALTERNATES, all as specified and required in the BID. All items required to complete the WORK, but not specifically included in the BID, shall be considered incidental to those set forth in the BID and no additional costs for such items will be recognized or paid for by TAMPA BAY WATER. The estimate of quantities of items which are to be proposed on a UNIT PRICE basis are stated in the BID schedule with as much accuracy as possible, and is an approximation upon which the award of the CONTRACT shall be made. Payment to the CONTRACTOR for UNIT PRICE work shall be made on the basis of units actually provided by the CONTRACTOR and accepted by TAMPA BAY WATER as specified in the CONTRACT DOCUMENTS. The total amount to be paid to the CONTRACTOR for the LUMP SUM PRICE work shall be the amount of the LUMP SUM PRICE as adjusted for additions or deletions resulting from changes in the WORK authorized in writing by TAMPA BAY WATER pursuant to the CONTRACT DOCUMENTS.

**V. Preparation of Bids**

5.1. BIDDER must fill in all blank spaces on the BID form in **black ink**. All price information, (where required) shall be shown in both words and figures. No changes shall be made in the phraseology or format of the forms. Amounts stated in words shall govern in a case of discrepancy between the amounts stated in words and the amounts stated in figures unless, in the sole discretion of TAMPA BAY WATER, this leads to a clearly erroneous or unreasonable result in which case the amount stated in figures shall govern. However, in a case of a discrepancy between UNIT PRICES and extended totals, UNIT PRICES shall govern.

5.2. Any BID may be deemed non-responsive which contains omissions, erasures, alterations, or additions of any kind, or prices not requested, or which may be obviously unbalanced, or which in any manner shall fail to conform to the requirements of the BID DOCUMENTS.

5.3. Only one BID from any individual, firm, partner, partnership, or corporation, under the same or different names, shall be considered. If any BIDDER has an interest in more than one BID for the WORK contemplated, as determined by TAMPA BAY WATER, all BIDS in which such BIDDER has an interest shall be rejected.

5.4. The BIDDER shall sign its BID in the blank space provided therefor. If the BIDDER is a corporation, the legal name of the corporation shall be set forth above the signature, together with the signature of the officer(s) or agent(s) authorized to sign contracts accompanied by evidence of authority to sign on behalf of the corporation. If BIDDER is a partnership, the true name of the partnership shall be set forth above, together with the signature of the partner(s) authorized to sign contracts accompanied by evidence of authority to sign on behalf of the partnership. If signature is by an agent, other than an officer of the corporation or a partner of a partnership, a notarized power-of-attorney must accompany the BIDDER'S BID.

5.5. Failure to provide evidence of authority as referenced in paragraph 5.4 above may cause the BIDDER'S BID to be rejected as being non-responsive.

5.6. The BIDDER shall complete and submit with its BID the following attachments on the forms provided:

Bid Security  
Litigation History  
Subcontractors and Suppliers Attachments/Manufacturers/Attachments IV and V  
(See Article XIV below)  
Non-Collusion Affidavit  
Questionnaire  
Bidder's Major Equipment List

5.7. The BIDDER shall include in the BID all UNIT PRICES and ALLOWANCES identified in the BID DOCUMENTS.

## **VI. Substitutes**

6.1. The CONTRACT shall be awarded, if at all, on the basis that the BIDDER awarded the CONTRACT shall furnish only items of material and equipment named or specified in the CONTRACT DOCUMENTS. Each BIDDER shall list the manufacturer and SUPPLIER as required on the BID form to whom that BIDDER intends to award a subagreement for furnishing each selected named or specified item. Substitutes shall not be considered until after the NOTICE OF AWARD.

## **VII. Changes in Quantities**

7.1. TAMPA BAY WATER reserves the right to increase or decrease the quantity of any UNIT PRICE work item shown in the BID that it may deem necessary, except that such increases or decreases in quantities of each item of UNIT PRICE WORK awarded shall not affect the stated

PROJECT NO.: \_\_\_\_\_

## Instructions To Bidders

UNIT PRICE rate if the quantity adjustment is not more than twenty-five percent (25%) of the total quantity shown on the BID for such item of UNIT PRICE WORK. If the quantity is adjusted by more than twenty-five percent (25%), then the UNIT PRICE may be equitably adjusted by an appropriately issued CHANGE AUTHORIZATION or CHANGE ORDER.

### VIII. State and Local Sales and Use Taxes

8.1. Unless the Supplementary Conditions contain a statement that TAMPA BAY WATER is exempt from state sales tax on materials incorporated into the WORK, the CONTRACTOR shall pay all state and local sales and use taxes, as required by all LAWS AND REGULATIONS.

8.2 TAMPA BAY WATER reserves the right to implement an Owner's Direct Purchase sales tax savings program with respect to this PROJECT.

### IX. Submission of Bids

9.1. BIDDERS shall execute and submit all BIDS in duplicate, not later than the time prescribed, at the place, and in the manner set forth in the published Request for Bids. BIDS must be made on the BID forms provided herewith. Failure to properly execute and complete the BID form shall result in rejection of the BID by TAMPA BAY WATER. Failure to properly execute and complete any Attachment to the BID may be grounds for rejection of the BID by TAMPA BAY WATER.

9.2. All BIDS shall be hand-delivered or sent by registered or certified mail, return receipt requested to TAMPA BAY WATER.

9.3. Each BID must be timely received in a sealed opaque envelope, so marked as to (i) indicate the PROJECT'S name and number, (ii) the BIDDER'S name, business address and business telephone number and (iii) its contents without being opened, and addressed in conformance with the instructions in the published Request for Bids.

### X. Modification or Withdrawal of Bids

10.1. Prior to the time and date designated for receipt of BIDS, any BID submitted may be withdrawn by NOTICE to TAMPA BAY WATER at the place designated for receipt of BIDS. Such NOTICE shall be in writing over the signature of the BIDDER and it shall be so worded as not to reveal the amount of the original BID. No BID may be withdrawn after the time scheduled for receipt of BIDS, unless the time specified in *Article XII BIDS to Remain Open* of these Instructions to Bidders, as that time may be extended, has elapsed. Withdrawal of a BID, as prescribed in this paragraph, shall not prejudice the right of a BIDDER to resubmit a BID within the time prescribed for receipt of the BID.

10.2. After expiration of the time specified in the Request for Bids for receiving BIDS, no BID may be withdrawn by a BIDDER.

### XI. Bid Security

11.1. BIDS must be accompanied by a certified check, or cashier's check drawn on a bank in good standing, or a Bid Bond issued by a Surety authorized to issue such bonds in the State of Florida, in the amount of five percent (5%) of the PROPOSED TOTAL CONTRACT PRICE of the BID

submitted. This BID SECURITY shall be given as a guarantee that the BIDDER will not withdraw its BID for the period of time specified in Article XII below, and if awarded the CONTRACT, the successful BIDDER will execute the CONTRACT and deliver to TAMPA BAY WATER four (4) originals of that executed CONTRACT, together with a properly executed Performance Bond and Payment Bond, each in the full amount of the CONTRACT PRICE, within the time specified. Said bonds to be issued by a Surety or Sureties authorized to issue such bonds in the State of Florida and acceptable to TAMPA BAY WATER. The Attorney-in-Fact who executes these bonds on behalf of the Surety must attach a notarized copy of its power-of-attorney as evidence of its authority to bind the Surety on the date of execution of the bonds. Where LAWS AND REGULATIONS require, certification by a resident agent shall also be provided.

11.2. If the BIDDER elects to furnish a Bid Bond, it shall use the Bid Bond form provided in the BID DOCUMENTS.

## **XII. BIDS to Remain Open**

12.1. All BIDS shall remain open for evaluation by TAMPA BAY WATER for ninety (90) days after the date of the opening of BIDS stated in the Request for Bids.

12.2. Extensions of the time beyond the above noted ninety (90) days, for which BIDS shall remain open with no increase in the TOTAL PROPOSED CONTRACT PRICE or CONTRACT TIME, may be made only by mutual agreement between TAMPA BAY WATER and the BIDDERS. If a BIDDER fails to agree to any proposed extension, the CONTRACT shall not be awarded to that BIDDER and its BID will be deemed withdrawn, but its failure to agree to the extension shall not constitute grounds for forfeiting its BID SECURITY. Also, any such withdrawal(s) shall not prevent or preclude TAMPA BAY WATER from awarding the CONTRACT to one of the remaining BIDDERS.

## **XIII. Return of Bid Security**

13.1. Within 15 days after the opening of the BIDS, TAMPA BAY WATER will return the BID SECURITY to each BIDDER whose BID is not to be considered further in the award of the CONTRACT. Retained BID SECURITIES shall be held until the CONTRACT has been fully executed, after which time all BID SECURITIES other than those which have been forfeited, shall be returned to the respective BIDDERS.

## **XIV. Subcontractors and Suppliers**

14.1. Each BIDDER shall list, on the forms attached to the BID, the SUBCONTRACTORS and SUPPLIERS to whom that BIDDER intends to award a subagreement in an amount in excess of two percent (2%) of the PROPOSED TOTAL CONTRACT PRICE. For each SUBCONTRACTOR and SUPPLIER identified, the BIDDER shall provide all of the information required by the forms.

14.2. Within two (2) days after the opening of the BIDS, each BIDDER whose BID is being considered for award of the CONTRACT shall submit to the ENGINEER the SUBCONTRACTORS and SUPPLIERS list noted in paragraph 14.1 above. The CONTRACTOR shall not employ any SUBCONTRACTORS or SUPPLIERS to which TAMPA BAY WATER may object for reasonable cause.

14.3. If TAMPA BAY WATER, after due evaluation of a BID, has reasonable objection to any listed SUBCONTRACTOR or SUPPLIER, TAMPA BAY WATER may, before giving NOTICE OF AWARD, request the BIDDER to remove or replace that SUBCONTRACTOR or SUPPLIER, in which case that BIDDER shall either perform the associated part of the WORK itself, if it holds a valid license for that classification and is so qualified, or nominate a substitute SUBCONTRACTOR or SUPPLIER, within the time period its BID is to remain open, and without an increase in its PROPOSED TOTAL CONTRACT PRICE or CONTRACT TIME. If that BIDDER declines, it shall not be awarded the CONTRACT and its BID shall be deemed withdrawn, but its declining to make the substitution will not constitute grounds for forfeiting its BID SECURITY. Also, any such withdrawal(s) shall not prevent or preclude TAMPA BAY WATER from awarding the CONTRACT to one of the remaining BIDDERS. No BIDDER shall be required to employ any SUBCONTRACTOR or SUPPLIER against whom it has reasonable objection.

#### **XV. Basis of Award**

15.1. The NOTICE OF AWARD will be issued, if at all, by TAMPA BAY WATER on the basis of the Total Evaluated Bid Cost, provided by the lowest responsive, responsible BIDDER, which, in TAMPA BAY WATER'S sole and absolute judgment, will best serve the interest of TAMPA BAY WATER. The Total Evaluated Bid Cost is the adjusted amount of the BIDDER'S PROPOSED TOTAL CONTRACT PRICE, as determined by TAMPA BAY WATER, based upon such line items within the BID which TAMPA BAY WATER elects to include in the WORK.

15.1.1. TAMPA BAY WATER'S PROJECT ALLOWANCE and all other ALLOWANCES, as well as all ALTERNATES, as specified in the BID, must be included in the PROPOSED TOTAL CONTRACT PRICE.

#### **XVI. Award of Contract**

16.1. TAMPA BAY WATER shall have the right to investigate among other things, the financial condition, experience record, and the equipment of each BIDDER, and to determine to its satisfaction the competency of each to undertake the PROJECT. TAMPA BAY WATER may request further and supplemental documentation from a BIDDER. A BIDDER'S refusal to provide such documentation may result in the disqualification of its BID. TAMPA BAY WATER shall have the sole discretion to determine which factors it deems significant and the BIDDERS agree that TAMPA BAY WATER'S determination as to qualifications shall not be subject to challenge.

16.2. The acceptance, if any, of a BID will be by written NOTICE OF AWARD, within the time period set forth in Article XII above, mailed to the office designated in the BID, or delivered to the BIDDER'S representative. In the event of failure of the lowest responsive, responsible BIDDER to sign the CONTRACT and provide acceptable Performance Bonds and Payment Bonds, TAMPA BAY WATER may award the CONTRACT to the next lowest responsive, responsible BIDDER. Such award, if made, will be made promptly after the failure of the first BIDDER to comply with the award requirements.

16.3. TAMPA BAY WATER reserves the right to accept or reject all bids and to delay or cancel the Project prior to acceptance of any bid in the event TAMPA BAY WATER has failed to secure all of the property or permits necessary for the Project. In addition, TAMPA BAY WATER reserves the right to include or exclude any ALTERNATES, and to waive any informalities or irregularities in

PROJECT NO.: \_\_\_\_\_

## Instructions To Bidders

BIDS. TAMPA BAY WATER further reserves the right to seek clarification from any BIDDER after the opening of the BIDS and to award the CONTRACT based on updated information obtained.

### **XVII. Execution of Contract**

17.1. The NOTICE OF AWARD to a BIDDER will be accompanied by four (4) unexecuted sets of the CONTRACT DOCUMENTS. The successful BIDDER shall within 15 days after receiving NOTICE OF AWARD, sign and return to TAMPA BAY WATER the four (4) sets of CONTRACT DOCUMENTS together with the Certificate of Insurance, Performance Bonds and Payment Bonds as required by the CONTRACT DOCUMENTS. Within 30 days after receiving the signed CONTRACT DOCUMENTS including acceptable Performance Bonds and Payment Bonds from the successful BIDDER, TAMPA BAY WATER'S authorized agent will sign the CONTRACT, whereupon TAMPA BAY WATER shall send the successful BIDDER one fully executed copy of the CONTRACT DOCUMENTS. Signature by both parties binds both parties to the CONTRACT DOCUMENTS.

### **XVIII. Notice to Proceed**

18.1. The CONTRACT TIME shall commence to run on the day indicated in the NOTICE TO PROCEED. A NOTICE TO PROCEED may be given at any time within thirty (30) days after the date the CONTRACT is executed by TAMPA BAY WATER. The CONTRACTOR shall begin the WORK no later than ten (10) days after the date specified for commencement of the WORK in the NOTICE TO PROCEED. Before beginning WORK, the CONTRACTOR shall provide evidence of insurance coverage as specified in the General Conditions and Supplementary Conditions.

### **XIX. Performance Bonds and Payment Bonds**

19.1. The successful BIDDER shall deliver to TAMPA BAY WATER a Performance Bond and a Payment Bond each on the forms set forth in the BID DOCUMENTS. Each Bond shall be in the full amount of the CONTRACT PRICE and in accordance with the requirements of Florida Statutes Section 255.05, as security for the faithful performance of the CONTRACTOR, and the payment of all persons supplying labor and/or materials for the construction of the WORK, and to cover all guarantees against defective workmanship or materials, or both, during the warranty period following the date of FINAL COMPLETION of the WORK. The surety or sureties furnishing these bonds shall have a sound financial standing and a record of service satisfactory to TAMPA BAY WATER, shall be authorized to do business in the State of Florida, and shall be listed on the current U.S. Department of Treasury Circular Number 570, or amendments thereto in the Federal Register, of acceptable Sureties for Federal Projects.

### **XX. Administrative Remedy**

**20.01 ADMINISTRATIVE REMEDY - Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. This includes, but is not limited to, any objection to or protest of the form and content of the BID DOCUMENTS and/or the actions of TAMPA BAY WATER.**



**SCHEDULE I****Release and Indemnification Agreement**

**IN CONSIDERATION** of the permission to enter granted herein by TAMPA BAY WATER,, a Regional Water Supply Authority whose address is 2575 Enterprise Road, Clearwater, Florida 33763-1102, to \_\_\_\_\_ whose address is \_\_\_\_\_ (hereinafter “Contractor”) and for the payment of the sum of ONE HUNDRED DOLLARS AND NO CENTS (\$100.00) by each party to the other, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Premises. TAMPA BAY WATER will permit Contractor to enter the property described in Exhibit “A” attached hereto and by reference made a part hereof (hereinafter “Property”), and conduct such site observations and tests as may be expressly approved by TAMPA BAY WATER, in its sole discretion, so that Contractor may develop the most appropriate bid for the work solicited by TAMPA BAY WATER .
2. Term. The term of this Agreement shall begin on the date noted below, and shall terminate on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Contractor’s right to enter upon the Property under this Agreement may be cancelled by TAMPA BAY WATER upon notice from TAMPA BAY WATER to Contractor. Notwithstanding anything to the contrary contained herein, this Agreement does not give Contractor unlimited access to the Property, rather such access must be scheduled and coordinated by TAMPA BAY WATER , and shall be subject to any and all conditions which may be required by TAMPA BAY WATER from time to time.
3. Release and Limit of Liability. Contractor, its successors and assigns, hereby waives, releases, renounces, relinquishes, absolves, and discharges TAMPA BAY WATER from any and all liability or claims for personal injury, death, and/or property damage that may result from TAMPA BAY WATER allowing Contractor to enter and utilize the Property for the activity contemplated herein, even if such entry or utilization is later found to be wrongful or negligent.
4. Indemnification. Contractor shall indemnify and hold harmless TAMPA BAY WATER and its officers, employees, agents and consultants from and against all liabilities, costs, losses, and damages (including but not limited to all reasonable attorneys) to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor, any Subcontractor, or any individual or entity directly or indirectly employed or utilized by Contractor by reason of their entry on or utilization of the Property.
5. Cleanup. Contractor is responsible for providing all cleanup of the Property. This cleanup shall consist of returning the Property to the condition in which Contractor found it prior to Contractor’s entry. Contractor in making use of the Property shall bear all financial responsibility for any and all damage to the Property and any structures or improvements located thereon, which may arise out of or relate to Contractor’s entry on or use of the Property.

PROJECT NO.: \_\_\_\_\_

**Instructions To Bidders**

6. Survivability. Notwithstanding anything to the contrary contained herein, the obligations of Contractor hereunder shall continue beyond the termination of this Agreement.

**IN WITNESS WHEREOF** the undersigned sets his hand this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

CONTRACTOR

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



PROJECT NO.: \_\_\_\_\_

Information to Bidders

**Information to Bidders**  
**Contents**

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**Information to Bidders**

1.1 Attachment "A" lists various drawings and other documents relating to existing surface and Attachment "B" lists various reports of explorations and tests of surface or subsurface conditions. Both were utilized in the preparation of the CONTRACT DOCUMENTS and are on file at the offices of the ENGINEER. The various reports, drawings and other documents listed in Attachments "A" and "B" are not part of the CONTRACT DOCUMENTS (collectively referred to as the "Existing Condition Documents"). They are made available solely to allow the BIDDERS to have ready access to some of the information available to the ENGINEER in its preparation of the CONTRACT DOCUMENTS.

1.2. It is the responsibility of each BIDDER, before submitting a BID, to (a) examine the CONTRACT DOCUMENTS and Existing Condition Documents thoroughly, (b) visit the PROJECT site to become familiar with general, local and prevailing conditions, (c) familiarize itself with and consider all LAWS AND REGULATIONS covering the WORK, (d) study and carefully correlate the BIDDER'S observations with the CONTRACT DOCUMENTS, and (e) request written interpretations or clarifications promptly after discovering any conflicts, ambiguities, errors or omissions in the CONTRACT DOCUMENTS or Existing Condition Documents.

1.3. BIDDERS may not rely upon non-technical data, interpretations or opinions contained in the Existing Condition Documents or on their completeness for the purposes of preparing its BID or construction of the WORK.

1.4. Except for the technical data listed in the Existing Condition Documents upon which the BIDDERS may rely, TAMPA BAY WATER and ENGINEER make no representation or warranty about the accuracy, correctness, or completeness of the Existing Condition Documents. Also, neither TAMPA BAY WATER nor the ENGINEER warrants or assumes any responsibility for the accuracy, correctness, reliability or completeness of information or data relating to surface or subsurface conditions, contained in any reports not prepared by TAMPA BAY WATER, the ENGINEER or their consultants. Finally, neither TAMPA BAY WATER nor ENGINEER assume any responsibility for any conclusions or interpretations made by any BIDDER based on the data contained in the Existing Condition Documents. Notwithstanding the foregoing, BIDDERS should refer to the CONTRACT DOCUMENTS (especially Paragraph 6.8 of the General Conditions) for provisions concerning changes that may be permitted due to materially different site conditions.

1.5. Information or data contained in the Existing Condition Documents or the CONTRACT DOCUMENTS about underground utilities owned by others at or contiguous to the PROJECT site is based upon information or data furnished by the owners of those underground utilities or others. Neither TAMPA BAY WATER nor the ENGINEER assumes any responsibility for, or makes any representation or warranty about, the accuracy, correctness or completeness of that information or data.

1.6. Information and data about underground utilities owned by others that have been utilized by the ENGINEER in the preparation of the proposed CONTRACT DOCUMENTS are contained in the Existing Condition Documents.

1.7. Attachment "C" of this section contains information pertaining to scheduling of construction in easements acquired by TAMPA BAY WATER for this PROJECT.

Attachment "A"

Surface and Subsurface Structures and Underground Utilities

<u>Owner</u>	<u>Structure/Utility Type/Description</u>	<u>Method of Identification</u>

PROJECT NO.: \_\_\_\_\_

Information to Bidders

Attachment "B"

Technical Data,  
Geophysical Reports and Tests

Author

Report Identification

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**Attachment "C"**

**Property Stipulation/Schedule Summary**

Property Owner	Summary Performance Stipulations for Time Constraints

Property Owner	Summary Performance Stipulations for Time Constraints

End of Section

**Bid  
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**Note to BIDDER:**  
Use black ink for completing this BID.

**PROJECT NO.:** \_\_\_\_\_

**Bid**

**Bid**

To: TAMPA BAY WATER,  
Attention: Records Department

Address: 2575 Enterprise Road \_\_\_\_\_  
Clearwater, FL 33763-1102 \_\_\_\_\_

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

TAMPA BAY WATER PROJECT NO.: \_\_\_\_\_

ENGINEER'S PROJECT NO.: \_\_\_\_\_

BIDDER'S person to contact for additional information on this BID:

BIDDER: \_\_\_\_\_

Person to Contact: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

**I. Bidder's Declaration and Understanding**

1.1 The undersigned, hereinafter called BIDDER, declares and certifies that (i) all principals with an interest in this BID have been named herein, (ii) this BID is, in all respects, fair and without fraud, (iii) this BID is made without collusion with any official of TAMPA BAY WATER or ENGINEER, and (iv) the BID is made without any connection or collusion with any person submitting another BID for the WORK.

1.2 The undersigned BIDDER proposes and agrees that if this BID is accepted it shall enter into the AGREEMENT with TAMPA BAY WATER in the form included with the CONTRACT DOCUMENTS and perform and furnish all WORK as specified or indicated in the CONTRACT DOCUMENTS for the CONTRACT PRICE, within the CONTRACT TIME, and in accordance with the other terms and conditions of the CONTRACT DOCUMENTS.

1.3 BIDDER acknowledges and agrees that the separate prices on this BID, where they are applicable and deemed acceptable by TAMPA BAY WATER will be used by TAMPA BAY WATER and BIDDER, if awarded the CONTRACT DOCUMENTS, whenever similar work is added or deducted from the CONTRACT DOCUMENTS.



PROJECT NO.: \_\_\_\_\_

Bid

1.4 BIDDER represents that before making its BID, BIDDER has familiarized itself with the nature and extent of the CONTRACT DOCUMENTS (as defined in the General Conditions), WORK, PROJECT site, locality, and all local conditions and LAWS AND REGULATIONS that may in any manner affect cost, schedule, progress, performance, or furnishing of the WORK.

1.5 BIDDER has read and studied carefully: reports of explorations and tests of surface and subsurface conditions; and those drawings of physical conditions in or relating to existing surface or subsurface structures or underground utilities; and accepts the determinations established in the Information to Bidders to the extent of the technical data contained in those reports and drawings upon which BIDDER may rely, which in any manner affect cost, schedule, progress, performance, and furnishing of the WORK.

1.6 BIDDER has read and studied all information and data shown or indicated in the CONTRACT DOCUMENTS about other work under separate contracts at or near the PROJECT site and assumes responsibility for all conditions and consequences which may result from other work and which in any manner affect cost, schedule, progress, performance, and furnishing of the WORK.

1.7 BIDDER has correlated the results of the activities, examinations, and studies in Paragraphs 1.4 through 1.6 of this *Article, Bidder's Declaration and Understanding*, with the terms and conditions of the CONTRACT DOCUMENTS and has exercised its own independent judgement in the interpretation of this information.

1.8 BIDDER has given the ENGINEER NOTICE of all conflicts, ambiguities, errors, or omissions that BIDDER has discovered in the CONTRACT DOCUMENTS.

1.9 BIDDER has read the CONTRACT DOCUMENTS, and accepts all of the terms and conditions of the CONTRACT DOCUMENTS, including without limitation those dealing with the disposition of BID SECURITY. BIDDER acknowledges all BIDS shall remain open as specified in the Instructions to Bidders.

1.10 Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the LAWS AND REGULATIONS of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, or LAWS AND REGULATIONS in effect on the date of the receipt of BIDS, except as may be otherwise specifically stated.

## II. Contract Execution and Bonds

2.1 BIDDER agrees that within 15 days after receipt of the NOTICE OF AWARD, it shall execute and deliver to TAMPA BAY WATER four (4) copies of the CONTRACT DOCUMENTS, including the Performance Bond and Payment Bond required by the CONTRACT DOCUMENTS.

PROJECT NO.: \_\_\_\_\_

**Bid**

**III. Certificates of Insurance**

3.1 The successful BIDDER shall furnish to TAMPA BAY WATER, at the time it executes and delivers the CONTRACT, the Certificates of Insurance as specified in the CONTRACT DOCUMENTS.

**IV. Subcontracting**

4.1 BIDDER shall perform (with BIDDER'S own employees) not less than \_\_\_\_\_ percent (\_\_\_\_%) of the difference between the CONTRACT PRICE less the cost of materials for the PROJECT.

**V. Liquidated Damages**

5.1 BIDDER agrees to the provisions of *Article III, Liquidated Damages* of the AGREEMENT as to liquidated damages in the event of BIDDER'S failure, neglect, or refusal to complete the WORK, within the specified CONTRACT TIME.

5.2 BIDDER acknowledges that these LIQUIDATED DAMAGES represent a reasonable estimate of TAMPA BAY WATER'S expenses specified in *Article III, Liquidated Damages* of the AGREEMENT, which expenses are difficult to estimate with accuracy. BIDDER agrees that these LIQUIDATED DAMAGES do not constitute a penalty or forfeiture.

**VI. Addenda**

6.1 BIDDER hereby acknowledges that it has received the ADDENDA noted below and agrees that all ADDENDA issued are hereby made part of the CONTRACT DOCUMENTS. BIDDER further agrees that its BID is submitted after consideration of all ADDENDA.

(BIDDER shall insert below the number and date of each ADDENDA received)

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**VII. Sales and Use Taxes**

7.1 BIDDER agrees that all federal, state, and local sales, and use taxes are included in its PROPOSED TOTAL CONTRACT PRICE for the WORK. In the event that TAMPA BAY WATER decides to utilize an Owner Direct Purchase Sales Tax Savings Program, Contractor agrees to cooperate with and assist TAMPA BAY WATER in that Program.

PROJECT NO.: \_\_\_\_\_

Bid

**VIII. Bid Schedule**

ITEM NO.	BRIEF DESCRIPTION	LUMP SUM PRICE	EST. QTY	UNIT PRICE	TOTAL AMOUNT
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PROPOSED TOTAL CONTRACT PRICE: \$ \_\_\_\_\_

PROPOSED TOTAL CONTRACT PRICE: \_\_\_\_\_

\_\_\_\_\_  
(Amount Written in Words)

**IX. TRENCH SAFETY ACT**

9.1 BIDDER acknowledges and agrees that the Trench Safety Standards in effect at the time of this BID and at the time(s) of performing the WORK shall be adhered to and compliance is the complete and sole responsibility of BIDDER. The PROPOSED TOTAL CONTRACT PRICE, as stated herein includes BIDDER'S total cost for compliance with the Florida Trench Safety Act.

\$ \_\_\_\_\_

(BIDDER'S total cost included in BID for compliance with the Trench Safety Act)

**X. Non-Collusion Affidavit**

10.1 BIDDER shall execute and attach to this BID the Non-Collusion Affidavit which is attached hereto as Attachment I.

**XI. Litigation History**

11.1 To enable TAMPA BAY WATER and the ENGINEER to further evaluate BIDDER'S qualifications to perform the WORK, BIDDER shall complete and attach to its BID the Litigation History form which is attached as Attachment II. On that form BIDDER shall list all litigation and arbitration matters BIDDER has been a party to during the past five (5) years.

**XII. Bidder Major Equipment List**

12.1 To enable TAMPA BAY WATER and the ENGINEER to evaluate BIDDER'S qualifications to perform the WORK, BIDDER shall complete and attach to its BID the Bidder's Major Equipment List which is attached as Attachment III. On that form BIDDER shall list all of the equipment it proposes to use in performing the WORK.

**XIII. Subcontractors**

13.1 To enable TAMPA BAY WATER and the ENGINEER to evaluate BIDDER'S qualifications to perform the WORK, and in accordance with the requirements of Article XIV of the Instructions to Bidder, BIDDER shall complete and deliver to TAMPA BAY WATER the Subcontractor List attached as Attachment IV. On that form, BIDDER shall list each SUBCONTRACTOR to whom BIDDER intends to award a subagreement which is in excess of two percent (2%) of the PROPOSED TOTAL CONTRACT PRICE.

13.2 BIDDER certifies that all SUBCONTRACTORS to be listed on the Subcontractors List, if acceptable to TAMPA BAY WATER, shall be awarded subcontracts for the portions of the WORK identified in the list, in the event BIDDER is awarded the CONTRACT.

**XIV. Suppliers**

14.1 To enable TAMPA BAY WATER and the ENGINEER to evaluate BIDDER'S qualifications to perform the WORK, and in accordance with the requirements of Article XIV of the Instructions to Bidders, BIDDER shall complete and deliver to TAMPA BAY WATER the Suppliers List attached as Attachment V. On that form BIDDER shall list each SUPPLIER to whom BIDDER intends to award a subagreement which is in excess of two percent (2%) of the PROPOSED TOTAL CONTRACT PRICE.

14.2 BIDDER certifies that all SUPPLIERS if acceptable to TAMPA BAY WATER, shall be supplying the material or equipment for the portions of the WORK identified in the list, in the event BIDDER is awarded the CONTRACT.

**XV. Questionnaire**

15.1 BIDDER shall complete and attach to its BID the Questionnaire which is attached as Attachment VI.

**XVI. Bid Bond**

16.1 If BIDDER is submitting a Bid Bond to satisfy its BID SECURITY obligation as set forth in Article XI of the Instructions to Bidders, BIDDER shall use the Bid Bond form which is attached as Attachment VII.

PROJECT NO.: \_\_\_\_\_

Bid

**XVII. Bid Signatures**

17.1. This BID is submitted on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

17.2. BIDDER'S License Number \_\_\_\_\_

Classification \_\_\_\_\_ Renewal Date \_\_\_\_\_, 20\_\_\_\_

Is license active? \_\_\_\_\_

17.3. If BIDDER is an individual:

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

Name and Title: \_\_\_\_\_

By \_\_\_\_\_  
(if other than individual, Attach Power of Attorney)

Doing Business As: \_\_\_\_\_

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

\_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

17.4. If BIDDER is a Partnership:

By: \_\_\_\_\_  
(True Name of Partnership)

\_\_\_\_\_  
Name of General or Limited Partner(s) Authorized to Sign

By: \_\_\_\_\_  
(Attach evidence of authority to sign)

\_\_\_\_\_  
Name of General or Limited Partner(s) Authorized to Sign

By: \_\_\_\_\_  
(Attach evidence of authority to sign)

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

**PROJECT NO.:** \_\_\_\_\_

**Bid**

\_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

17.5. If BIDDER is a Corporation:

By: \_\_\_\_\_  
(Legal Corporation Name)

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

By: \_\_\_\_\_  
(attach evidence of authority to sign)

Name and Title and Signature of Official Attesting:

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

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

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

\_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

17.6. If BIDDER is a Joint Venture:

Each joint venturer shall be identified below and shall sign the BID. The manner of signing for each individual, partnership and corporation that is a party to the joint venture shall be in the same manner as is indicated above.

Joint Venture Partners:

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

PROJECT NO.: \_\_\_\_\_

Bid

**ATTACHMENT I  
NON-COLLUSION AFFIDAVIT**

Owner: TAMPA BAY WATER

Engineer: \_\_\_\_\_

PROJECT Name: \_\_\_\_\_

PROJECT No.: \_\_\_\_\_

Affiant, \_\_\_\_\_, being first duly sworn, deposes and says that:

Affiant is (Title) \_\_\_\_\_ of \_\_\_\_\_,

("BIDDER"). Affiant has personal knowledge of the matters set forth in this Affidavit and is competent to testify about them.

BIDDER has submitted to TAMPA BAY WATER, a BID ("BID") to construct the above referenced PROJECT, also referred to in this Affidavit as the "WORK".

This Non-Collusion Affidavit is executed by Affiant for inclusion with the submission to TAMPA BAY WATER of the BID and may be relied upon by TAMPA BAY WATER in considering the BID.

Affiant is fully informed about the preparation and contents of the BID and of all pertinent circumstances surrounding the BID, has not entered into any illegal contract, combination, conspiracy or other unlawful act and the BID is genuine and is not a collusive or sham BID.

Neither BIDDER nor any of its officers, partners, agents, representatives, employees or parties in interest, including this Affiant, have in any way entered or proposed to enter into any combination to prevent the making of any BID, or to fix a price or prices (including any overhead, profit or other cost elements) for the BID; or have made any agreement, or given or promised any consideration to induce any other person not to submit a BID for the WORK, or to submit a BID at a specified price; or have

**PROJECT NO.:** \_\_\_\_\_

**Bid**

secured or intended to secure through any agreement an unlawful advantage against TAMPA BAY WATER, or any other person interested in the WORK.

The BID is not intended to secure an unfair advantage or benefit from TAMPA BAY WATER or in favor of any person interested in the proposed WORK.

The prices proposed are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of BIDDER or any other of its agents, representatives, owners, employees, or parties in interest, including this Affiant; and neither BIDDER nor any of its officers, partners, owners agents, representatives, employees, or parties in interest, including this Affiant, have divulged information regarding the BID or any data about the BID to any other person.

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



**PROJECT NO.:** \_\_\_\_\_

**Bid**

**Verification**

State of \_\_\_\_\_

County of \_\_\_\_\_

Before me, a Notary Public commissioned, qualified, and acting, personally appeared:

\_\_\_\_\_ to me well known, who being by me first duly sworn upon

oath, says that he/she is the attorney-in-fact for \_\_\_\_\_, that he/she

has been authorized by \_\_\_\_\_ to execute this Affidavit on behalf

of BIDDER for the uses and purposes mentioned.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

My Commission expires: \_\_\_\_\_, 20\_\_\_\_\_.

PROJECT NO.: \_\_\_\_\_

Bid

**ATTACHMENT II  
LITIGATION HISTORY**

Project Name	Parties to Dispute	Nature of Dispute	Resolution of Dispute
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**[Attach Additional Pages If Necessary]**







PROJECT NO.: \_\_\_\_\_

Bid

**ATTACHMENT VI  
QUESTIONNAIRE**

**OWNER:** TAMPA BAY WATER

**ENGINEER:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**PROJECT NO.:** \_\_\_\_\_

The undersigned warrants that all statements and answers to questions hereinafter made are current, accurate, and complete as of the date indicated below.

How many years has your organization been in business as a licensed general contractor under your present business name? \_\_\_\_\_.

Attach a list of all contracts over \$\_\_\_\_\_ that your organization has performed during the last five years. For each contract listed, include the owner's contract number, contract title, bid contract price, final contract price, substantial completion date or percent complete (if not completed), and the name, address and phone number of an individual from the owner to which your organization may refer.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

Has your organization ever failed to complete work awarded to it? \_\_\_\_\_. If so, where and why?

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

Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a construction project? \_\_\_\_\_. If so, state name of individual, organization and reason therefore.

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

Does your organization now hold valid certificates of competency or licenses for which a specific license is required? \_\_\_\_\_. If so, attach copies of all licenses covering the WORK under the CONTRACT DOCUMENTS together with the specific political jurisdiction issuing said licenses.

Attachment \_\_\_\_\_, consisting of \_\_\_\_\_ pages.

**PROJECT NO.:** \_\_\_\_\_

**Bid**

BIDDER:

\_\_\_\_\_

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**PROJECT NO.:** \_\_\_\_\_

**Bid**

**ATTACHMENT VII**

**Florida Bid Bond**

**KNOW ALL MEN BY THESE PRESENTS:**

That the "BIDDER", \_\_\_\_\_, a corporation \_\_\_\_\_, individual \_\_\_\_\_, partnership \_\_\_\_\_, of the state of Florida, qualified to do business in this State, as Principal, and the "Surety", \_\_\_\_\_, a corporation of the state of \_\_\_\_\_, authorized to do business as a surety in this State, as Surety, are hereby held and firmly bound unto the TAMPA BAY WATER as Obligees, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States of America, which represents five percent (5%) of the sum of BIDDER'S PROPOSED TOTAL CONTRACT PRICE, for the payment of which BIDDER and the Surety hereby bind ourselves, our respective heirs, successors, legal representatives and assigns, jointly, and severally, firmly by these presents.

WHEREAS, BIDDER has submitted to TAMPA BAY WATER, its BID to which this Bond is attached, to enter into the Contract with TAMPA BAY WATER for the \_\_\_\_\_, Project No.: \_\_\_\_\_ covered by the CONTRACT DOCUMENTS prepared by TAMPA BAY WATER and the ENGINEER, which CONTRACT DOCUMENTS are incorporated herein by this reference:

NOW, THEREFORE: THE CONDITION OF THIS OBLIGATION IS THAT, BIDDER and Surety are jointly and severally bound by all of the provisions of this Bid Bond, and if BIDDER faithfully performs and fulfills all the understandings, covenants, terms, conditions and requirements of the BID DOCUMENTS (including ADDENDA issued before the date of the opening of the BID) within the time specified or any extension thereof, with or without notice to the Surety, or if BIDDER fails to comply with all requirements of the BID DOCUMENTS within the time specified or any extension thereof, with or without notice to the Surety, but pays TAMPA BAY WATER the full amount of the sum set forth in this Bid Bond as liquidated damages, then this obligation shall be null and void, otherwise to remain in full force and effect.



**PROJECT NO.:** \_\_\_\_\_

**Bid**

A. If TAMPA BAY WATER makes demand on the Surety to perform in accordance with the Surety's obligations under this Bond, then the full amount of the Bid Bond shall be immediately due and payable to TAMPA BAY WATER, and the Surety shall pay that sum without delay. Additionally, the Surety shall reimburse TAMPA BAY WATER for all costs of collection (including but not limited to attorney's fees).

B. The Surety, for value received, stipulates and agrees that the obligations of the Surety and this Bid Bond shall be in no way impaired or affected by any extension of the time within which TAMPA BAY WATER may accept the BID, and the Surety does, by this Bid Bond, waive notice of any such extension.

C. The term this "State" means the State of Florida. Other defined terms (i.e., capitalized terms) used in this Bid Bond have the intent and meanings assigned to them in the General Conditions of the CONTRACT DOCUMENTS, Definitions.

IMPORTANT: Sureties executing this Bid Bond shall be currently authorized to do business in the State of Florida as surety and, except as otherwise provided by the Florida Statutes, be on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies. Bonds cannot be in excess of the amount indicated as approved by that list.

\_\_\_\_\_  
(Name of Surety)

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

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

\_\_\_\_\_  
(Name of Duly Authorized Florida Agent)

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PROJECT NO.: \_\_\_\_\_

Bid

**BIDDER/Principal**

Witness

\_\_\_\_\_

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

\_\_\_\_\_  
Name and Title

**Surety**

Witness

\_\_\_\_\_

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

\_\_\_\_\_  
Name and Title

By Attorney-In-Fact: \_\_\_\_\_

(Attach Certified Copy of Power of Attorney

**Certificate of Principal**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation \_\_\_\_\_, or a General Partner \_\_\_\_\_ or Managing Partner \_\_\_\_\_ of the partnership, named as the BIDDER in the attached Bid Bond; that \_\_\_\_\_ who signed the Bid Bond on behalf of the BIDDER, was then \_\_\_\_\_ of that organization \_\_\_\_\_ or partnership \_\_\_\_\_; that I know his/her signature, and on the Bid Bond is genuine; and that the Bid Bond was duly signed, sealed, and attested for and on behalf of that organization \_\_\_\_\_ or partnership \_\_\_\_\_ by authority of its governing body \_\_\_\_\_ or partners \_\_\_\_\_.

\_\_\_\_\_  
Signed by Secretary of the Corporation or  
By General or Managing Partner Authorized to Sign

\_\_\_\_\_  
Name of the Corporation or True Name of the Partnership

(Corporate Seal)

**PROJECT NO.:** \_\_\_\_\_

**Bid**

**Verification**

State of Florida

County of \_\_\_\_\_

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification, who being by me first duly sworn upon oath, says that he is the attorney-in-fact for \_\_\_\_\_ named BIDDER in favor of the TAMPA BAY WATER.

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

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

**AGREEMENT**

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**AGREEMENT**

This AGREEMENT, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between TAMPA BAY WATER, A Regional Water Supply Authority (“TAMPA BAY WATER”) and \_\_\_\_\_, a corporation of the State of \_\_\_\_\_, or other business entity authorized to do business in the State of Florida (“CONTRACTOR”), with respect to that certain PROJECT consisting generally of the construction of \_\_\_\_\_.

WITNESSETH:

TAMPA BAY WATER and the CONTRACTOR in consideration of the mutual covenants and obligations contained herein, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, agree as follows:

**I. Work**

1.1 The CONTRACTOR shall perform all of the WORK in accordance with the CONTRACT DOCUMENTS (as that term is defined in the General Conditions which are attached to and made a part of this AGREEMENT). All of the other CONTRACT DOCUMENTS are hereby incorporated into and made a part of this AGREEMENT by this reference. The CONTRACT DOCUMENTS may only be amended, modified, or supplemented as provided in the CONTRACT DOCUMENTS.

1.2 The CONTRACT DOCUMENTS represent the final and entire integrated agreement between the parties with respect to the WORK. The CONTRACT DOCUMENTS supersede all prior oral or written agreements, if any, between the parties, and any statement, representation, promise or inducement not set forth in the CONTRACT DOCUMENTS is null and void and not binding on TAMPA BAY WATER or the CONTRACTOR. Except for the warranty and third party beneficiary rights of TAMPA BAY WATER set forth herein, the CONTRACT DOCUMENTS shall not in any way create a relationship of any kind between the ENGINEER and the CONTRACTOR or between TAMPA BAY WATER and a SUBCONTRACTOR or SUPPLIER, or between TAMPA BAY WATER and any other person.

1.3 If any provision(s) of the CONTRACT DOCUMENT is/are invalid, illegal, or unenforceable such provision(s) shall be considered divisible, and all other provisions of the CONTRACT DOCUMENTS shall nevertheless remain in full force and effect.

1.4 CONTRACTOR shall perform the WORK in accordance with generally accepted construction practice and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the WORK as required by this AGREEMENT and the CONTRACT DOCUMENTS. The responsibility to provide the construction means, methods, techniques, sequences and procedures shall include, but not

be limited to, the obligation of the CONTRACTOR to provide the following construction requirements, as applicable: temporary power and light; temporary offices and construction trailers; required design certifications; required approvals; weather protection; site clean-up and housekeeping; construction trade management; temporary parking; a construction safety plan; safety and first aid facilities; correction of or compensation for defective work or equipment; SUBCONTRACTORS' insurance certificates; storage areas; workshops and warehouses; temporary fire protection; site security; temporary Utilities; including without limitations; potable water and water for use in performing the WORK (in all cases, including a backflow preventer meeting ANSI A40.6); phone; sanitary; gas or fuel; SUBCONTRACTOR and SUPPLIER qualification; equipment and materials procurement and expediting; receipt and unloading and proper storage of delivered materials and equipment; erection rigging; temporary supports; submittal and shop drawings review and orderly filing system; construction and procurement critical path scheduling; construction coordination; and cooperation with TAMPA BAY WATER in implementation of TAMPA BAY WATER'S owner's direct purchase sales tax savings program.

1.5 During the progress of the WORK, CONTRACTOR shall at all times during normal working hours afford TAMPA BAY WATER and ENGINEER every reasonable opportunity for observing all WORK. During any such observation, all representatives of TAMPA BAY WATER and ENGINEER shall comply with all safety and other rules and regulations applicable to presence in or at the WORK site.

1.6 CONTRACTOR shall have full responsibility, to the extent applicable, for: locating all underground Utilities in advance of excavation; scheduling excavation and uncovering in advance, unless it conflicts with WORK already uncovered; shoring, blocking, and protecting underground Utilities; repairing any damage done to the satisfaction of TAMPA BAY WATER and ENGINEER, and the owners of those underground Utilities; promptly notifying TAMPA BAY WATER and ENGINEER of any newly discovered underground Utility; and the safety, protection and repairing of any damage done to any affected WORK. All costs involved and time required to perform these responsibilities shall be considered as having been included in the CONTRACT PRICE.

1.7 CONTRACTOR shall use care and diligence, and shall take all appropriate precautions, to protect the WORK and the WORK site and the property of other persons (including any materials, equipment, or other items furnished by TAMPA BAY WATER) from damage due to the nature of the WORK, the natural elements, carelessness of others, and from any cause, until FINAL COMPLETION of the WORK and for such purpose, CONTRACTOR shall provide fencing, protective features (such as tarpaulins, boards, boxing, frames, canvas guards, and fireproofing), and other safeguards to the extent CONTRACTOR reasonably determines such are necessary and proper in the performance of the WORK. CONTRACTOR shall ensure that each employee, representative, SUBCONTRACTOR, SUPPLIER, and others acting for the CONTRACTOR use designated access roads and parking areas. CONTRACTOR shall employ watchmen on the WORK site when necessary and shall also erect and maintain such strong and suitable barriers and such lights as shall effectively prevent the happening of any accident to health or to property or to any partially completed WORK or to any materials stored on or adjacent to the WORK site. CONTRACTOR shall employ any additional temporary fencing and gates to adequately protect the WORK. Stored materials shall be kept in a neat and orderly manner. Materials that are subject to deterioration by exposure to the sun, rain or other elements shall be kept adequately covered and protected. CONTRACTOR shall be responsible for protecting all stored materials and the WORK site safe from theft and vandalism. All costs involved and

time required to perform these responsibilities shall be considered as having been included in the CONTRACT PRICE.

1.8 CONTRACTOR shall notify owners of adjacent property (including underground Utility owners) not less than forty-eight (48) hours, or the time period required by LAWS AND REGULATIONS, whichever period is longer, prior to commencing the WORK, and shall coordinate and cooperate with them in the location, protection, removal, relocation, and/or replacement of their property. At least five (5) days prior to providing such notice to adjacent property owners, CONTRACTOR shall submit its proposed written notice to TAMPA BAY WATER for review and approval. All damage, injury or loss to property caused, directly or indirectly, in whole or part, by CONTRACTOR, any SUBCONTRACTOR or SUPPLIER or anyone for whose acts any of them may be liable, shall be remedied at CONTRACTOR'S expense, which shall be considered to have been included in the CONTRACT PRICE.

1.9 In case of damage or destruction to the WORK, the WORK site or adjacent properties resulting from any cause, and regardless of the extent thereof or the estimated cost of repair, replacement or restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, CONTRACTOR shall immediately undertake and complete the repair, replacement and restoration of the damage or destruction to the character and condition existing immediately prior to the damage or destruction, all at CONTRACTOR'S sole cost and expense, which shall be considered to have been included in the CONTRACT PRICE, except in the event that such damage or destruction is caused by TAMPA BAY WATER, its employees, agents, representatives, including ENGINEER, or is the result of an UNCONTROLABLE CIRCUMSTANCE.

1.10 CONTRACTOR shall notify TAMPA BAY WATER immediately of any damage or destruction to the WORK, the WORK site or any adjacent properties, including, but not limited to hazardous substance spills, damage to sensitive areas, permit or approval violations, fires and injuries. Additionally, CONTRACTOR shall notify the required Insurance carriers and Sureties of any damage or destruction to the WORK, the WORK site, or adjacent properties, or any accidents on the WORK site, as promptly as possible after CONTRACTOR learns of any such damage, destruction or accidents. As soon as practicable after learning of any such occurrence, CONTRACTOR shall submit a full and complete written report to TAMPA BAY WATER.

1.11 In case of an emergency which threatens loss or injury to persons or property, CONTRACTOR shall take appropriate remedial action, without previous instructions from TAMPA BAY WATER or ENGINEER, as the situation may warrant, and shall immediately provide Notice to TAMPA BAY WATER and ENGINEER of its action. Any claim for compensation by CONTRACTOR, together with substantiating documentation in regard to expense caused by emergency acts, shall be submitted to TAMPA BAY WATER and the amount of compensation if any, shall be determined by mutual agreement, subject to cost substantiation.

## **II. Contract Time**

2.1 TAMPA BAY WATER and the CONTRACTOR recognize that time is of the essence with respect to CONTRACTOR'S performance of its obligation under the CONTRACT DOCUMENTS, and TAMPA BAY WATER shall suffer financial loss if SUBSTANTIAL COMPLETION of the WORK is not achieved within the CONTRACT TIME specified in paragraph 2.2 below. Accordingly, if the CONTRACTOR fails to achieve SUBSTANTIAL

COMPLETION of the WORK, within the CONTRACT TIME, it shall pay TAMPA BAY WATER LIQUIDATED DAMAGES in accordance with the terms stated below in *Article III, Liquidated Damages*.

2.2 The CONTRACTOR shall commence the WORK within ten (10) days after the date specified for the commencement of the WORK in the NOTICE TO PROCEED and shall complete all WORK hereunder as follows:

a. All facilities shall be manually operational to provide TAMPA BAY WATER at its option the full time use of the PROJECT as intended by the CONTRACT DOCUMENTS and the CONTRACTOR shall perform the WORK to achieve SUBSTANTIAL COMPLETION on or before \_\_\_\_\_, providing \_\_\_\_\_, is specified in the NOTICE TO PROCEED as the date of commencement of the CONTRACT TIME or one day beyond \_\_\_\_\_, for each day beyond \_\_\_\_\_, specified in the NOTICE TO PROCEED as the date of commencement of the CONTRACT TIME.

b. The CONTRACTOR shall perform the WORK to achieve FINAL COMPLETION on or before \_\_\_\_\_, providing \_\_\_\_\_, is specified in the NOTICE TO PROCEED as the date of commencement of the CONTRACT TIME or one day beyond \_\_\_\_\_ for each day beyond \_\_\_\_\_, specified in the NOTICE TO PROCEED as the date of commencement of the CONTRACT TIME.

### III. Liquidated Damages

3.1 If the CONTRACTOR fails to achieve SUBSTANTIAL COMPLETION of the WORK within the CONTRACT TIME, as said time period may be adjusted pursuant to the terms of the CONTRACT DOCUMENTS, CONTRACTOR shall pay TAMPA BAY WATER LIQUIDATED DAMAGES in accordance with the following:

a. The CONTRACTOR shall pay TAMPA BAY WATER as LIQUIDATED DAMAGES, and not as a penalty, the amount of \_\_\_\_\_ Dollars and \_\_\_\_/cents (\$\_\_\_\_\_) for each day that expires after the CONTRACT TIME specified above in paragraph 2.2a for SUBSTANTIAL COMPLETION. These LIQUIDATED DAMAGES are TAMPA BAY WATER'S sole and exclusive SUBSTANTIAL COMPLETION delay related damages and represent a reasonable estimate of TAMPA BAY WATER'S damages in the event SUBSTANTIAL COMPLETION of the WORK is delayed. The CONTRACTOR agrees that these SUBSTANTIAL COMPLETION LIQUIDATED DAMAGES do not constitute a penalty or forfeiture.

b. The CONTRACTOR shall pay TAMPA BAY WATER as LIQUIDATED DAMAGES and not as a penalty, the amount of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_) for each day that expires after the time specified in Paragraph 2.2.b for FINAL COMPLETION. These LIQUIDATED DAMAGES are TAMPA BAY WATER's sole and exclusive FINAL COMPLETION delay related damages and represent a reasonable estimate of TAMPA BAY WATER's damages in the event FINAL COMPLETION of the WORK is delayed. The CONTRACTOR agrees that these FINAL COMPLETION LIQUIDATED DAMAGES do not constitute a penalty or forfeiture. Also, CONTRACTOR agrees these FINAL COMPLETION LIQUIDATED DAMAGES are in addition to, and not



duplicative of, the SUBSTANTIAL COMPLETION LIQUIDATED DAMAGES noted in Paragraph 3.1.a above.

**IV. Contract Price**

4.1 TAMPA BAY WATER hereby agrees to pay to the CONTRACTOR in lawful money of the United States for the faithful performance of all of the CONTRACTOR'S obligations under the CONTRACT DOCUMENTS, and the CONTRACTOR agrees to accept in full payment the CONTRACT PRICE of: \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_), subject to the conditions governing payments to the CONTRACTOR in the CONTRACT DOCUMENTS. If the CONTRACT PRICE includes any UNIT PRICE amounts and the actual quantity of UNIT PRICE items installed is different than the estimated quantity, then the CONTRACT PRICE shall be adjusted in accordance with the CONTRACT DOCUMENTS. The CONTRACT PRICE includes, if applicable, only those ALTERNATES accepted by TAMPA BAY WATER, as identified in paragraph 4.3 below. The CONTRACT PRICE includes, if applicable, only those ALLOWANCES established by TAMPA BAY WATER, as identified in paragraph 4.4 below.

4.2 The UNIT PRICES and associated estimated quantities included within the CONTRACT PRICE are attached hereto and made a part hereof as Schedule A.

4.3 The following ALTERNATES have been may be accepted by TAMPA BAY WATER and are included within the CONTRACT PRICE:

ALTERNATE	Price
_____	_____
_____	_____
_____	_____
_____	_____

4.4 The following ALLOWANCES have been established by TAMPA BAY WATER and are included within the CONTRACT PRICE:

ALLOWANCE	Price
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**V. Payment**

5.1 Payment procedures are outlined in the General Conditions, Article VII Payment. All monies not paid when due shall bear interest at a rate not to exceed the interest rate allowed by law to be paid by governmental entities in Florida, provided that this does not exceed six percent per year simple interest.

**VI. Miscellaneous**

6.1 The CONTRACTOR shall not sell, assign, transfer or otherwise convey any of its rights and shall not delegate any of its duties under the CONTRACT DOCUMENTS without the prior and expressed written consent of TAMPA BAY WATER and the Surety. Any attempted sale, assignment, transfer, conveyance or delegation of the CONTRACTOR'S rights under this AGREEMENT or the other CONTRACT DOCUMENTS in violation of the terms of this paragraph shall be void and shall relieve TAMPA BAY WATER of any further liability under the CONTRACT DOCUMENTS, but shall not relieve the CONTRACTOR or the CONTRACTOR'S Surety(ies) of any liability. If TAMPA BAY WATER consents in writing to an assignment, unless specifically stated to the contrary in the consent, the assignment shall not release or discharge the CONTRACTOR from any duty, responsibility or obligation set forth in the CONTRACT DOCUMENTS, and shall not release or discharge the Surety(ies) under the bonds required by the CONTRACT DOCUMENTS.

6.2 This AGREEMENT shall be binding on TAMPA BAY WATER, the CONTRACTOR, and all of their respective successors, heirs, legal representatives and, if TAMPA BAY WATER has consented to an assignment or delegation as provided in the previous paragraph, assigns and delegates.

6.3 Any waiver by TAMPA BAY WATER of any provision of the CONTRACT DOCUMENTS must be specific and in writing, and shall apply only to the particular matter concerned and not to other similar or dissimilar matters. Any waiver of any breach of the CONTRACT DOCUMENTS shall not be held to be a waiver of any other or subsequent breach. Neither the failure of TAMPA BAY WATER to exercise any power given to TAMPA BAY WATER under the CONTRACT DOCUMENTS or to insist upon compliance by the CONTRACTOR with CONTRACTOR'S obligations under the CONTRACT DOCUMENTS, nor any custom or practice of TAMPA BAY WATER and CONTRACTOR at variance with the terms of the CONTRACT DOCUMENTS, shall constitute a waiver of TAMPA BAY WATER'S right to demand full and complete compliance by the CONTRACTOR with the terms and provisions of the CONTRACT DOCUMENTS.

6.4 Nothing contained in the CONTRACT DOCUMENTS shall in any manner authorize, empower or constitute the CONTRACTOR, its SUBCONTRACTORS or SUPPLIERS as agent(s) of TAMPA BAY WATER; authorize or empower the CONTRACTOR, its SUBCONTRACTORS or SUPPLIERS to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of TAMPA BAY WATER; or authorize or empower the CONTRACTOR, its SUBCONTRACTORS or SUPPLIERS to bind TAMPA BAY WATER in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of TAMPA BAY WATER. The CONTRACTOR shall perform all WORK under the CONTRACT DOCUMENTS as an independent contractor. This AGREEMENT does not create, and shall not be construed as creating, any rights enforceable by any person not a party to the AGREEMENT.

6.5 This AGREEMENT and the CONTRACT DOCUMENTS shall be governed by and construed in accordance with the LAWS AND REGULATIONS of the State of Florida without giving effect to any rules governing conflict of laws.

6.6 The parties agree that for any litigation arising under the CONTRACT DOCUMENTS, venue shall be only in the state courts in and for Pinellas County, Florida.

6.7 TAMPA BAY WATER'S payment to CONTRACTOR of any progress or final payment shall not release the CONTRACTOR of any liability and shall not be deemed evidence of performance or be construed as an acceptance of defective or improper WORK, or WORK that does not comply with the requirements of the CONTRACT DOCUMENTS.

6.8 All documents prepared or produced by CONTRACTOR or any of its SUBCONTRACTORS pursuant to this AGREEMENT are the property of and belong to TAMPA BAY WATER, provided that CONTRACTOR is allowed to reuse such documents with the approval of TAMPA BAY WATER. If CONTRACTOR claims that any such document is proprietary or protected by trade secret or otherwise, CONTRACTOR has the burden to establish the basis of any such protection but until judicially declared otherwise, TAMPA BAY WATER shall have all rights of ownership and use of such documents.

6.9 In no event shall TAMPA BAY WATER be liable to CONTRACTOR, nor shall CONTRACTOR be liable to TAMPA BAY WATER, for any incidental, consequential, or punitive damages based upon claims arising out of or in connection with the performance or non-performance of a party's obligations under this AGREEMENT, or the material inaccuracy of any representation made by a party in this AGREEMENT, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. CONTRACTOR acknowledges and agrees, however, that claims, which are brought by third parties against TAMPA BAY WATER and for which, but for the application of this paragraph, CONTRACTOR would otherwise have an indemnification obligation under this AGREEMENT, shall not be considered consequential damages under this paragraph.

6.10 All express representations, indemnifications, or limitations of liability made in or given in this AGREEMENT will survive its completion or termination for any reason.

**6.11 TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR AND TAMPA BAY WATER HEREBY ACKNOWLEDGE AND AGREE THAT ANY AND ALL CLAIMS ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP CREATED HEREBY ARE MATTERS WHICH, IF ADJUDICATED, SHOULD BE ADJUDICATED BY A COURT WITHOUT A JURY. THEREFORE, THE PARTIES HEREBY WAIVE A TRIAL BY A JURY. NEITHER TAMPA BAY WATER NOR CONTRACTOR OR ANY SUCCESSOR THEREOF SHALL SEEK A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER AT LAW OR IN EQUITY, WHETHER DIRECT OR COLLATERAL, WHETHER IN CONTRACT OR IN TORT) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP CREATED HEREBY. NEITHER TAMPA BAY WATER NOR CONTRACTOR SHALL SEEK TO CONSOLIDATE ANY ACTION OR PROCEEDING IN WHICH TRIAL BY JURY HAS BEEN WAIVED WITH ANY OTHER ACTION OR PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH CANNOT BE AND HAVE NOT BEEN WAIVED. THE**

**PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE PARTIES AND THEIR RESPECTIVE ATTORNEYS AND THE PROVISIONS HEREOF SHALL BE SUBJECT TO NO EXCEPTIONS. TAMPA BAY WATER AND CONTRACTOR ACKNOWLEDGE AND AGREE THAT NO ONE, INCLUDING, WITHOUT LIMITATION, TAMPA BAY WATER'S AGENTS OR CONTRACTORS, HAS REPRESENTED THAT THE PROVISIONS OF THIS PARAGRAPH OR OF ANY OTHER PARAGRAPH OF THIS AGREEMENT WILL NOT BE FULLY ENFORCED.**

6.12 CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this AGREEMENT and that CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this AGREEMENT.

## **VII. Definitions**

7.1 Defined terms used in this AGREEMENT have the intent and meanings assigned to them in the General Conditions, *Article I, DEFINITIONS*.

## **VIII. Engineer**

8.1 TAMPA BAY WATER has retained the firm of \_\_\_\_\_ to act as the ENGINEER, assume all of the duties and responsibilities and have the rights and authority assigned to the ENGINEER in the CONTRACT DOCUMENTS with respect to completion of the WORK in accordance with the CONTRACT DOCUMENTS.

## **IX. Public Entity Crime Statement**

9.1 Pursuant to subsections 287.133(2) and (3), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO, for a period of thirty-six months following the date of being placed on the convicted vendor list.

CONTRACTOR hereby certifies and warrants that it has not been placed on any convicted vendor list for the past thirty-six months and is in full compliance with the requirements of subsections 287.133(2) and (3), Florida Statutes.

## **X. Discrimination**

10.1 Pursuant to Subsection 287.134(2)(a), Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building

or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

CONTRACTOR hereby certifies and warrants that it has not been placed on any discriminatory vendor list and is in full compliance with the requirements of subsections 287.134(2)(a), Florida Statutes.

**XI. Drawings and Specifications**

11.1 The DRAWINGS consist of the following:

Drawings Description	Drawing Number	Issue/Revision Date

11.2 The SPECIFICATIONS consist of the following:

Section	Description	Date

PROJECT NO.: \_\_\_\_\_

Agreement

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

**XII. IN WITNESS WHEREOF, TAMPA BAY WATER and CONTRACTOR have signed four (4) copies of this AGREEMENT, and all parts of the CONTRACT DOCUMENTS have been identified by OWNER and CONTRACTOR.**

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

ATTEST

**TAMPA BAY WATER  
A Regional Water Supply Authority**

\_\_\_\_\_  
Secretary

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

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

Its: \_\_\_\_\_ Chair

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Office of General Counsel

\_\_\_\_\_  
(CONTRACTOR)

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

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

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

[Version 7-23-09]

PROJECT NO.: \_\_\_\_\_

Agreement

Address for giving notice to:

**TAMPA BAY WATER**  
A Regional Water Supply Authority:

**TAMPA BAY WATER**  
2575 Enterprise Road  
Clearwater, Florida 33763-1102  
Attn: Amanda Rice, P.E., Senior Manager, Construction

The ENGINEER:

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The CONTRACTOR:

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End of Agreement

[

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That  
 \_\_\_\_\_ as Principal, located at  
 \_\_\_\_\_ (Business Address) and  
 \_\_\_\_\_ as Surety,  
 located at \_\_\_\_\_

(Business Address) are held and firmly bound to the TAMPA BAY WATER, A Regional Water Supply Authority as Obligee in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

**Whereas,** Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, with Obligee for \_\_\_\_\_, **Project No.:** \_\_\_\_\_ in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

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

then this bond is void; otherwise it remains in full force.



## BE IT FURTHER KNOWN:

1. Any changes, regardless of scope or amount, in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.
2. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anyway affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.
3. This Performance Bond is issued in compliance with the terms and conditions set forth in Florida Statute 255.05, however, it is intended to exceed the minimal coverage requirements established by that statute. The Notice and time limitations of Florida Statute 255.05 (2) are also, to the extent applicable, if any, incorporated herein by reference and made a part hereof.
4. In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.
5. Whenever the CONTRACTOR shall be, and is declared by TAMPA BAY WATER to be in default under the CONTRACT, TAMPA BAY WATER having performed TAMPA BAY WATER'S obligations thereunder, the SURETY shall promptly remedy the default, as set forth below and at the sole option of TAMPA BAY WATER, by promptly:
  - (1) Completing the CONTRACT in accordance with its terms and conditions and paying TAMPA BAY WATER all of its losses, damages, costs and attorneys' and legal assistants' fees, whether at trial, on appeal or in bankruptcy, that TAMPA BAY WATER sustains because of any default by Principal under the CONTRACT, including, but not limited to, all delay damages, whether liquidated or actual. In the event SURETY takes over and

completes the CONTRACT, then in such event it shall be entitled to receive the balance of the CONTRACT PRICE, as defined in sub-paragraph 2 below; or

- (2) Indemnifying TAMPA BAY WATER for all of its damages, expenses, costs, delay damages, attorneys' and legal assistant's fees, including appellate and bankruptcy proceedings, that TAMPA BAY WATER has incurred, suffered or sustained as a result of TAMPA BAY WATER'S completion of the CONTRACT or the Principal's default under the CONTRACT, less the remaining unpaid balance of the CONTRACT PRICE, if any. The term "balance of the CONTRACT PRICE", as used in this Performance Bond, shall mean the total amount payable by TAMPA BAY WATER to the CONTRACTOR under the CONTRACT and any amendments thereto, less the amount previously paid by TAMPA BAY WATER to the CONTRACTOR.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

**PRINCIPAL:**

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

Witnesses as to Principal

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

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

Its: \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

**PERFORMANCE BOND**

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

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

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

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_  
Serial No., If Any: \_\_\_\_\_

ATTEST:

**SURETY:**

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

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

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

\_\_\_\_\_  
Witness as to Surety

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

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

PROJECT NO.: \_\_\_\_\_

PERFORMANCE BOND

**OR**

\_\_\_\_\_

\_\_\_\_\_

Florida Resident Agent and As Attorney in  
Fact

(Attach Power of Attorney)

Witness

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Business Address)

(Printed Name)

(Telephone Number)

PROJECT NO.: \_\_\_\_\_

PERFORMANCE BOND

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_, of the above named Surety. He/She is personally known to me **OR** has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_

Serial No., If Any: \_\_\_\_\_

**255.05 PUBLIC PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That  
 \_\_\_\_\_ as Principal, located at  
 \_\_\_\_\_ (Business Address) and  
 \_\_\_\_\_ as  
 Surety, located at  
 \_\_\_\_\_ (Business  
 Address) are held and firmly bound to the TAMPA BAY WATER, A Regional Water  
 Supply Authority as Oblige in the sum of \_\_\_\_\_  
 (\$\_\_\_\_\_ ) for the payment whereof we bind ourselves, our heirs, executors,  
 personal representatives, successors and assigns, jointly and severally.

**Whereas,** Principal has entered into a contract dated as of the \_\_\_\_\_ day of  
 \_\_\_\_\_, 20\_\_, with Oblige for \_\_\_\_\_, **Project  
 No.:** \_\_\_\_\_ in accordance with drawings and specifications, which contract is  
 incorporated by reference and made a part hereof, and is referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract; and
2. Pays Oblige all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings that Oblige sustains because of default by the Principal under paragraph 1 of this bond;

then this bond is void; otherwise it remains in full force.

**BE IT FURTHER KNOWN:**

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

- 2. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anyway affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.
- 3. This Payment Bond is a statutory payment bond and is not intended to be a common law Payment Bond. This Payment Bond is issued in compliance with the terms and conditions set forth in Florida Statute 255.05. The Notice and time limitations of Florida Statute 255.05 (2) are also expressly incorporated herein by reference and made a part hereof. Any action instituted by a claimant under this bond must be in accordance with the Notice and Time limitations contained in Florida Statute 255.05 (2).

In no event shall the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by such claimants.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

**PRINCIPAL:**

\_\_\_\_\_  
Witnesses as to Principal

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

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

It: \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

**PUBLIC PAYMENT BOND**

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

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

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

My Commission Expires:

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

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_  
Serial No., If Any: \_\_\_\_\_

ATTEST:

SURETY:

\_\_\_\_\_  
\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)  
\_\_\_\_\_  
(Authorized Signature)  
\_\_\_\_\_  
(Printed Name)



PROJECT NO.: \_\_\_\_\_

PUBLIC PAYMENT BOND

OR

\_\_\_\_\_  
in Fact

\_\_\_\_\_  
Florida Resident Agent and As Attorney

\_\_\_\_\_  
Witness

(Attach Power of Attorney)

\_\_\_\_\_

\_\_\_\_\_

(Business Address)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Telephone Number)

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_, of the above named surety. He/She is personally known to me **OR** has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_

Serial No., If Any: \_\_\_\_\_

**TAMPA BAY WATER, A REGIONAL WATER SUPPLY  
AUTHORITY CERTIFICATE OF INSURANCE FORM or  
APPROVED ACORD FORM**

Issue Date: \_\_\_\_\_

Producer: \_\_\_\_\_

CANCELLATION: Should any of the below described policies be cancelled, non-renewed or adversely changed before the expiration date thereof, the issuing company will provide 30 days written notice to TAMPA BAY WATER by certified mail.

Re: PROJECT/Contract Number: \_\_\_\_\_

Insured: \_\_\_\_\_

COMPANIES AFFORDING COVERAGE	BEST RATING/CLASS
A.	
B.	
C.	
D.	
E.	

COVERAGES: This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated.

Company Letter	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS ALL LIMITS IN THOUSANDS		
					EACH OCCURRENCE	AGGREGATE	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> Commercial Form <input type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Premises-Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazard <input type="checkbox"/> Products/Completed Operations Hazard <input type="checkbox"/> Contractual Insurance <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Personal Injury						
					BI & PD Combined	\$	\$
					Bodily Injury	\$	\$
					Property Damage	\$	\$
					Products Comp/OP	\$	\$
					Personal & Adv. Injury	\$	\$
					* Separate Project Agg. For TAMPA BAY WATER	<del> </del>	\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Combined Single Limit		
					Bodily Injury (Per Person)		
					Bodily Injury (Per Accident)		
					Property Damage		
	<b>UMBRELLA/EXCESS LIABILITY</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Excess Form <input type="checkbox"/> Following Form Coverage				Each Occurrence		
					Aggregate		
	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				<input checked="" type="checkbox"/> Statutory Coverage Limit	\$	
					EL Each Accident	\$	
					EL Disease – Policy Limit	\$	
					EL Disease – Each Employee	\$	
	<b>PROFESSIONAL LIABILITY</b> <input type="checkbox"/> Claims Made   <input type="checkbox"/> Occurrences Retro Date _____					\$	
						\$	
	<b>BUILDER'S RISK</b> <input type="checkbox"/> All Risk   <input type="checkbox"/> Permission to Occupy <input type="checkbox"/> All Owners', Contractors', Subcontractors' Interests Covered <input type="checkbox"/> Installation Floater				\$	<del> </del>	
					\$	<del> </del>	
					\$	<del> </del>	
	<b>FIDELITY</b> <input type="checkbox"/> Employee Dishonesty <input type="checkbox"/> Covers Loss to TAMPA BAY WATER				\$	<del> </del>	
					\$	<del> </del>	
	<b>OTHER</b>						

Description of Operations/Locations/Vehicle/Special Items:  
\* Specific Project or Location: \_\_\_\_\_

**CERTIFICATE HOLDER and ADDITIONAL INSURED**  
 TAMPA BAY WATER, Its Engineers, Architects, Consultants,  
 Subsidiaries or Affiliates and each of the TAMPA BAY WATER  
 Directors, Officers, Employees, Representatives, Agents or Volunteers.

Authorized Representative: \_\_\_\_\_  
 (Signature Required)  
 Address \_\_\_\_\_  
 Telephone # \_\_\_\_\_ Facsimile # \_\_\_\_\_

**THIS IS TO FURTHER CERTIFY THAT:**

1. The company issuing the General Liability Coverage hereby agrees to waive any right of subrogation it may acquire against TAMPA BAY WATER, its engineers, its consultants, and all other parties named as insured by reason of any payment made on account of personal injury, bodily injury, including death resulting therefrom, sustained by any employee of the insured or property damage arising out of the performance or furnishing of work under the above referenced Agreement.
2. Each of the above described policies contains a provision or endorsement that the coverage afforded will not be canceled, adversely changed or non-renewed until at least thirty (30) days prior written notice has been give to TAMPA BAY WATER by certified mail.
3. Each of the above listed companies hereby agrees to deliver to TAMPA BAY WATER new Certificate of Insurance at least fifteen (15) days prior to coverage renewals or binder within such period and a certificate within fifteen (15) days thereafter.
4. If requested, each of the above listed companies hereby agrees to deliver two (2) copies of the policies purchased by the AGENT to TAMPA BAY WATER.
5. Each of the above listed companies is authorized to do business and has an agent for service of process in Florida and has an "A" policy holders rating and a financial rating of at least Class VIII in accordance with the most current Best's rating. For self-insurance funds, financial statements are to be provided, if requested by TAMPA BAY WATER. (At TAMPA BAY WATER'S option, a Best's rating or financial information regarding any self-insurance funds may be waived).

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**   DATE (MM/DD/YYYY)

PRODUCER  Your Insurance Agent	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED  Company Name Street City, State, Zip Code	INSURER A: Company Name	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**

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

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Policy Number	effective	expires	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
X	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Policy Number	effective	expires	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
X	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$	Policy Number	effective	expires	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below NO	Policy Number	effective	expires	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 DISEASE - POLICY LIMIT \$ 500,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Job Name/Number  
 Tampa Bay Water, its Engineers, Architects, Consultants, Subsidiaries or Affiliates and each of the Tampa Bay Water Directors, Officers, Employees, Representatives, Agents or Volunteers shall be named as additional insured under the GL Policy per CG 20 10 (07/04) AND CG 20 37 (07/04) or equivalent, and the Automobile Liability policy. Waiver of Subrogation is provided in favor of Tampa Bay Water on all policies. The insurance evidenced by this Certificate is primary and non-contributory to any insurance maintained by Tampa Bay Water.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
Tampa Bay Water 2575 Enterprise Road Clearwater, FL 33763-1102	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

## Supplementary Conditions

### Supplementary Conditions To the General Conditions, *Article IV, The Contractor and Its Employees.*

The limits of liability for the following insurance required by the General Conditions, *Article IV, The Contractor and Its Employees*, as amended in the Supplementary Conditions, shall provide coverage for not less than the following amounts or greater where required by LAWS AND REGULATIONS:

1. Commercial General Liability. The coverage(s) shall be no less than:
  - (a) Minimum limits of \$1,000,000 per occurrence combined single limit for all liability must be provided, with umbrella insurance making up the difference between the policy limits of underlying policies and the total amount of coverage required. The referenced limit shall be provided as a separate aggregate for the WORK (PROJECT Aggregate).
  - (b) Minimum limits of \$2,000,000 Aggregate single limit for all liability must be provided, with umbrella insurance making up the difference between the policy limits of underlying policies and the total amount of coverage required. The referenced limit shall be provided as a separate aggregate for the WORK (PROJECT Aggregate).
2. Business Automobile Liability. The coverage shall be no less than:
  - (a) Minimum limits of \$1,000,000 combined single limit for all liability must be provided.
3. Umbrella/Excess Liability. The coverage shall be no less than:
  - (a) Minimum limits of \$2,000,000 per occurrence must be provided.
  - (b) Aggregate limits of \$5,000,000 must be provided.
4. Worker's Compensation and Employer's Liability. The coverage shall include:
  - (a) Coverage A:
    - State: Statutory limits under the Laws of the State of Florida.
    - Federal: Statutory limits under the Laws of the United State of America (e.g., Longshoremen's, etc.)
  - (b) Coverage B:
    - Employer's Liability, bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employees shall be no less than:
      - (1) \$ 500,000 Each Accident
      - (2) \$ 1,000,000 Each Disease
      - (3) \$ 500,000 Each Employee

TAMPA BAY WATER requires CONTRACTOR employers to purchase workers compensation insurance for all their employees regardless of the number of employees they have and regardless of any other exemptions. Florida law permits employers who may be exempt from purchase of coverage to waive their exemptions and purchase the coverage. TAMPA BAY WATER requires the CONTRACTOR to purchase said coverage.

5. Builder's Risk "All Risk" Completed Value Insurance. Coverage shall be no less than the full insurable value of the WORK, including completed WORK and WORK in progress.
6. Additional Requirements
  - a. TAMPA BAY WATER must be listed as an Additional Insured on General Liability, Auto Liability and Excess policies;
  - b. Excess/Umbrella policies shall be written as "follow form";
  - c. The insurance provided for TAMPA BAY WATER as Additional Insured shall apply as primary and non-contributory insurance;
  - d. The Additional Insured Endorsement utilized for General Liability must be form CG 20 10 (07/04) and CG 20 37 (07/04) or broader wording in TAMPA BAY WATER'S favor as approved by TAMPA BAY WATER;
  - e. CONTRACTOR shall maintain General Liability coverage for itself and all Additional Insureds for the duration of the WORK and maintain completed operations coverage for itself and Additional Insureds for five (5) years after completion of the WORK;
  - f. All CONTRACTOR insurance policies will include a Waiver of Subrogation in favor of TAMPA BAY WATER;
  - g. Each of CONTRACTOR'S insurance policies shall be endorsed to provide TAMPA BAY WATER with at least thirty (30) days written notice prior to any material change or cancellation of the policy, to the fullest extent commercially available;
  - h. Deductible amounts on CONTRACTOR policies shall not exceed \$25,000 and shall require approval from TAMPA BAY WATER;
  - i. In the event CONTRACTOR breaches any provision of the Insurance Requirements of the AGREEMENT, TAMPA BAY WATER may deduct the cost of any insurance from any funds Payable to CONTRACTOR under the CONTRACT DOCUMENTS.

**General Conditions  
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## General Conditions

### I. DEFINITIONS

Wherever in the CONTRACT DOCUMENTS the following terms are used, the intent and meaning shall be as follows:

#### 1.1 ADDENDA

Instruments issued by ENGINEER for TAMPA BAY WATER prior to the advertised time for receipt of BIDS that modify the CONTRACT DOCUMENTS by additions, deletions, clarifications, corrections, or other revisions.

#### 1.2 AGREEMENT

The written AGREEMENT between TAMPA BAY WATER and the CONTRACTOR covering the WORK to be performed.

#### 1.3 ALLOWANCES

A specified sum included in the CONTRACT PRICE to be utilized only at the discretion of TAMPA BAY WATER.

#### 1.4 ALTERNATES

A specified portion of the WORK listed on the BID which has been added to or deducted from the BASE BID, at TAMPA BAY WATER's discretion, as identified in the AGREEMENT.

#### 1.5 AS APPROVED

The words "AS APPROVED", unless otherwise qualified, shall be understood to be for conformance with the CONTRACT DOCUMENTS.

#### 1.6 AS - BUILT CONTRACT DOCUMENTS

A set of the CONTRACT DOCUMENTS marked up by the CONTRACTOR to show the WORK as constructed with all modifications from the original CONTRACT DOCUMENT.

#### 1.7 BASE BID

The sum total of the combined UNIT PRICES, LUMP SUM PRICES and ALLOWANCES in the BID, excluding all ALTERNATES.

#### 1.8 BIDDER

The person(s), partnership, firm or corporation submitting a BID for the WORK.

#### 1.9 BID DOCUMENTS

The "BID DOCUMENTS" consist of the Instruction of Bidders, Information to Bidders, Request for Bid, BID and the CONTRACT DOCUMENTS.

**1.10 BID SECURITY**

The Bid Bond, certified check or cashier's check provided pursuant to the BID DOCUMENTS to protect TAMPA BAY WATER from the unauthorized withdrawal of BID or refusal to execute the CONTRACT DOCUMENTS.

**1.11 CHANGE AUTHORIZATION**

A written instrument, which when recommended by the ENGINEER and signed by TAMPA BAY WATER, authorizes and directs the CONTRACTOR to perform changes in the WORK as described in the CHANGE AUTHORIZATION, and/or gives the basis, if any, for a subsequent adjustment in CONTRACT PRICE or CONTRACT TIME. Upon receipt of a CHANGE AUTHORIZATION, the CONTRACTOR is authorized and required to perform the subject changes in the WORK.

**1.12 CHANGE ORDER**

A written instrument which, when recommended by the ENGINEER and signed by TAMPA BAY WATER and the CONTRACTOR, amends the CONTRACT DOCUMENTS to provide for changes in the WORK, and/or CONTRACT PRICE, and/or CONTRACT TIME.

**1.13 CONSTRUCTION DIRECTIVE**

A written instrument issued by the ENGINEER pursuant to Paragraph 7.2.9.

**1.14 CONTRACT DOCUMENTS**

The "CONTRACT DOCUMENTS" consist of the AGREEMENT, ADDENDA, Supplementary Conditions, General Conditions, SPECIFICATIONS, DRAWINGS, CHANGE ORDERS, CHANGE AUTHORIZATIONS, and all other documents expressly incorporated by specific reference thereto. The CONTRACT DOCUMENTS are sometimes collectively referred to as the "CONTRACT".

**1.15 CONTRACTOR**

The person(s), partnership, firm, or corporation that entered into and is (are) identified in the AGREEMENT.

**1.16 CONTRACTOR'S REPRESENTATIVE**

The CONTRACTOR'S superintendent, project manager or other person at the location of WORK authorized to direct the WORK and receive communications from TAMPA BAY WATER or ENGINEER.

**1.17 CONTRACT PRICE**

The total compensation payable by TAMPA BAY WATER to the CONTRACTOR for the performance of the WORK by the CONTRACTOR in accordance with the requirements of the CONTRACT DOCUMENTS, as stated in the AGREEMENT and adjusted by all CHANGE ORDERS and CHANGE AUTHORIZATIONS.

**1.18 CONTRACT TIME**

Unless otherwise specified, the CONTRACT TIME for all or a designated part of the WORK is the period of time allowed, subject to CHANGE ORDERS and CHANGE AUTHORIZATIONS, for completion of a specified part of the WORK. The first DAY of CONTRACT TIME shall be that date as specified on the NOTICE TO PROCEED as the date the CONTRACT TIME shall commence.

**1.19 CORRECTION PERIOD**

The period of time established in paragraph 4.20.2 hereafter for the correction of DEFECTIVE WORK.

**1.20 DAY**

Unless otherwise specifically stated, the term DAY shall be understood to mean calendar day.

**1.21 DEFECTIVE**

A term used to refer to WORK that is faulty, unsatisfactory, deficient, damaged or does not conform to the requirements of the CONTRACT DOCUMENTS and all applicable LAWS AND REGULATIONS.

**1.22 DRAWINGS**

The term DRAWINGS refers to the various drawings, profiles, cross sections, elevations, details, plans and other working drawings and supplementary drawings, or reproductions thereof, sealed by the ENGINEER, which show the location, character, dimensions, details of the WORK to be performed, all as identified in the AGREEMENT. DRAWINGS may either be bound in the same book as the balance of the CONTRACT DOCUMENTS or bound in separate sets, and are a part of the CONTRACT DOCUMENTS, regardless of the method of binding.

**1.23 ENGINEER**

The person or organization identified as such in the AGREEMENT that provided the technical design. The term "ENGINEER" means the ENGINEER or its authorized representatives.

**1.24 FINAL COMPLETION**

The completion of all the WORK in accordance with the CONTRACT DOCUMENTS.

**1.25 LAWS AND REGULATIONS**

Federal, State, and Local Statutes, Judicial and Administrative Decisions, Laws, By-Laws, Codes, Rules, Regulations, Resolutions, Ordinances, and/or Orders applicable to the PROJECT.

**1.26 LUMP SUM PRICE**

The price paid for a specified quantity of WORK, which when performed, is paid for on the basis of an agreed price for the completed WORK.

**1.27 NOTICE**

The term "NOTICE", or the requirement to notify, as used in the CONTRACT DOCUMENTS or applicable LAWS AND REGULATIONS, shall signify a written communication delivered in person or

by certified or registered mail, return receipt requested to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended.

**1.28 NOTICE OF AWARD**

The written notice of acceptance of the BID by TAMPA BAY WATER to the successful BIDDER stating that upon compliance by the BIDDER, within the time specified, with the requisite conditions stated in the BID DOCUMENTS, TAMPA BAY WATER will deliver the CONTRACT to the successful BIDDER for its execution.

**1.29 NOTICE TO PROCEED**

The written NOTICE issued by TAMPA BAY WATER to the CONTRACTOR authorizing it to proceed with the WORK in accordance with the CONTRACT DOCUMENTS, and fixing the date for which the CONTRACT TIME shall commence.

**1.30 OR EQUAL**

The term "or equal" shall be understood to indicate that the "equal" product is the same or better than the named product in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the PROJECT design requirements will be made by the ENGINEER.

**1.31 PARTIAL UTILIZATION**

Use by TAMPA BAY WATER of a portion of the WORK (as designated by TAMPA BAY WATER) before reaching SUBSTANTIAL COMPLETION for all the WORK.

**1.32 PAYMENT APPLICATION**

The forms provided by TAMPA BAY WATER which shall be used by the CONTRACTOR in requesting partial or final payment.

**1.33 PERMIT ALLOWANCE**

The PERMIT ALLOWANCE is for TAMPA BAY WATER's use in reimbursing the CONTRACTOR for the actual cost of permit fees required by LAWS AND REGULATIONS necessary to perform the WORK. This is a pass-through cost and no mark-ups are allowed on the PERMIT ALLOWANCE.

**1.34 PROGRESS REPORT**

A written report(s) indicating progress of the WORK, estimated date for delivery of materials, and proposed plan for recovery of any delays to the timing and sequence of WORK set forth in the PROGRESS SCHEDULE and proposed plan for recovery of any delays to the timing and sequence of WORK set forth in the PROGRESS SCHEDULE.

**1.35 PROGRESS SCHEDULE**

Schedule which shows the timing and sequence of CONTRACTOR'S proposed execution of the WORK and all subsequently issued updates thereto, after said updates have been reviewed and accepted by TAMPA BAY WATER.

**1.36 PROJECT**

The name of the PROJECT is as identified in the AGREEMENT.

**1.37 PROJECT ALLOWANCE**

The PROJECT ALLOWANCE is solely for TAMPA BAY WATER'S use in the payment for changes in the WORK, where such changes have been approved pursuant to the CONTRACT DOCUMENTS.

**1.38 PROJECT REPRESENTATIVE**

The authorized representative(s) of the ENGINEER who is (are) assigned to the PROJECT or any part thereof.

**1.39 RECORD DRAWINGS**

DRAWINGS that are prepared by the ENGINEER reflecting as-built information provided by the CONTRACTOR on CONTRACTOR'S AS-BUILT CONTRACT DOCUMENTS.

**1.40 SHOP DRAWINGS**

All drawings, diagrams, illustrations, schedules, and other data prepared by or for the CONTRACTOR to illustrate some part of the WORK and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other data prepared by a SUPPLIER and submitted by the CONTRACTOR to illustrate items of material or equipment.

**1.41 SPECIFICATIONS**

The term "SPECIFICATIONS" refers to those written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK, and certain administrative details applicable thereto, all as identified in the AGREEMENT. Where standard specifications, common to the construction industry and to standard engineering practice, are referenced to or are otherwise applicable, the applicable portions of the most current versions of such standard specifications shall become a part of these CONTRACT DOCUMENTS. If referenced standard specifications conflict with SPECIFICATIONS contained herein, the requirements contained herein shall control unless contrary to LAWS AND REGULATIONS.

**1.42 SUBCONTRACTOR**

An entity having a Contract with the CONTRACTOR for performing labor on the WORK on the PROJECT, or for performing both labor on the PROJECT and furnishing materials or equipment.

**1.43 SUBMITTAL**

The term SUBMITTAL includes SHOP DRAWINGS, tests, samples, PROGRESS SCHEDULES and other schedules, PROGRESS REPORTS and other reports, and any other documents required for submission by the CONTRACT DOCUMENTS.

**1.44 SUBSTANTIAL COMPLETION**

SUBSTANTIAL COMPLETION shall be that degree of completion of the WORK or specified portion of the WORK in accordance with the CONTRACT DOCUMENTS, as specified in the General Conditions, *Article II, Contract Time* of the Agreement, certified by the ENGINEER and approved by TAMPA BAY WATER as evidenced by the ENGINEER'S issuance of a Certificate of Substantial Completion, sufficient to provide TAMPA BAY WATER, at its discretion, the full-time use of the WORK or PARTIAL UTILIZATION of a specified portion of the WORK for the purposes for which it was intended.

**1.45 SUPPLIER**

A manufacturer, fabricator, distributor, material man, or vendor having an agreement with the CONTRACTOR for furnishing materials or equipment for the PROJECT.

**1.46 TAMPA BAY WATER, A REGIONAL WATER SUPPLY AUTHORITY/OWNER**

TAMPA BAY WATER, A Regional Water Supply Authority is the OWNER of the WORK described in the CONTRACT DOCUMENTS. The term "OWNER" and "TAMPA BAY WATER" are interchangeable

**1.47 UNCONTROLLABLE CIRCUMSTANCE**

Any act, event or condition affecting the PROJECT, CONTRACTOR or TAMPA BAY WATER to the extent that it materially and adversely affects: (i) the ability of either party to perform any obligation hereunder (except for payment obligations); or (ii) the cost of such party's performance, if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this AGREEMENT;

- (1) Inclusions. Subject to the foregoing, such acts or events include the following:
  - (a) an act of God, hurricane, landslide, lightning, earthquake, fire, flood, plague, tornadoes, (but not including reasonably anticipated weather conditions for the geographic area of the WORK site), explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
  - (b) a Change in Law;
  - (c) the failure of any appropriate governmental body or private utility having operational jurisdiction in the area in which the PROJECT is located to provide and maintain Utilities to the WORK site;
  - (d) any failure of title to the WORK site or any enforcement of any encumbrance on the site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;
  - (e) the preemption of materials or services by a governmental body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the PROJECT or WORK site;
  - (f) the presence at the WORK site of (i) subsurface structures, materials or conditions having archaeological significance; (ii) any habitat of endangered or similarly protected species;(iii) functioning subsurface structures at the site (to the extent not identified by TAMPA BAY WATER to CONTRACTOR); and (iv) subsurface conditions of which



CONTRACTOR, through the exercise of reasonable diligence, could not reasonably be expected to have notice;

(g) strikes by an organized union of the CONTRACTOR'S SUBCONTRACTOR'S;

(h) the failure of TAMPA BAY WATER to obtain any permit or approval which is TAMPA BAY WATER'S responsibility to obtain, on or prior to the dates set forth in the Project Schedule.

(2) Exclusions. It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

(a) general economic conditions, interest or inflation rates, or currency fluctuations or exchange rates;

(b) changes in the financial condition of TAMPA BAY WATER, CONTRACTOR or any SUBCONTRACTOR affecting the ability to perform their respective obligations;

(c) the consequences of error, neglect or omissions by the parties and any SUBCONTRACTOR in the performance of any WORK or responsibilities under this AGREEMENT;

(d) any increase for any reason in premiums charged by the CONTRACTOR'S insurers or the insurance markets generally for the required Insurance;

(e) the failure of CONTRACTOR to secure any patents or licenses in connection with the technology necessary to perform its obligations hereunder;

(f) the failure of any SUBCONTRACTOR or SUPPLIER to furnish labor, materials, services or equipment for any reason other than for acts or events specifically included herein as Uncontrollable Circumstances;

(g) equipment failure except when due to acts or events specifically enumerated herein as Uncontrollable Circumstances; or

(h) any Change in Law with respect to the issuance of any permit or approval, the enactment of any statute, or the promulgation of any regulation affecting the standards or requirements of performance, the terms and conditions of which do not impose more stringent or burdensome requirements on the PROJECT or CONTRACTOR than in effect on the Effective Date of the Agreement.

#### 1.48 UNIT PRICE

The price paid for units of WORK, which when performed, is measured and paid for on the basis of units.

#### 1.49 WORK

The word "WORK" within these CONTRACT DOCUMENTS shall include all material, labor, services, documentation, tools, equipment, fuel, utilities, temporary facilities and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the PROJECT in accordance with the CONTRACT DOCUMENTS, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described in the CONTRACT DOCUMENTS or indicated and as required by good practice to provide a complete and satisfactory system(s) or structure(s).

#### 1.50 WORKING HOURS

WORKING HOURS shall mean the hours between 7:00 a.m. and 6:00 p.m., Monday through Friday, excluding legal holidays. Maintenance of equipment will be allowed outside of WORKING HOURS.

Other terms not defined herein shall have the meanings assigned to them elsewhere in the CONTRACT DOCUMENTS, and if not assigned and where the context will permit, as used or defined in the Florida Statutes.

## II. Contract Documents

### 2.1 Intent of Contract Documents

2.1.1. The CONTRACT DOCUMENTS comprise the entire agreement between TAMPA BAY WATER and the CONTRACTOR concerning the WORK. The CONTRACT DOCUMENTS are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the CONTRACT DOCUMENTS is to describe a functionally complete PROJECT (or part thereof) to be constructed in accordance with the CONTRACT DOCUMENTS. Any work, materials, or equipment that may reasonably be inferred from the CONTRACT DOCUMENTS as being required to produce the indicated result shall be supplied whether or not specifically called for, with no increase in the CONTRACT PRICE or extension of the CONTRACT TIME. When words which have a customary technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning, unless a contrary definition appears in the CONTRACT DOCUMENTS, in which case the CONTRACT DOCUMENTS shall control.

2.1.2. Whenever the terms "as ordered", "as directed", "as required", "as allowed", "AS APPROVED", or terms of like effect, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory", or adjectives of similar effect, are used to describe a requirement, direction, review, or judgment of the ENGINEER or TAMPA BAY WATER as to the WORK, it is intended that the requirement, direction, review, or judgment will be to evaluate the WORK for compliance with the CONTRACT DOCUMENTS.

2.1.3. No use of any provision of any standard specification, manual, or code (whether or not expressly incorporated by reference in the CONTRACT DOCUMENTS), or SUPPLIERS' instructions, shall be effective to (a) change the duties and responsibilities of the CONTRACTOR, TAMPA BAY WATER, or ENGINEER, or any of their consultants, agents, or employees from those assigned in the CONTRACT DOCUMENTS, or (b) to assign to the CONTRACTOR, TAMPA BAY WATER, or ENGINEER, or any of their consultants, agents, or TAMPA BAY WATER employees, any duty or authority to supervise or direct the execution of the WORK or to assume responsibility contrary to the provisions of the CONTRACT DOCUMENTS.

### 2.2 Priority of the Contract Documents

2.2.1 In resolving inconsistencies or apparent conflicts among the CONTRACT DOCUMENTS, the first listed below shall take precedence and control over those following:

- a. AGREEMENT
- b. SUPPLEMENTARY CONDITIONS
- c. GENERAL CONDITIONS
- d. SPECIFICATIONS / DRAWINGS
- e. FRONT-ENDS.

2.2.2. In resolving inconsistencies between DRAWINGS and SPECIFICATIONS, CONTRACTOR shall be obligated to comply with the more costly or stringent requirement, as determined by TAMPA BAY WATER. Figure dimensions on DRAWINGS shall take precedence over scale dimensions. Detailed DRAWINGS shall take precedence over general DRAWINGS.

### **2.3 Examination and Verification of Contract Documents**

2.3.1. Before undertaking each part of the WORK, the CONTRACTOR shall carefully study and compare the CONTRACT DOCUMENTS with each other, check and verify pertinent figures and all applicable field measurements, and compare and coordinate related requirements for WORK (i.e. location, dimensions, fit, completeness, consistency, etc.).

2.3.2 The CONTRACTOR shall, immediately upon discovery, report in writing to the ENGINEER any conflict, error, omission, or ambiguity in the CONTRACT DOCUMENTS which the CONTRACTOR discovers, whether prior to or while performing the WORK, and shall obtain a written interpretation or clarification from the ENGINEER before proceeding with any affected WORK. The ENGINEER shall promptly investigate the matter and until such interpretation or clarification is obtained from the ENGINEER, any WORK done by the CONTRACTOR which is directly or indirectly affected by same, will be at the CONTRACTOR'S risk and the CONTRACTOR shall bear all resultant costs and delays.

### **2.4 Documents to be Kept on the Project Site**

2.4.1. The CONTRACTOR shall keep at least one copy of the CONTRACT DOCUMENTS on the PROJECT site in good order, available to TAMPA BAY WATER and its representatives. The CONTRACTOR shall maintain on a daily basis at the PROJECT site, and make available to the ENGINEER on request, one current set of AS-BUILT CONTRACT DOCUMENTS which have been accurately marked by CONTRACTOR to indicate all modifications in the completed WORK that differ from the original CONTRACT DOCUMENTS. As a condition precedent to FINAL COMPLETION of the WORK, the CONTRACTOR shall give the ENGINEER one complete set of these AS-BUILT CONTRACT DOCUMENTS.

### **2.5 Additional Contract Documents**

2.5.1. The ENGINEER shall furnish to the CONTRACTOR \_\_\_\_\_ sets of sealed DRAWINGS and one (1) reproducible set of the CONTRACT DOCUMENTS.

### **2.6 Ownership of Contract Documents**

2.6.1. All portions of the CONTRACT DOCUMENTS, and copies thereof furnished by the ENGINEER are the property of TAMPA BAY WATER. They are not to be used on other work and are to be returned to the ENGINEER at the completion of the WORK with the exception of the CONTRACTOR'S record set. Any reuse or adaptation of these materials by CONTRACTOR without specific written permission by TAMPA BAY WATER is expressly prohibited and shall be at the risk of the CONTRACTOR and without liability or legal expense to TAMPA BAY WATER or ENGINEER. The CONTRACTOR shall hold TAMPA BAY WATER and ENGINEER harmless from any and all damages and claims, including reasonable attorneys' fees and legal assistants' fees, for such unauthorized use.

## **III. The Engineer**

### **3.1 Authority of the Engineer**

3.1.1. The ENGINEER shall be a representative of TAMPA BAY WATER during the CONTRACT TIME for performance of the WORK. The ENGINEER shall have authority to reject WORK which does not conform to the CONTRACT DOCUMENTS. However, the ENGINEER'S authority shall not

affect the CONTRACTOR'S responsibility to perform the WORK in accordance with the CONTRACT DOCUMENTS.

### **3.2 Duties and Responsibility of the Engineer**

3.2.1. The ENGINEER shall make visits to the PROJECT site at intervals appropriate to the various stages of construction to observe the progress and quality of the WORK and to determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS. Visits and observations made by the ENGINEER are solely for the benefit of TAMPA BAY WATER and shall not relieve the CONTRACTOR of its obligations, including, but not limited to, the CONTRACTOR'S obligations to conduct comprehensive inspections of the WORK and to furnish materials and perform acceptable work, and to provide adequate safety precautions, all in accordance with the CONTRACT DOCUMENTS.

3.2.2. The ENGINEER shall respond, in writing, within 21 days of receipt (unless more time is reasonably required for response), to all claims by TAMPA BAY WATER or the CONTRACTOR required for performance of the WORK and requests for clarification or interpretation of the CONTRACT DOCUMENTS. The ENGINEER'S response shall be of factual and/or technical nature, and shall not include the legal interpretation of the CONTRACT DOCUMENTS.

3.2.3. The ENGINEER may assign one or more PROJECT REPRESENTATIVES to observe the WORK. It is understood that such PROJECT REPRESENTATIVES shall have authority to issue NOTICES of non-conformance and make decisions within the limitations of authority of the ENGINEER. The CONTRACTOR shall furnish all reasonable assistance required by the ENGINEER or PROJECT REPRESENTATIVE for proper observation of the WORK. Observations by the PROJECT REPRESENTATIVE shall not relieve the CONTRACTOR of its obligations including, but not limited to, the CONTRACTOR'S obligation to conduct comprehensive inspections of the WORK and to furnish materials and perform work, and to provide adequate safety precautions, all in accordance with the CONTRACT DOCUMENTS.

3.2.4. On-site observations by the ENGINEER, PROJECT REPRESENTATIVES and other assistants shall not relieve the CONTRACTOR from its obligation to perform the WORK in accordance with the CONTRACT DOCUMENTS, nor constitute acceptance of DEFECTIVE WORK, nor give rise to any duty on their part to make the observations for the benefit of the CONTRACTOR.

3.2.5. The ENGINEER shall review SUBMITTALS within the times specified in the General Requirements, or if not specified, within 21 days of receipt (unless more time is reasonably required for review) for conformance with the design of the PROJECT and for compliance with the CONTRACT DOCUMENTS. The ENGINEER'S review shall not extend to means, methods, techniques, sequences, nor to procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the CONTRACT DOCUMENTS), nor to safety precautions or programs incident thereto.

### **3.3 Rejected Work**

3.3.1. The ENGINEER shall have authority to disapprove or reject WORK at any time during the performance of the WORK, which the ENGINEER believes to be DEFECTIVE; or to require special inspection or testing of the WORK, whether or not the WORK is fabricated, installed, or completed. The ENGINEER'S authority does not relieve the CONTRACTOR from its responsibility to perform in accordance with the CONTRACT DOCUMENTS. When the CONTRACTOR is notified by the ENGINEER of rejection of DEFECTIVE WORK, the CONTRACTOR shall take immediate action to correct same.

3.3.2. All DEFECTIVE WORK, whether discovered before or after FINAL COMPLETION, shall be removed and replaced by the CONTRACTOR, without cost to TAMPA BAY WATER, with WORK which shall conform to the CONTRACT DOCUMENTS. Failure on the part of the ENGINEER to condemn or reject DEFECTIVE WORK shall not be construed to imply acceptance of such WORK. TAMPA BAY WATER shall reserve and retain all of its rights and remedies at law or equity against the CONTRACTOR and its Surety for correction of or damages arising from any and all DEFECTIVE WORK.

#### **3.4 Lines and Grades**

3.4.1. Lines and grades shall be established as provided in the DRAWINGS or the Supplementary Conditions. All information, stakes or marks shall be carefully preserved by the CONTRACTOR, and if the information, stakes or marks are destroyed or removed, all such information, stakes or marks shall be replaced at the CONTRACTOR'S expense.

#### **3.5 Detail Drawings and Instructions**

3.5.1. If required, the ENGINEER shall furnish within 21 days (unless more time is reasonably required), in writing, additional instructions by means of DRAWINGS or otherwise, as required for the proper execution of the WORK. All such DRAWINGS and instructions shall be in writing and consistent with the CONTRACT DOCUMENTS.

### **IV. The Contractor and Its Employees**

#### **4.1 Contractor**

4.1.1. The CONTRACTOR shall independently perform all WORK included in the CONTRACT DOCUMENTS and shall not be considered an agent of TAMPA BAY WATER or of the ENGINEER, nor shall the CONTRACTOR'S SUBCONTRACTORS, SUPPLIERS, or employees be agents of TAMPA BAY WATER or of the ENGINEER.

4.1.2. The CONTRACTOR shall provide competent, suitably qualified and reliable personnel, SUBCONTRACTORS, and SUPPLIERS to survey and lay-out the WORK and furnish and perform the WORK in accordance with the CONTRACT DOCUMENTS.

#### **4.2 Subcontractors and Suppliers**

4.2.1. The CONTRACTOR shall be responsible and liable to TAMPA BAY WATER for the acts and omissions of CONTRACTOR'S employees, agents, and SUBCONTRACTORS and SUPPLIERS and their respective employees.

4.2.2. The CONTRACTOR shall list each SUBCONTRACTOR or SUPPLIER whom the CONTRACTOR intends to award a subagreement, other than those SUBCONTRACTORS or SUPPLIERS previously listed in the BID, by submitting to TAMPA BAY WATER in writing, for each additional SUBCONTRACTOR and SUPPLIER, the same information required to be set forth in the BID.

4.2.3. Work performed by a SUBCONTRACTOR or SUPPLIER shall be through an appropriate written subagreement which expressly binds the SUBCONTRACTOR or SUPPLIER to the terms and conditions of the CONTRACT DOCUMENTS for the express benefit of TAMPA BAY WATER, and

requires each of them to assume toward the CONTRACTOR all of the obligations which the CONTRACTOR assumes toward TAMPA BAY WATER.

4.2.4. The CONTRACTOR shall deliver to TAMPA BAY WATER a copy of each subagreement with a SUBCONTRACTOR or SUPPLIER within fifteen (15) DAYS after receiving the NOTICE TO PROCEED or the execution of the subagreement, as applicable.

4.2.5. The CONTRACTOR shall perform (with the CONTRACTOR'S own employees) not less than \_\_\_\_\_ percent (\_\_\_%) of the difference between the CONTRACT PRICE minus the cost of materials for the PROJECT.

4.2.6. Nothing contained in the CONTRACT DOCUMENTS or any subagreement shall create any contractual relationship between any SUBCONTRACTOR or SUPPLIER and TAMPA BAY WATER or ENGINEER. Provided, however, TAMPA BAY WATER shall be named an intended third party beneficiary under all such subagreements.

### **4.3 Equal Opportunity**

4.3.1. At all times during the performance of the WORK, CONTRACTOR shall comply with Title VII of the Civil Rights Act of 1964, and the Florida Civil Rights Act of 1992. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, or marital status. The CONTRACTOR shall take affirmative action to ensure that employment applications are used and that employees are treated without regard to their race, color, religion, sex, national origin, age, handicap or marital status for employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

4.3.2. The CONTRACTOR shall state in all solicitations or advertisements for employment placed by or on behalf of the CONTRACTOR that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, handicap, or marital status.

### **4.4 Indemnity**

4.4.1. In consideration of One Hundred Dollars (\$100.00) separately allocated from the first consideration paid hereunder, and other good and valuable consideration, including TAMPA BAY WATER'S execution of the CONTRACT, the sufficiency of which is hereby acknowledged by CONTRACTOR, CONTRACTOR shall indemnify and hold harmless TAMPA BAY WATER, its officers, employees, agents, representatives and consultants from and against all liabilities, costs, losses, and damages (including but not limited to all reasonable attorneys) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CONTRACTOR, any SUBCONTRACTOR, or any individual or entity directly or indirectly employed or utilized by CONTRACTOR in the performance of the WORK under this AGREEMENT. This indemnification shall also include all liabilities, damages, losses and costs, including but not be limited to, reasonable attorneys' fees arising out of any infringement of patents or copyrights incident to performing the WORK by the CONTRACTOR, any SUBCONTRACTOR or any person or organization employed by CONTRACTOR to perform or furnish any of the WORK, or anyone for whose acts any of them may be liable

4.4.2. With respect to all claims against TAMPA BAY WATER or the ENGINEER by any employee of the CONTRACTOR, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the

CONTRACTOR (or any SUBCONTRACTOR or SUPPLIER) under workers' compensation, disability benefit or other employee benefit acts.

4.4.3. The separate consideration recited in paragraph 4.4.1 above is in consideration of the indemnification obligation set forth in this Article 4.4, as well as any other indemnification provided by CONTRACTOR under the CONTRACT DOCUMENTS.

4.4.4 CONTRACTOR acknowledges and agrees its indemnification obligations under paragraph 4.4.1 shall be effective and fully enforceable even if any party indemnified hereunder is partially at fault or responsible for the claim; provided, however, CONTRACTOR shall not be liable or responsible for indemnifying any claim which is the result of the sole negligence of TAMPA BAY WATER, ENGINEER or any other party indemnified under paragraph 4.4.1.

#### **4.5 Bonds and Insurance**

##### **A. Performance Bonds, Payment Bonds and Other Bonds**

4.5.1. The CONTRACTOR shall furnish Performance Bonds and Payment Bonds, each in an amount at least equal to the CONTRACT PRICE, in accordance with the requirements of Sections 255.05, Florida Statutes, as security for the faithful performance and payment of all CONTRACTOR'S obligations under the CONTRACT DOCUMENTS. These Bonds shall be in the forms specified in the CONTRACT DOCUMENTS. The CONTRACTOR shall also furnish any other bonds required in the Supplementary Conditions. All bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Reinsuring companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Attorneys-in-Fact who sign Bonds shall attach a certified copy of their Power of Attorney.

##### **B. The Contractor's Insurance - General**

4.5.2. The CONTRACTOR shall purchase and maintain the coverage specified in this Article and the Supplementary Conditions, and shall be written for not less than the limits of coverage specified in the Supplementary Conditions. The CONTRACTOR shall submit certificates to TAMPA BAY WATER itemizing the policies issued, limits of coverage, expiration dates and endorsements provided, using the form provided in the CONTRACT DOCUMENTS.

4.5.3. The CONTRACTOR shall not start or continue to perform any WORK unless it has in full force and effect all required insurance as per the CONTRACT DOCUMENTS. The CONTRACTOR shall submit the insurance certificates provided with these CONTRACT DOCUMENTS for review by TAMPA BAY WATER prior to performing any WORK. All SUBCONTRACTORS and SUPPLIERS performing WORK on the PROJECT shall provide the same types and limits of insurance as is required of the CONTRACTOR hereunder, unless otherwise expressly waived in writing by TAMPA BAY WATER.

4.5.4. Insurance shall be provided by insurance companies authorized to transact business and which have an agent for service of process in the State of Florida, having at least an "A-" Best's Rating and a Class VIII or better financial size category in accordance with the most current A.M. Best Company rating.

4.5.5. All the policies of insurance shall be endorsed to provide that any failure of the CONTRACTOR to comply with any provisions will not prejudice coverage for TAMPA BAY WATER. Deductible amounts shall be reduced or eliminated upon TAMPA BAY WATER'S written request in which case CONTRACTOR shall be entitled to payment of any additional costs for such reduction or elimination of

deductibles in accordance with paragraph 7.2 of these General Conditions. The insurer's costs of providing the insured(s) a defense at trial in bankruptcy proceedings, and/or appeal, including attorneys' fees, and legal assistants' fees, shall not be included within the limits of the policy coverage, but shall remain the insurer's separate responsibility.

4.5.6. To the fullest extent commercially available, all the policies of insurance shall be endorsed to provide that the coverage afforded will not be cancelled, adversely changed or renewal refused until at least thirty (30) DAYS' prior written NOTICE has been given to TAMPA BAY WATER and the ENGINEER by certified mail, return receipt requested. Should any coverage approach expiration during the period in which it is to remain in full force and effect, it shall be renewed prior to its expiration, and certificate filed with TAMPA BAY WATER at least thirty (30) DAYS prior to expiration. TAMPA BAY WATER and ENGINEER, their officers, agents, and employees shall be named as Additional Insured(s) on the CONTRACTOR'S and any SUBCONTRACTOR'S commercial general liability, comprehensive automobile liability insurance, umbrella/excess liability and builder's risk policies for any claims arising out of work performed under the CONTRACT DOCUMENTS.

4.5.7. In case of the breach of any provision of this Article, TAMPA BAY WATER, at its option, may take out and maintain, at the expense of the CONTRACTOR, such insurance as TAMPA BAY WATER may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the CONTRACTOR under the CONTRACT DOCUMENTS.

4.5.8. In carrying out any of the provisions of the CONTRACT DOCUMENTS or in exercising any authority granted by the CONTRACT DOCUMENTS, there will be no personal liability upon any board member, officer, employee or agent of TAMPA BAY WATER.

C. The Contractor's Liability Insurance

4.5.9. The CONTRACTOR shall purchase and maintain commercial general liability and other insurance appropriate for the WORK, in the limits of at least those specified in the Supplementary Conditions, and which shall provide protection from claims itemized below which may arise out of or result from the CONTRACTOR'S performance and furnishing of the WORK and the CONTRACTOR'S other obligations under the CONTRACT DOCUMENTS, whether the WORK and the obligations be performed or furnished by the CONTRACTOR, SUBCONTRACTOR or any SUPPLIER, to wit:

a. Claims under workers' compensation, disability benefits, and other applicable similar employee benefits acts;

b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees; claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees; claims for damages insured by personal injury liability coverage sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or by any other person for any other reason; claims for damages, other than to the WORK itself, because of injury to or destruction of tangible property wherever located, including loss of use; claims arising by operation of LAWS AND REGULATIONS for damages because of bodily injury or death of any person or for damage to property; and

c. Claims for damages because of bodily injury or death of any person, or property damage arising out of ownership, maintenance, operation, use of loading and unloading of any owned, hired or non-owned motor vehicle used in the WORK, including employee non-ownership use.

4.5.10. The CONTRACTOR'S liability insurance shall include contractual liability coverage sufficient to cover the CONTRACTOR'S indemnification obligations under the CONTRACT DOCUMENTS. The



CONTRACTOR agrees to pay on behalf of TAMPA BAY WATER, and to provide and pay for a defense for all claims covered by the CONTRACTOR'S obligations under the indemnification provisions.

4.5.11. The CONTRACTOR'S liability insurance shall be endorsed to include as additional insured: TAMPA BAY WATER, the ENGINEER, their consultants, any subsidiaries or affiliates, and each of their directors, officers, shareholders, agents, or employees. The insurance afforded to these additional insured shall be primary insurance, and neither the coverage nor the amount of insurance provided under the CONTRACTOR'S policies shall be reduced or prorated by the existence of any other insurance applicable to any loss they may have sustained. If the SUBCONTRACTORS and SUPPLIERS do not purchase and maintain the coverage specified in this Article or the Supplementary Conditions, they shall be included in the CONTRACTOR'S policies as additional insured.

4.5.12 The CONTRACTOR'S liability insurance shall remain in effect until three (3) years after FINAL COMPLETION and at all times after that when the CONTRACTOR may be correcting or removing and replacing DEFECTIVE WORK. Evidence of insurance shall be furnished to TAMPA BAY WATER yearly.

4.5.13. These requirements shall not be construed to limit the liability of the CONTRACTOR or its insurers. TAMPA BAY WATER does not represent that the specified coverage or limits of insurance are sufficient to protect the CONTRACTOR'S interests or liabilities.

#### D. Property Insurance

4.5.14. The CONTRACTOR shall purchase and maintain builder's risk "all risk" completed value insurance coverage for physical loss or damage upon the WORK at the PROJECT site to its full insurable value, including completed WORK, and WORK in progress. This insurance shall list TAMPA BAY WATER as an additional insured and shall include the interests of the CONTRACTOR, SUBCONTRACTORS and SUPPLIERS, the ENGINEER, and TAMPA BAY WATER'S and the ENGINEER'S consultants in the WORK, all of whom shall be listed as additional insured. At a minimum, and not by way of limitation, it shall insure against extended coverage, perils of fire, lightning, windstorm, flood, rain, hail, explosions, riot, tornado, hurricane, sink holes, theft, vandalism and malicious mischief, collapse and water damage and shall include damages, losses and expenses arising out of or resulting from any insured loss incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance, the CONTRACTOR shall purchase and maintain similar property insurance on parts of the WORK stored on and off the PROJECT site or in transit whether or not such WORK is included in a PAYMENT APPLICATION. The policy shall be endorsed to permit use or occupancy by TAMPA BAY WATER prior to FINAL COMPLETION. The property insurance may have a deductible amount, which shall be borne by the CONTRACTOR, not exceeding \$25,000.00. The property insurance shall comply with the requirements of this Article.

#### E. Waiver of Subrogation Rights

4.5.15. TAMPA BAY WATER and the CONTRACTOR intend that all policies of insurance shall protect TAMPA BAY WATER, the CONTRACTOR, and the ENGINEER, provide primary coverage for all losses and damages caused by the perils covered. Accordingly, all such policies shall be endorsed to provide that in the event of payment of any loss or damage the insurer shall have no rights of subrogation or other recovery against any of the parties named as insured or additional insured, and if the insurers require separate waiver forms to be signed by the ENGINEER or TAMPA BAY WATER'S and the ENGINEER'S consultants, TAMPA BAY WATER will obtain separate waiver forms, and if such forms are required of any SUBCONTRACTOR or SUPPLIER, the CONTRACTOR will so obtain them.

#### 4.6 Taxes and Charges

4.6.1. The CONTRACTOR shall pay any and all sales and use taxes and all withholding taxes, whether State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, fees, or sums whatsoever, which are now required to be paid or withheld under any laws, unless otherwise modified in the Supplementary Conditions.

4.6.2. TAMPA BAY WATER reserves the right to implement an Owner's Direct Purchase sales tax savings program with respect to the PROJECT. In such event, CONTRACTOR shall cooperate and assist TAMPA BAY WATER, at no additional cost, with respect to the implementation of that sales tax savings program. TAMPA BAY WATER and CONTRACTOR shall work together to identify particular pieces of equipment and material that are suitable for direct purchase by TAMPA BAY WATER. As such items are identified, TAMPA BAY WATER shall issue purchase orders, in accordance with a schedule mutually acceptable to TAMPA BAY WATER and CONTRACTOR, to the appropriate SUPPLIERS of such items for the direct purchase of those items by TAMPA BAY WATER. TAMPA BAY WATER shall pay the SUPPLIER of such items directly and the title for such items shall pass directly from the SUPPLIER to TAMPA BAY WATER. Notwithstanding the foregoing, CONTRACTOR shall remain responsible for the ordering, scheduling, coordinating, insuring, delivery, unloading, storage, installation, operation, and warranties of all such direct purchase items, as if CONTRACTOR had purchased the items itself for incorporation into the WORK. In that regard, TAMPA BAY WATER shall assign to CONTRACTOR all contract and warranty rights TAMPA BAY WATER may have against any such SUPPLIER, so as to permit CONTRACTOR to assert warranty or other contract claims for defective or nonconforming materials or equipment directly against the SUPPLIER. As TAMPA BAY WATER issues purchase orders to the SUPPLIERS of such items, TAMPA BAY WATER and CONTRACTOR shall execute a CHANGE ORDER which deducts from the CONTRACT PRICE the amount being paid by TAMPA BAY WATER, plus the amount of sales tax that otherwise would have been paid on such items. As an inducement to CONTRACTOR to more fully cooperate and facilitate this sales tax savings program, CONTRACTOR shall receive as a bonus, at the time final payment is to be made hereunder, a sum equal to \_\_\_\_\_ percent (\_\_\_%) of the total amount of sales tax saved by TAMPA BAY WATER as a result of these direct purchases.

#### 4.7 Codes, Ordinances, Permits, and Licenses

4.7.1. The CONTRACTOR shall keep itself fully informed of all applicable LAWS AND REGULATIONS, which in any manner affect the WORK. All permits, licenses, inspection fees, impact fees, and other costs necessary for performance of, compliance with, and/or completion of the WORK shall be obtained and paid for by the CONTRACTOR, unless otherwise modified in the Supplementary Conditions.

4.7.2. If TAMPA BAY WATER has obtained and paid for any permits or licenses applicable to the WORK, the CONTRACTOR shall meet all requirements of those permits and licenses. The CONTRACTOR shall bear all costs arising from the CONTRACTOR'S responsibilities under this Article.

4.7.3 All WORK is to be performed by CONTRACTOR in accordance with the most current applicable LAWS AND REGULATIONS. Provided, however, in the event of any changes to any applicable LAWS AND REGULATIONS that take effect after the date CONTRACTOR submitted its PROPOSAL to TAMPA BAY WATER, and under the circumstances it is not reasonable to assume that CONTRACTOR was or should have been aware of such changes, and CONTRACTOR provides NOTICE to ENGINEER of the changes and ENGINEER thereupon directs CONTRACTOR in writing to perform the WORK in accordance with such changes, and such changes impact the time

and/or cost of CONTRACTOR'S performance of the WORK, a CHANGE ORDER or CHANGE AUTHORIZATION shall be issued with respect to such changes.

#### **4.8 Superintendence**

4.8.1. The CONTRACTOR shall keep at the PROJECT site, supervisory personnel who shall direct the WORK in a competent manner, applying the skills, expertise and attention necessary to perform the WORK in accordance with the CONTRACT DOCUMENTS. The CONTRACTOR shall designate in writing, before starting WORK, a competent PROJECT superintendent who shall be an employee of the CONTRACTOR and shall have complete authority to represent and to act for the CONTRACTOR. The CONTRACTOR shall notify TAMPA BAY WATER and ENGINEER in writing prior to any change in superintendent assignment. If TAMPA BAY WATER objects to the CONTRACTOR'S superintendent, the CONTRACTOR shall submit a replacement superintendent at no increase in CONTRACT PRICE nor extension in CONTRACT TIME. The CONTRACTOR shall be responsible for all construction means, methods, techniques, sequences, and procedures, and for providing adequate safety precautions and coordinating all portions of the WORK.

4.8.2. If TAMPA BAY WATER or the ENGINEER objects to any of the CONTRACTOR'S personnel, by reason of being unfit, incompetent, unskilled, disorderly, intemperate, or otherwise hindering the WORK, the CONTRACTOR shall promptly correct the problem and, if required by TAMPA BAY WATER or the ENGINEER, remove such personnel from the WORK. Failure to comply with this provision shall constitute a material breach of the CONTRACT and be grounds for withholding payment.

#### **4.9 Reception of ENGINEER'S Communications**

4.9.1. The CONTRACTOR'S REPRESENTATIVE at the PROJECT site shall have authority to act on behalf of and contractually bind the CONTRACTOR. All communications given to the CONTRACTOR'S REPRESENTATIVE shall be deemed given to the CONTRACTOR. Communications of major importance will be confirmed in writing upon request from the CONTRACTOR.

4.9.2. The ENGINEER may schedule PROJECT meetings for the purposes of discussing and resolving matters concerning the various elements of the WORK. The time and place for these meetings and the names of persons required to be present shall be determined by TAMPA BAY WATER and the ENGINEER. The CONTRACTOR shall comply with these attendance requirements and shall also require its SUBCONTRACTORS and SUPPLIERS to comply.

#### **4.10 Safety**

4.10.1. The CONTRACTOR shall be solely responsible for the condition of the PROJECT site, including safety of all persons and property during performance of the WORK. This requirement shall apply continuously and not be limited to normal WORKING HOURS. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable LAWS AND REGULATIONS, as well as all applicable safety rules and regulations promulgated by TAMPA BAY WATER from time to time. Where any of these are in conflict, the more stringent requirement shall be followed. The CONTRACTOR'S failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations and penalties set forth therein

4.10.2. The CONTRACTOR shall develop and maintain for the duration of this PROJECT, a safety program, and a written safety plan specific to the PROJECT that will effectively incorporate and implement all safety provisions required by any LAWS AND REGULATIONS. The CONTRACTOR

shall appoint an employee assigned to the WORK, who shall be responsible to supervise and enforce compliance with the safety program.

4.10.3. The CONTRACTOR, as a part of its safety program, shall maintain at its office or other prominent place at the PROJECT site, the written safety plan and safety equipment applicable to the WORK as prescribed by the aforementioned authorities and all articles necessary for giving first aid to the injured. The written safety plan shall establish the procedures for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the PROJECT site.

4.10.4. The CONTRACTOR must give TAMPA BAY WATER and the ENGINEER prompt NOTICE of all accidents or injuries whatsoever arising out of, or in connection with, the performance of the WORK, whether on or adjacent to the PROJECT site, giving full details in writing, including statements of witnesses. The prompt NOTICE required hereunder shall be given within 24 hours with respect to any injuries, and within two (2) working days as to all other accidents.

4.10.5. If a claim is made by anyone against the CONTRACTOR or any SUBCONTRACTOR for any reason, including, but not limited to, any accident, the CONTRACTOR shall give TAMPA BAY WATER and the ENGINEER prompt NOTICE, giving full details of the claim.

#### **4.11 Protection of Work and Property**

4.11.1. The CONTRACTOR shall have full responsibility for locating all underground utilities in advance of excavation (whether they are indicated on the CONTRACT DOCUMENTS or indicated by visible markers); scheduling excavation and uncovering in advance, unless it conflicts with WORK already uncovered; shoring, blocking, and protecting the underground utilities; repairing any damage done to the satisfaction of TAMPA BAY WATER or the owners of those underground utilities; giving prompt NOTICE to TAMPA BAY WATER and the ENGINEER of any newly discovered underground utility; and the safety, protection and repairing of any damage done to any affected WORK. All costs involved and time required to perform these responsibilities shall be considered as having been included in the CONTRACT PRICE and in the PROGRESS SCHEDULE for performing the WORK within the CONTRACT TIME; except that in the case of newly-discovered underground utilities, those costs and times shall, upon proper documentation, be considered pursuant to the General Conditions, *Article 6.8. Differing Site Conditions*, for adjustment of the CONTRACT PRICE and/or the CONTRACT TIME.

4.11.2. The CONTRACTOR shall at all times safely guard and protect from damage TAMPA BAY WATER'S property, property on which the PROJECT is located if not owned by TAMPA BAY WATER, adjacent property, and its own WORK from injury or loss. The CONTRACTOR shall provide all facilities required for protection of the WORK according to all LAWS AND REGULATIONS and local conditions.

4.11.3. The CONTRACTOR shall protect its WORK and materials from damage due to the nature of the WORK, the natural elements, carelessness of others, or from any cause, until FINAL COMPLETION of the WORK.

4.11.4. The CONTRACTOR shall notify owners of adjacent property (including underground utility owners) not less than 48 hours, or the time period required by LAWS AND REGULATIONS, whichever period is longer, prior to the WORK affecting the property, and shall coordinate and cooperate with them in the location, protection, removal, relocation, and/or replacement of their property. All damage, injury or loss to property caused, directly or indirectly, in whole or part, by the CONTRACTOR, any SUBCONTRACTOR or SUPPLIER or anyone for whose acts any of them may be liable, shall be remedied at the CONTRACTOR'S expense. The CONTRACTOR shall shore up, brace, underpin, and

protect as may be necessary, all foundations and other parts of all existing structures adjacent to the PROJECT site.

#### **4.12 Responsibility of Contractor to Act in Emergency**

4.12.1. In case of an emergency which threatens loss or injury to persons or property, the CONTRACTOR shall take appropriate remedial action, without previous instructions from TAMPA BAY WATER or ENGINEER, as the situation may warrant, and immediately provide NOTICE to TAMPA BAY WATER and the ENGINEER of its action. Any claim for compensation by the CONTRACTOR, together with substantiating documentation in regard to expense caused by emergency acts, shall be submitted to TAMPA BAY WATER and the ENGINEER and the amount of compensation if any, shall be determined by mutual agreement.

#### **4.13 Materials and Appliances**

4.13.1. Unless otherwise modified in the Supplementary Conditions, all materials to be incorporated into the WORK shall be new. The CONTRACTOR shall furnish satisfactory evidence to the ENGINEER as to the kind and quality of materials.

4.13.2. In selecting and/or approving equipment and materials for installation in the PROJECT, neither TAMPA BAY WATER nor the ENGINEER shall be responsible for injuries or claims resulting from failure of the equipment or material to comply with LAWS AND REGULATIONS and applicable federal, state, and local safety codes or requirements, or other applicable safety requirements, or failure due to the WORK being DEFECTIVE.

#### **4.14 Contractors' and Manufacturers' Compliance with State Safety Laws and Regulations, OSHA, and Other Code Requirements**

4.14.1. The completed WORK shall include all necessary permanent safety devices, such as machinery guards and similar safety items required by the state and federal (OSHA) industrial authorities and other LAWS AND REGULATIONS. Further, any features of the WORK subject to such safety regulations shall be fabricated, furnished, and installed (including installation of TAMPA BAY WATER-furnished equipment) in compliance with these requirements. SUBCONTRACTORS and SUPPLIERS shall be held responsible for compliance with the requirements included herein. The CONTRACTOR shall notify all SUPPLIERS and SUBCONTRACTORS of the provisions of this Article.

#### **4.15 Submittals**

4.15.1. After checking and verifying all field measurements and after complying with all applicable procedures, CONTRACTOR shall submit to the ENGINEER for its review all SUBMITTALS, which shall bear a stamp or specific written indication that the CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the CONTRACT DOCUMENTS with respect to SUBMITTALS. All SUBMITTALS shall be promptly submitted by CONTRACTOR so as to cause no delay to the completion of the WORK. All SUBMITTALS shall be identified as ENGINEER may require. The data shown shall be complete with respect to quantities, dimensions, specified performance, and design criteria, materials, and similar data sufficient to enable ENGINEER to review the information.

4.15.2. All SUBMITTALS shall be identified clearly as to material, SUPPLIER, pertinent data such as catalog numbers, and the use for which it is intended. The CONTRACTOR shall review all SUBMITTALS prior to submission, for compliance with the CONTRACT DOCUMENTS and shall provide specific written certification of compliance.

4.15.3. Before each submission, the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed and coordinated each SUBMITTAL with other SUBMITTALS and with the requirements of the WORK and for compliance with the CONTRACT DOCUMENTS. At the time of each submission, CONTRACTOR shall provide specific written NOTICE of each variation that the SUBMITTAL may have from the requirements of the CONTRACT DOCUMENTS, and in addition, shall cause a specific notation of each such variation to be made on each SUBMITTAL submitted for review and approval. In the absence of such notification, the approval of a SUBMITTAL shall not waive or alter the original requirements of the CONTRACT DOCUMENTS.

4.15.4. The CONTRACTOR shall make all corrections required by ENGINEER, and shall resubmit the required number of corrected copies of SUBMITTALS and new samples for review. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the ENGINEER on previous SUBMITTALS.

4.15.5. Where a SUBMITTAL or sample is required by the CONTRACT DOCUMENTS, any related WORK performed prior to the ENGINEER'S review and approval of the pertinent SUBMITTAL shall be at the CONTRACTOR'S sole expense and responsibility.

4.15.6. SUBMITTALS are to demonstrate how the CONTRACTOR intends to conform with the design of the PROJECT and the information given in the CONTRACT DOCUMENTS.

4.15.7. All costs incurred by TAMPA BAY WATER and the ENGINEER for the review of a particular SUBMITTAL after the ENGINEER'S second review shall be borne by the CONTRACTOR, and shall be reimbursed by the CONTRACTOR to TAMPA BAY WATER. TAMPA BAY WATER may withhold such costs from payments to the CONTRACTOR.

4.15.8. The CONTRACTOR shall not be entitled to any claim for additional time or compensation caused by the review of any resubmittals.

#### **4.16 Substitution of Materials**

4.16.1. Whenever materials, equipment, type of construction, or process are described in the CONTRACT DOCUMENTS by using a brand name, make, manufacturer, supplier, patent, catalog number, or technique, the naming or specification of the item is intended to denote the standard of quality and essential characteristics of the item or process required by TAMPA BAY WATER. Unless words indicating that no substitution is permitted are used, items from prospective suppliers may be accepted by the ENGINEER if sufficient information is submitted by the CONTRACTOR in its written application for the substitution to allow the ENGINEER to determine whether the material or equipment proposed (1) will perform at least equally well, function, and achieve the results called for by the design, (2) is at least of equal materials of construction, quality and necessary essential design features, (3) is suited to the same use as that named or specified, (4) conforms to the desired detailed requirements for that item, including but not limited to, durability, strength, appearance, dimensions, aesthetics (where aesthetics are essential), safety, service, comparable usefulness, reliability, economy of operation, and ease of maintenance, (5) evidences a proven record of performance, and (6) will not extend the CONTRACT TIME or increase the CONTRACT PRICE. CONTRACTOR shall be responsible for and shall pay all costs in connection with any inspection or testing required in connection with TAMPA BAY WATER'S or ENGINEER'S acceptance of a SUPPLIER of materials or equipment proposed to be incorporated in the WORK.

4.16.2. Each application for a substitution shall certify that the proposed substitute will meet each of the six criteria itemized in paragraph 4.16.1., and that the evaluation and acceptance by the ENGINEER of the proposed substitute will not prejudice completion of the WORK within the CONTRACT TIME. All

variations of the substitute from the item named or specified shall be identified (operation, materials or construction finish, thickness or gauge of material dimensions, loads, tolerances, deleted/added features, etc.), and information regarding available maintenance, repair, and replacement service shall be indicated. The CONTRACTOR is solely responsible for verifying that substitutes are in accordance with the CONTRACT DOCUMENTS, and that dimensions, arrangement, design, and construction details, and all other features of substitutes are suited to the specified purpose.

4.16.3. A proposed substitute will be accepted as equivalent or "OR-EQUAL" to that named or specified if, in the ENGINEER'S judgement, it meets the criteria in paragraph 4.16.1. No substitute shall be utilized, ordered, or installed without the ENGINEER'S prior written acceptance.

#### **4.17 Tests, Samples, and Observations**

4.17.1. The CONTRACTOR shall furnish, with no increase in CONTRACT PRICE, the necessary test pieces and samples, including facilities and labor for obtaining the same, as required by the CONTRACT DOCUMENTS or requested by the ENGINEER. When required by the CONTRACT DOCUMENTS or requested by the ENGINEER, the CONTRACTOR shall furnish certificates of any designated tests of materials and equipment.

4.17.2. The CONTRACTOR shall establish a quality control system to ensure sufficient supervision, inspection and testing of all items of WORK, including those of the SUBCONTRACTORS and SUPPLIERS, and to ensure conformance to the applicable CONTRACT DOCUMENTS with respect to products, workmanship, construction, maintenance, finish, functional performance, and identification. The CONTRACTOR'S quality control system shall include checking, approval, and coordination of SUBMITTALS and the surveillance of all specified tests.

4.17.3. TAMPA BAY WATER, the ENGINEER, authorized government agents and their representatives shall at all times be provided safe access to the WORK whenever it is in preparation or progress, and the CONTRACTOR shall provide facilities for such access and for observations, including maintenance of temporary and permanent access.

4.17.4. If the CONTRACT DOCUMENTS, LAWS AND REGULATIONS or any public authority requires any WORK to be specially tested or approved, the CONTRACTOR shall give timely NOTICE to the ENGINEER of its readiness for testing or approval.

4.17.5. If any testing, inspection, or approval reveals failure of any part of the WORK to conform to the CONTRACT DOCUMENTS, the CONTRACTOR shall not recover any costs made necessary by that failure, and shall reimburse TAMPA BAY WATER for all direct, indirect, and consequential costs made necessary by that failure including those of repeated procedures, and compensation for the ENGINEER'S services. Such reimbursement may be withheld from payment to the CONTRACTOR.

4.17.6. If a portion of the WORK is covered contrary to the ENGINEER'S request or to requirements specifically expressed in the CONTRACT DOCUMENTS, it must, if required by the ENGINEER, be uncovered for the ENGINEER'S examination and be recovered at the CONTRACTOR'S expense without change to the CONTRACT TIME or CONTRACT PRICE. If any WORK should be covered up without approval or consent of the ENGINEER, re-examination of questioned WORK may be ordered by the ENGINEER, and if so ordered, the WORK shall be uncovered by the CONTRACTOR. If it is found that such WORK is DEFECTIVE, CONTRACTOR shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection, correction of the DEFECTIVE WORK, and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) and TAMPA BAY WATER shall be entitled to reimbursement or to deduct the costs from payment to the CONTRACTOR. If it is found

that such WORK is not DEFECTIVE, TAMPA BAY WATER shall reimburse CONTRACTOR for the cost of uncovering, inspecting, and recovering such WORK.

#### **4.18 Royalties and Patents**

4.18.1. The CONTRACTOR shall pay all royalty and patent fees unless otherwise specified. Pursuant to the indemnity provisions of the General Conditions, *Article 4.4, Indemnity*, the CONTRACTOR shall defend all suits or claims for infringement of any patent rights and shall save TAMPA BAY WATER and the ENGINEER harmless from any and all loss, including reasonable attorneys' fees and legal assistants' fees on account thereof.

#### **4.19 Contractor's Right to Terminate Contract**

4.19.1. If the WORK is stopped under an order of any court or other public authority for a period of more than 3 months, through no act or fault of the CONTRACTOR, its SUBCONTRACTORS, or their respective employees, or if TAMPA BAY WATER should fail to pay the CONTRACTOR within forty-five (45) DAYS after the time specified in the General Conditions, *Article 7.1, Partial Payments*, any sum recommended by the ENGINEER and approved by TAMPA BAY WATER, then the CONTRACTOR may, upon fifteen (15) DAYS written NOTICE to TAMPA BAY WATER and the ENGINEER, suspend WORK. If TAMPA BAY WATER fails to correct the conditions, which under this Article justify the CONTRACTOR'S suspension of the WORK, the CONTRACTOR may, after fifteen (15) DAYS additional written NOTICE to TAMPA BAY WATER and the ENGINEER, terminate the CONTRACT. Upon termination, the CONTRACTOR'S sole and exclusive remedy shall be the same as and limited to those rights set forth in paragraph 6.6.6 hereafter. CONTRACTOR shall not be entitled to any additional rights or remedies against TAMPA BAY WATER, including loss profits and other damages, all such other remedies being expressly waived by CONTRACTOR.

#### **4.20 Warranty and Guarantee; Correction of Defective Work During Correction Period**

4.20.1. The CONTRACTOR warrants and guarantees to TAMPA BAY WATER that all WORK will be in accordance with the CONTRACT DOCUMENTS and will not be DEFECTIVE, including all WORK performed or furnished by any SUBCONTRACTOR or SUPPLIER. This warranty and guarantee is in addition to and shall survive the CONTRACTOR'S obligations under the CORRECTION PERIOD set forth in this Article.

4.20.2. The CONTRACTOR shall make, at its own expense, all repairs or replacements necessitated by DEFECTIVE WORK, and pay for any damage (whether to the WORK itself or other property), including routine repairs resulting from such DEFECTIVE WORK, which becomes evident within the one (1) year after the date of SUBSTANTIAL COMPLETION established by the ENGINEER for the entire WORK or for specified items of WORK, or within one (1) year after the date of FINAL COMPLETION of the WORK if TAMPA BAY WATER did not operate or use the entire facility between the SUBSTANTIAL COMPLETION date and FINAL COMPLETION, or within such longer period of time as may be prescribed by LAWS AND REGULATIONS or by the terms of any applicable special guarantee required by the CONTRACT DOCUMENTS ("CORRECTION PERIOD"). After the CORRECTION PERIOD, CONTRACTOR shall remain liable to TAMPA BAY WATER, and its successors, for DEFECTIVE WORK and damage resulting from such DEFECTIVE WORK, but such liability shall not include an obligation to make routine repairs, unless otherwise agreed to in writing.

4.20.3. CONTRACTOR'S subagreements with its manufacturer(s) and the SUPPLIER(s) of all other materials and equipment used in the PROJECT which have a cost of more than \$1,000.00 shall require an express warranty from the manufacturer(s) and the SUPPLIER(S) to TAMPA BAY WATER that the materials (1) are new, (2) have been manufactured and supplied in accordance with the requirements of



the CONTRACT DOCUMENTS, and (3) are not DEFECTIVE. Such express warranty shall be for a period of not less than the CORRECTION PERIOD.

4.20.4. DEFECTIVE WORK identified for correction during the CORRECTION PERIOD but remaining DEFECTIVE after its expiration shall be considered as part of the obligations of the warranty or guarantee.

4.20.5. The CONTRACTOR agrees to defend, indemnify and hold TAMPA BAY WATER and the ENGINEER harmless from liability of any kind arising from damage due to DEFECTIVE WORK. The CONTRACTOR shall make all repairs and replacements promptly upon receipt of written order for same from TAMPA BAY WATER or the ENGINEER. If the CONTRACTOR fails to make the repairs and replacements promptly, or in an emergency, where delay would cause serious risk, loss, or damage, TAMPA BAY WATER may have the DEFECTIVE WORK corrected or the rejected WORK removed and replaced, and the CONTRACTOR and its Surety shall be liable for the cost thereof.

4.20.6. CONTRACTOR'S subagreements with its manufacturer(s) and the SUPPLIER(S) of all materials shall permit the CONTRACTOR to assign to TAMPA BAY WATER all express and implied warranties from the manufacturer(s) and the SUPPLIER(S). CONTRACTOR hereby assigns to TAMPA BAY WATER all express and implied warranties from the manufacturer(s) and the SUPPLIER(S) of all materials used in the WORK.

4.20.7. The specified warranties and guarantees and the CONTRACTOR'S obligations for correction of WORK specified in this Article are in addition to and not in limitation of any other specific remedies provided in the CONTRACT DOCUMENTS or by LAWS AND REGULATIONS.

4.20.8. Tests, inspections or approvals shall not in any way relieve the CONTRACTOR from its obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS, or to warrant and guarantee the WORK as provided in the CONTRACT DOCUMENTS.

4.20.9. These provisions shall not be construed to prohibit TAMPA BAY WATER from seeking damages or any remedy at law or equity against CONTRACTOR for breach of the CONTRACT, DEFECTIVE WORK or the warranties provided herein.

#### **4.21 Allowances**

4.21.1 CONTRACTOR shall not proceed with any ALLOWANCE item unless and until it has received express written authorization from TAMPA BAY WATER. The CONTRACT PRICE shall be adjusted by CHANGE ORDER or CHANGE AUTHORIZATION based upon the actual cost of the ALLOWANCE items authorized in writing by TAMPA BAY WATER.

#### **4.22 CONTRACTOR'S Representations:**

4.22.1 CONTRACTOR has examined and carefully studied the AGREEMENT and CONTRACT DOCUMENTS.

4.22.2 CONTRACTOR has visited the WORK Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the WORK.

4.22.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local LAWS and REGULATIONS that may affect cost, progress, and performance of the WORK.

4.22.4 CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions (if any) at or contiguous to the WORK site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the WORK site which have been identified or made available by TAMPA BAY WATER and (2) reports and drawings of Hazardous Environmental Conditions (if any) at the WORK site which have been identified or made available by TAMPA BAY WATER.

4.22.5 CONTRACTOR is aware of the general nature of WORK to be performed by TAMPA BAY WATER and others at the WORK site that relates to the WORK to the extent indicated in the CONTRACT DOCUMENTS.

4.22.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the CONTRACT DOCUMENTS, and all additional examinations, investigations, explorations, tests, studies and data with the CONTRACT DOCUMENTS.

4.22.7 CONTRACTOR has given TAMPA BAY WATER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TAMPA BAY WATER is acceptable to CONTRACTOR.

4.22.8 The CONTRACT DOCUMENTS are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the WORK.

4.22.9 CONTRACTOR'S execution of this AGREEMENT is not based upon their reliance upon any representation, understanding or agreement not expressly set forth herein. TAMPA BAY WATER has not made any representation to CONTRACTOR except as expressly set forth herein.

4.22.10 CONTRACTOR is organized and exists under the laws of the State of \_\_\_\_\_ and is in good standing in the State of \_\_\_\_\_ and is authorized to do business in the State of Florida.

4.22.11 CONTRACTOR has the full power and authority to execute and deliver this AGREEMENT and to incur and perform the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary action of the governing body of the CONTRACTOR. CONTRACTOR is in compliance with all laws and regulatory requirements to which they are subject.

4.22.12 CONTRACTOR executes this AGREEMENT as a free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of TAMPA BAY WATER or any other party.

4.22.13 This AGREEMENT is a valid, binding and enforceable obligation of CONTRACTOR, and does not violate any law, rule, regulation, contract or agreement otherwise enforceable by or against CONTRACTOR, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

**V. TAMPA BAY WATER/Owner**

**5.1 General Provision**

5.1.1. Written communications from TAMPA BAY WATER to the CONTRACTOR shall in general be issued through the ENGINEER, but if issued directly by TAMPA BAY WATER, a copy shall be provided to the ENGINEER.

5.1.2. TAMPA BAY WATER may issue without negotiation, at its discretion CHANGE AUTHORIZATIONS, as provided in the CONTRACT DOCUMENTS. Only TAMPA BAY WATER is empowered under the CONTRACT DOCUMENTS to order changes in the WORK that affect CONTRACT TIME or CONTRACT PRICE or quality.

5.1.3. If the WORK is DEFECTIVE, or the CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in a way that the completed WORK will conform to the CONTRACT DOCUMENTS, TAMPA BAY WATER may order the CONTRACTOR to stop the WORK, or any portion of the WORK in question, until the cause for the stop order has been eliminated; however, this right of TAMPA BAY WATER to stop the WORK shall not give rise to any duty on the part of TAMPA BAY WATER to exercise this right for the benefit of the CONTRACTOR or any other party. The CONTRACTOR shall not be allowed to recover any costs resulting from an order to stop the WORK, and the CONTRACTOR shall reimburse TAMPA BAY WATER for all direct, indirect, or consequential costs attributable to an order to stop the WORK; those costs to be documented as to reasonableness, and TAMPA BAY WATER shall be entitled to an appropriate decrease in CONTRACT PRICE, or to withhold such decrease against any amounts recommended for payment. The CONTRACTOR shall remain responsible for maintaining and performing in accordance with the PROGRESS SCHEDULE and shall not be entitled to any extension in CONTRACT TIME or any increase in CONTRACT PRICE.

5.1.4. Neither TAMPA BAY WATER, the ENGINEER, nor TAMPA BAY WATER'S consultants will be responsible for the CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction, or the safety precautions, and programs related to safety, and neither TAMPA BAY WATER nor ENGINEER or any of their consultants shall be responsible for the CONTRACTOR'S failure to perform or furnish the WORK in accordance with CONTRACT DOCUMENTS.

## **VI. Progress of the Work**

### **6.1 Beginning of the Work**

6.1.1. Prior to starting the WORK, the CONTRACTOR shall prepare and submit to the ENGINEER, a PROGRESS SCHEDULE and a schedule for SUBMITTALS in a format acceptable to TAMPA BAY WATER and the ENGINEER and as specified in the General Requirements showing the dates on which each part or division of the WORK is expected to be started and completed, and a schedule for SUBMITTALS.

6.1.2. No sooner than ten (10) DAYS before the NOTICE TO PROCEED is issued, a pre-construction conference shall be held to review the steps undertaken by the CONTRACTOR to comply with the schedule requirements; review the qualifications of the CONTRACTOR'S on-site personnel; review the CONTRACTOR'S plans for lay-down and staging areas, construction traffic, and access to the PROJECT site, parking, communications, procedures, and other similar matters.

### **6.2 Schedules and Progress Reports**

6.2.1. The PROGRESS SCHEDULE or schedule recovery actions, once reviewed and accepted by TAMPA BAY WATER and ENGINEER, shall be utilized to report progress or schedule recovery actions, and to evaluate the CONTRACTOR'S PAYMENT APPLICATIONS. The CONTRACTOR shall be required to keep TAMPA BAY WATER informed of the progress of the WORK by delivering updated PROGRESS SCHEDULES prior to the seventh (7th) day of each month, for TAMPA BAY WATER and ENGINEERS review and acceptance. CONTRACTOR'S submittal of acceptable monthly

updates to the PROGRESS SCHEDULES is a condition precedent to TAMPA BAY WATER'S obligation to make payments to CONTRACTOR hereunder. Notwithstanding anything in the CONTRACT DOCUMENTS to the contrary, it is expressly acknowledged and agreed that no review or acceptance of any PROGRESS SCHEDULE by TAMPA BAY WATER or ENGINEER shall be construed as an admission or acknowledgement by TAMPA BAY WATER or ENGINEER that any such PROGRESS SCHEDULE was either reasonable or achievable.

6.2.2. Prior to the seventh (7th) day of each month, the CONTRACTOR shall submit to the ENGINEER, an itemized PROGRESS REPORT of the delivery status of purchased equipment and material, SHOP DRAWINGS and the status of shop and field fabricated WORK. These PROGRESS REPORTS shall indicate, but shall not be limited to, the dates of the purchase orders, the estimated delivery dates of any material and/or equipment, and cause(s) of delays, if any.

6.2.3. In addition to retainage, TAMPA BAY WATER shall have the right to withhold all or any portion of PROGRESS PAYMENTS for the WORK if the CONTRACTOR fails to update and submit the PROGRESS SCHEDULE(S) and PROGRESS REPORTS as specified.

6.2.4. Neither TAMPA BAY WATER'S nor the ENGINEER'S review of the CONTRACTOR'S PROGRESS SCHEDULE, or TAMPA BAY WATER'S decision to raise or not to raise any objections about the CONTRACTOR'S PROGRESS SCHEDULE, shall impose on TAMPA BAY WATER or the ENGINEER any responsibility for the timing, planning, scheduling, or execution of the WORK, nor relieve CONTRACTOR of its obligation to complete the WORK in a timely manner.

### **6.3 Prosecution of the Work**

6.3.1. TAMPA BAY WATER and the CONTRACTOR agree that time is the essence with respect to CONTRACTOR'S performance under the CONTRACT DOCUMENTS. The CONTRACTOR shall perform the WORK at such time, and in or on such part(s) of the PROJECT site as may be required to complete the WORK as required by the CONTRACT DOCUMENTS.

6.3.2. If the CONTRACTOR desires to carry on WORK at night or otherwise outside of the WORKING HOURS, it shall give timely NOTICE to TAMPA BAY WATER and ENGINEER to allow satisfactory arrangements to be made for observing the WORK in progress. The CONTRACTOR shall reimburse TAMPA BAY WATER for all of TAMPA BAY WATER'S expenses associated with the WORK performed outside of normal WORKING HOURS.

6.3.3. The CONTRACTOR shall carry on the WORK and adhere to the most recent approved PROGRESS SCHEDULE during all disputes or disagreements with TAMPA BAY WATER. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements. Upon receipt of a written order from the ENGINEER or TAMPA BAY WATER, the CONTRACTOR will immediately proceed with the WORK regardless of whether a CHANGE ORDER or CHANGE AUTHORIZATION has or has not been issued.

### **6.4 TAMPA BAY WATER'S Right to Retain Imperfect Work**

6.4.1. If any part or portion of the WORK completed under the CONTRACT DOCUMENTS shall prove DEFECTIVE, TAMPA BAY WATER shall have the right in its sole discretion, to retain such WORK and may make such deductions in the payment due the CONTRACTOR as may be just and reasonable.

**6.5 TAMPA BAY WATER'S Right to do Work**

6.5.1. Should the CONTRACTOR neglect to prosecute the WORK in conformance with the CONTRACT DOCUMENTS or neglect or refuse at its own cost to remove and replace WORK as shall have been rejected by the ENGINEER, then TAMPA BAY WATER may notify the CONTRACTOR and its Surety of the condition, and after seven (7) DAYS written NOTICE to the CONTRACTOR and its Surety, or without NOTICE if an emergency or danger to the WORK or public exists, and without prejudice to any other right which TAMPA BAY WATER may have under the CONTRACT DOCUMENTS, take over that portion of the WORK which has been improperly executed, and correct the deficiencies and deduct the cost thereof from the payments then or thereafter due the CONTRACTOR.

**6.6 TAMPA BAY WATER'S Right to Terminate**

6.6.1. At any time, TAMPA BAY WATER may request the CONTRACTOR to provide adequate assurances of its ability to complete the WORK in the manner and times designated in the CONTRACT DOCUMENTS. The types of adequate assurances shall be designated by TAMPA BAY WATER and shall consist of reasonable means for the CONTRACTOR to prove its ability to perform.

**A. Termination for Cause**

6.6.2. TAMPA BAY WATER, shall have full power and authority to terminate the services of the CONTRACTOR seven (7) DAYS after providing NOTICE to the CONTRACTOR and its Surety, or sooner if safety to persons or property is in question, because:

a. the CONTRACTOR refuses or fails to prosecute the WORK, or separable part of the WORK with the diligence that will cause its completion within the corresponding CONTRACT TIME, including any authorized adjustments; supply sufficient skilled workers, materials or equipment in adherence with the PROGRESS SCHEDULE; or comply with the PROGRESS SCHEDULE requirements; or

b. the CONTRACTOR fails to complete the WORK, or any separable part, within the corresponding CONTRACT TIME, including any authorized adjustments; or

c. the CONTRACTOR refuses or fails to make prompt payment to SUBCONTRACTORS, disregards LAWS AND REGULATIONS; refuses or fails to perform the WORK in conformance with the CONTRACT DOCUMENTS; or violates any provision of the CONTRACT DOCUMENTS; or

d. the CONTRACTOR fails to provide TAMPA BAY WATER with adequate assurances in accordance with this Article, that the CONTRACTOR can complete the WORK in accordance with the CONTRACT DOCUMENTS.

6.6.3. If, after the furnishing of said NOTICE, the CONTRACTOR and the Surety fail to cure or correct the default, TAMPA BAY WATER may terminate CONTRACTOR'S right to perform the WORK and take possession of the PROJECT site and of all materials, tools, and appliances thereon, and require CONTRACTOR to assign to TAMPA BAY WATER any or all of CONTRACTOR'S subagreements with SUBCONTRACTORS or SUPPLIERS, as directed by TAMPA BAY WATER, and finish the WORK by whatever method it may deem expedient and charge the cost thereof to the CONTRACTOR and Surety. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finally completed. If the expense of completing the WORK exceeds such unpaid balance of the CONTRACT PRICE, the CONTRACTOR and its Surety shall pay the difference to TAMPA BAY WATER.

6.6.4. Where the CONTRACTOR'S rights to perform the WORK have been so terminated by TAMPA BAY WATER, the termination shall not affect any rights or remedies of TAMPA BAY WATER against the CONTRACTOR then existing or which may accrue after termination. Any retention or payment of monies due the CONTRACTOR by TAMPA BAY WATER shall not release the CONTRACTOR from its contractual liability or any other liability.

#### **B. Termination for Convenience**

6.6.5. Upon seven (7) DAYS written NOTICE to the CONTRACTOR and its Surety, TAMPA BAY WATER may, without cause and without prejudice to any other right or remedy, elect to terminate the CONTRACTOR'S services under the CONTRACT DOCUMENTS in whole or in part. Upon receipt of such NOTICE, the CONTRACTOR shall immediately proceed in accordance with any specific provisions or instructions, to protect and maintain the WORK, and make reasonable and diligent efforts to mitigate costs associated with the termination.

6.6.6. In any such termination for the convenience of TAMPA BAY WATER, the CONTRACTOR, as its sole and exclusive remedy, shall be entitled to payment for that portion of the CONTRACT PRICE attributable to the WORK completed, prior to receipt of the NOTICE of termination, in accordance with the CONTRACT DOCUMENTS, together with CONTRACTOR'S reasonable and direct out-of-pocket termination expenses; provided, however, CONTRACTOR shall not be entitled to any further or additional recovery against TAMPA BAY WATER, including, but not limited to, any lost profit on WORK not performed or any other damages however categorized.

6.6.7. If, after NOTICE of termination for cause as provided in paragraph 6.6.A above, it is determined the CONTRACTOR was not in default or that TAMPA BAY WATER was not entitled to the remedies set forth therein, the termination shall be deemed to have been for the convenience of TAMPA BAY WATER and CONTRACTOR'S rights and remedies shall be the same as and limited to those set forth in paragraph 6.6.6 above.

6.6.8. No waiver, express or implied, of any covenant, provision, right or remedy herein shall at any time thereafter be held to be a waiver of the terms and conditions of this Article.

#### **6.7 Delays and Extensions of Time**

6.7.1. If the CONTRACTOR is delayed in the progress of the WORK by any act or neglect of TAMPA BAY WATER or the ENGINEER, or by any other contractor retained by TAMPA BAY WATER, or by strikes, lockouts, fire, adverse weather conditions not reasonably anticipated, or acts of nature, or any other cause beyond the fault and neglect of the CONTRACTOR, within 48 hours of the start of the occurrence, the CONTRACTOR shall provide NOTICE to TAMPA BAY WATER. Within seven (7) DAYS after the event which caused the delay has ended the CONTRACTOR must provide full documentation of the impact of the delay. The CONTRACT TIME may be extended by CHANGE ORDER or CHANGE AUTHORIZATION for such reasonable time as the ENGINEER and TAMPA BAY WATER determine. No extension of time will be granted to the CONTRACTOR for delays occurring to parts of the WORK that have no measurable impact on the completion of the total WORK. No extension of CONTRACT TIME will be considered for weather conditions reasonably anticipated for the area in which the WORK is being performed. Reasonably anticipated weather conditions will be based on official records of monthly precipitation and other historical data. Adverse weather conditions, if determined by the ENGINEER to be of a severity that would impact progress of the WORK, may be considered as cause for an extension of CONTRACT TIME. No request by the CONTRACTOR for an equitable adjustment to the CONTRACT TIME under this Article will be allowed, unless the CONTRACTOR has given the NOTICE and documentation within the times required.

6.7.2. Delays in delivery of equipment or material purchased by the CONTRACTOR or its SUBCONTRACTORS or SUPPLIERS shall not be considered as a cause for delay. The CONTRACTOR shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

6.7.3. Within 21 days (unless a longer period of time is reasonably required) after the CONTRACTOR submits to TAMPA BAY WATER and the ENGINEER a written request for an extension of time, the ENGINEER will present its written opinion to TAMPA BAY WATER as to whether an extension of time is justified, and, if so, its recommendation as to the number of DAYS for time extension. TAMPA BAY WATER shall make the final decision on all requests for extensions to CONTRACT TIME.

6.7.4. The CONTRACTOR waives its right to file claims unless the claims are filed within the times specified in the CONTRACT DOCUMENTS. TAMPA BAY WATER'S determination shall be final and binding on the CONTRACTOR unless the CONTRACTOR files suit within thirty (30) days after receipt of TAMPA BAY WATER'S decision.

6.7.5. Notwithstanding anything in the CONTRACT DOCUMENTS to the contrary, no interruption, interference, inefficiency, suspension or delay in the commencement or the progress of the WORK for any cause whatever, including those for which TAMPA BAY WATER or ENGINEER may be responsible, in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from TAMPA BAY WATER. CONTRACTOR expressly acknowledges and agrees that it shall receive no damages for delay. CONTRACTOR'S sole remedy, if any, against TAMPA BAY WATER will be the right to seek an extension to the CONTRACT TIME, in accordance with the procedures set forth in this Article 6.7; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the WORK is delayed due to the fault or neglect of TAMPA BAY WATER or ENGINEER, and such delays have a cumulative total of more than 30 calendar days, CONTRACTOR may make a claim, in accordance with the procedures set forth in Article 7.3, for its actual and direct delay damages accruing after said 30 calendar days.

## 6.8 Differing Site Conditions

6.8.1. The CONTRACTOR shall promptly, and before the conditions are disturbed, provide NOTICE to TAMPA BAY WATER and the ENGINEER of:

a. any subsurface or latent physical conditions at the PROJECT site which differ materially from those (i) observed by CONTRACTOR prior to the submittal of its BID or (ii) indicated in the CONTRACT DOCUMENTS or the Existing Condition Documents referenced in the Information to Bidders,

or

any unknown physical conditions at the PROJECT site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the CONTRACT DOCUMENTS.

6.8.2. The ENGINEER shall investigate the reported conditions promptly after receiving the NOTICE from the CONTRACTOR. If the conditions do materially differ and cause an increase or decrease in the CONTRACTOR'S cost or time for performance of the work, an equitable adjustment shall be made in accordance with the procedures set forth in Articles 6.7 and 7.3 herein. Notwithstanding the provisions of this paragraph, if the reported condition in question would have been revealed by a thorough on-site

inspection, TAMPA BAY WATER in its sole discretion shall have the right to deny any such claim for an adjustment in the CONTRACT PRICE or CONTRACT TIME.

6.8.3. No request by the CONTRACTOR for an equitable adjustment to the CONTRACT PRICE or CONTRACT TIME for differing site conditions will be allowed if made after the time periods set forth in Articles 6.7 or 7.3, or FINAL COMPLETION, whichever first occurs.

### **6.9 Liquidated Damages**

6.9.1. Should the CONTRACTOR fail to achieve SUBSTANTIAL COMPLETION of the WORK within the CONTRACT TIME, as that time may be adjusted pursuant to the terms of the CONTRACT DOCUMENTS, the CONTRACTOR shall pay to TAMPA BAY WATER the liquidated damages as set forth in the AGREEMENT. TAMPA BAY WATER shall have the right to deduct the liquidated damages from any amount due, or that may become due to the CONTRACTOR. If an insufficient amount of the CONTRACT PRICE remains, the amount of liquidated damages shall be due and collectible from the CONTRACTOR and its Surety, jointly and severally.

### **6.10 Other Contracts**

6.10.1. TAMPA BAY WATER reserves the right to let other contracts in connection with the PROJECT. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of their equipment and materials for the execution of their work and shall properly interface and coordinate its WORK with theirs.

6.10.2. If the execution of any part of the WORK depends on the performance of any other contractor, utility service company or TAMPA BAY WATER, the CONTRACTOR shall promptly provide NOTICE to the ENGINEER of any defects or deficiencies that render it incompatible with the intended results of these CONTRACT DOCUMENTS. The CONTRACTOR'S failure to provide the required NOTICE shall constitute an acceptance of the work by others as being fit and proper for integration with the WORK.

### **6.11 Use of Premises**

6.11.1. The CONTRACTOR shall confine its equipment, the storage of materials, and the operation of its workers to the areas shown on the CONTRACT DOCUMENTS or indicated by LAWS AND REGULATIONS, permits, easements, licenses or directions of TAMPA BAY WATER or the ENGINEER. The CONTRACTOR shall provide, at its own expense, any right-of-ways or access to the WORK which it may require outside the limits of TAMPA BAY WATER'S property interests or easements and shall furnish TAMPA BAY WATER and the ENGINEER copies of permits and agreements for use of property outside that provided by TAMPA BAY WATER prior to entering said properties.

6.11.2. The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the WORK or adjacent property to stresses or pressures that will endanger it.

6.11.3. The CONTRACTOR shall take all precautions to minimize inconvenience to residents living adjacent to the PROJECT site by maintaining access to driveways and providing dust control for the PROJECT site and noise control devices for dewatering 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 land or areas contiguous thereto, resulting from the performance of the WORK.



**6.12 Substantial and Final Completion Dates**

6.12.1. When the CONTRACTOR considers that the entire WORK or designated portion thereof, has progressed to the point where it is sufficiently complete in accordance with the CONTRACT DOCUMENTS, and it has been proven to be ready for its intended use, the CONTRACTOR shall provide NOTICE to TAMPA BAY WATER and the ENGINEER that the CONTRACTOR considers the WORK or designated portion thereof, SUBSTANTIALLY COMPLETE (except for listed items to be completed or corrected prior to FINAL COMPLETION). The CONTRACTOR shall prepare an initial list of items of WORK to be corrected or completed for FINAL COMPLETION and attach that list to the above referenced NOTICE. Within a reasonable time after that, TAMPA BAY WATER, the CONTRACTOR, and the ENGINEER shall make an inspection to determine the status of completion.

6.12.2. If TAMPA BAY WATER and ENGINEER agree that SUBSTANTIAL COMPLETION of the WORK has been achieved, the ENGINEER shall issue a Certificate of Substantial Completion for the purpose of establishing the starting date for specific equipment warranties, and to establish the date that TAMPA BAY WATER shall assume the cost of operating such equipment. Said Certificate shall not be considered as FINAL COMPLETION of any portion of the WORK or relieve the CONTRACTOR from completing the remaining WORK within the specified time and in compliance with the CONTRACT DOCUMENTS. The ENGINEER shall review and supplement the CONTRACTOR'S initial list of items of WORK to be corrected or completed for FINAL COMPLETION and such revised and supplemental list shall be attached to the Certificate of Substantial Completion. Provided, however, the failure to include any incomplete or DEFECTIVE WORK on said list shall not relieve or excuse the CONTRACTOR from completing all of the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

6.12.3. When the CONTRACTOR considers the entire WORK has progressed to the point where it is complete in accordance with the CONTRACT DOCUMENTS, the CONTRACTOR shall provide NOTICE to TAMPA BAY WATER and the ENGINEER that the CONTRACTOR considers the WORK to have reached FINAL COMPLETION.

**6.13 Performance Testing**

6.13.1. Operating equipment and systems shall be performance tested in accordance with the General Requirements and in the presence of the ENGINEER to demonstrate compliance with the CONTRACT DOCUMENTS. The CONTRACTOR shall schedule such testing with the ENGINEER at least one (1) week in advance of the planned date for testing.

**6.14 TAMPA BAY WATER'S Use of Portions of the Work**

6.14.1. Following issuance of the NOTICE OF SUBSTANTIAL COMPLETION, TAMPA BAY WATER may occupy and operate the WORK. Such occupancy and operation shall not be considered as FINAL COMPLETION of any portion of the WORK, nor shall such occupancy or use be considered as cause for an extension of the CONTRACT TIME.

**6.15 Cutting, Patching, or Fitting**

6.15.1. The CONTRACTOR shall do all cutting, patching, or fitting of its WORK that may be required to make its several parts come together properly and fit the WORK to receive or be received by work of other contractors shown in or reasonably implied by the CONTRACT DOCUMENTS.

**6.16 Cleaning Up**

6.16.1. The CONTRACTOR shall, at all times, keep property on which WORK is in progress and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the WORK. Upon completion of the construction, the CONTRACTOR shall remove all temporary structures, rubbish caused by employees, SUPPLIERS, SUBCONTRACTORS, or the WORK, and waste materials resulting from its operations.

**6.17 Intoxicants**

6.17.1. The CONTRACTOR and persons under its employ shall not bring onto, possess, sell, or use alcohol, narcotics, drugs (other than prescription drugs, provided the person in possession of the drug has a valid prescription in his or her name, or over-the-counter drugs which may be purchased legally by the person), or controlled substances while on the PROJECT site, including parking lots, at any time, including all breaks and lunch periods. The CONTRACTOR and persons under its employ shall not report to, or commence, or continue to work while under the influence of alcohol or any drugs, regardless of whether those drugs were legally or illegally taken. The CONTRACTOR and persons under its employ shall not undertake any activities at the PROJECT site which create a nuisance or improperly disturbs or interferes with TAMPA BAY WATER'S operations at the PROJECT site or the use and enjoyment of any adjacent properties by their respective owners. Gambling on the PROJECT site is prohibited.

**VII. Payment****7.1 Partial Payments****A. General**

7.1.1. Within ten (10) days after commencing the WORK, but in any event prior to the submittal of its first PAYMENT APPLICATION, CONTRACTOR shall submit to ENGINEER, for ENGINEER'S and TAMPA BAY WATER'S review and approval, a proposed schedule of values which distributes the CONTRACT PRICE among the various items and categories of WORK to be performed. Said schedule of values shall be in such form and contain such detail as may be required by ENGINEER and TAMPA BAY WATER. The final approved schedule of values shall serve as the basis for partial payments and shall be incorporated into the PAYMENT APPLICATION form provided by TAMPA BAY WATER. Nothing contained in this Article shall be construed to affect the right of TAMPA BAY WATER or ENGINEER to reject, the whole or any part of the WORK, should such WORK be found to be DEFECTIVE. All estimated quantities of WORK for which partial payments have been made are subject to review and correction on the final PAYMENT APPLICATION. Payment by TAMPA BAY WATER and acceptance by the CONTRACTOR of partial payments based on UNIT PRICE WORK, shall not in any way constitute acceptance of the estimated UNIT PRICE WORK by TAMPA BAY WATER.

7.1.2. The CONTRACTOR shall provide TAMPA BAY WATER with copies of its written daily reports at weekly intervals. Refusal of the CONTRACTOR to provide its daily reports shall be cause for TAMPA BAY WATER to withhold payments until the CONTRACTOR'S daily reports have been provided.

**B. Estimate**

7.1.3. The CONTRACTOR shall not submit more than one PAYMENT APPLICATION per month with respect to the WORK. Within thirty-one (31) DAYS following submission of a complete and

accurate PAYMENT APPLICATION to the ENGINEER, approved by the ENGINEER, and acceptable to TAMPA BAY WATER, TAMPA BAY WATER shall make partial payments to the CONTRACTOR on the basis of WORK performed during the preceding calendar month by the CONTRACTOR. The final working day of each month shall be used as the day for measurement of WORK performed.

7.1.4. The ENGINEER shall, within ten (10) DAYS after receipt of each PAYMENT APPLICATION for payment, provide NOTICE to TAMPA BAY WATER recommending payment to the CONTRACTOR, or return the request to the CONTRACTOR providing NOTICE of the ENGINEER'S reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the request.

7.1.5. The ENGINEER may refuse to recommend and TAMPA BAY WATER may refuse to pay the whole or any part of any payment, if in the ENGINEER'S or TAMPA BAY WATER'S opinion, the CONTRACTOR is not entitled to any such payment. The ENGINEER may also refuse to recommend and TAMPA BAY WATER may refuse to pay any payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests of any WORK, retract any previous recommendation or payment to such extent necessary in the ENGINEER'S or TAMPA BAY WATER'S opinion to protect TAMPA BAY WATER from loss for reasons not limited to:

1. The WORK is DEFECTIVE, or completed WORK has been damaged requiring correction or replacement;
2. The CONTRACT PRICE has been reduced because of CHANGE ORDERS;
3. TAMPA BAY WATER has been required to correct DEFECTIVE WORK or complete all or portions of the WORK;
4. The CONTRACTOR'S unsatisfactory prosecution of the WORK in accordance with the CONTRACT DOCUMENTS;
5. Written claims have been made against TAMPA BAY WATER or liens have been filed in connection with the WORK;
6. The CONTRACTOR'S failure to make payment to SUBCONTRACTORS OR SUPPLIERS for labor, materials, or equipment;
7. Amounts owed by CONTRACTOR to TAMPA BAY WATER as LIQUIDATED DAMAGES; or
8. Any other amounts which may be owed to TAMPA BAY WATER by CONTRACTOR pursuant to the terms of the CONTRACT DOCUMENTS.

### **C. Deduction from Estimate**

7.1.6. Unless modified in the Supplementary Conditions, TAMPA BAY WATER shall withhold from each partial payment, ten percent (10%) of the amount earned for WORK completed. A deduction and retainage of ten percent (10%) shall be made on the estimated amount earned for approved items of material delivered to and properly stored at the PROJECT site but not incorporated into the WORK. When the WORK is at least fifty percent (50%) complete, TAMPA BAY WATER in its sole discretion may reduce the retainage to five percent (5%) of the CONTRACT PRICE, provided the CONTRACTOR is making satisfactory progress and there is no specific cause for a greater retainage. TAMPA BAY WATER may reinstate the retainage up to ten percent (10%) if TAMPA BAY WATER determines, in its discretion, that the CONTRACTOR is not making satisfactory progress or where there is other specific cause for such withholding. The retainage is to be withheld by TAMPA BAY WATER until all WORK has been performed in accordance with the CONTRACT DOCUMENTS and until such WORK has been accepted by TAMPA BAY WATER.

7.1.7. TAMPA BAY WATER may deduct from each PAYMENT APPLICATION an amount equal to TAMPA BAY WATER'S estimate of the amount of LIQUIDATED DAMAGES then due, or which may become due.

#### **D. Reimbursement**

7.1.8. For TAMPA BAY WATER'S expenses as defined in the General Conditions, *Article 4.15. Submittals*, and for testing that is performed by TAMPA BAY WATER or the ENGINEER which indicates WORK is DEFECTIVE, or for any other cost for which TAMPA BAY WATER is entitled to reimbursement from CONTRACTOR under the CONTRACT DOCUMENTS, at TAMPA BAY WATER'S election, such reimbursement shall be deducted from the CONTRACTOR'S monthly partial payments or shall be paid by CONTRACTOR within 30 days after TAMPA BAY WATER makes demand for same upon CONTRACTOR.

#### **E. Qualification for Partial Payment for Materials Delivered**

7.1.9. Partial payments for materials delivered but not yet incorporated into the WORK shall be as described below:

1. Materials, as used herein, shall be considered to be those items which are fabricated and manufactured material and equipment. No consideration shall be given to individual purchases of less than \$200.00 for any one item.

2. To receive partial payment for materials delivered to the PROJECT site, but not incorporated in the WORK, it shall be necessary for the CONTRACTOR to include a list of such materials with the PAYMENT APPLICATION, the utilization of TAMPA BAY WATER provided forms is required. At its sole discretion, TAMPA BAY WATER, with the ENGINEER'S advice, may approve items for which partial payment is to be made. Partial payments shall be based on the CONTRACTOR'S actual cost for the materials as evidenced by invoices from the SUPPLIER. Proper storage and protection shall be provided by the CONTRACTOR, AS APPROVED by the ENGINEER. Final payment shall be made only for materials actually incorporated in the WORK and upon acceptance of the WORK, all materials remaining for which partial payments had been made shall revert to the CONTRACTOR, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the WORK.

3. CONTRACTOR warrants and guarantees that title to all items of WORK requested in any PAYMENT APPLICATION, whether incorporated in the PROJECT or not, shall pass to TAMPA BAY WATER at the time of payment for such items, free and clear of all liens, claims, security interests, and encumbrances.

4. If requested by the ENGINEER, the CONTRACTOR shall provide, with subsequent PAYMENT APPLICATIONS, invoices received by the SUBCONTRACTOR or SUPPLIER showing payment in full has been made.

#### **F. Payment**

7.1.10. The amount of partial payment due the CONTRACTOR shall be equal to the current value of the CONTRACT PRICE earned, less, any retainage, less any amounts previously paid, and any deductions for reimbursement as required by the CONTRACT DOCUMENTS.

## 7.2 Payment for Change Orders

7.2.1. TAMPA BAY WATER, without NOTICE to the Sureties, shall have the right to order changes to the WORK. If the parties agree upon the terms for the change, including any appropriate adjustments to the CONTRACT PRICE or CONTRACT TIME, a CHANGE ORDER shall be issued. If the parties cannot agree upon the terms for the change, a CHANGE AUTHORIZATION may be issued by TAMPA BAY WATER. The terms of the CHANGE AUTHORIZATION shall be final and binding upon CONTRACTOR, unless CONTRACTOR makes a claim, within twenty-one (21) days of its receipt of the CHANGE AUTHORIZATION, challenging those terms it takes objection to, giving full details and supporting documentation for its specific objections. Any terms not specifically objected to within that twenty-one (21) day period shall be deemed final and accepted by CONTRACTOR. Regardless of whether or not CONTRACTOR files a timely claim with respect to any of the terms of the CHANGE AUTHORIZATION, CONTRACTOR shall proceed with the change to the WORK, as set forth in the CHANGE AUTHORIZATION, as directed by TAMPA BAY WATER or ENGINEER.

7.2.2. At TAMPA BAY WATER'S option, payment or credit for any changes covered by a CHANGE ORDER or a CHANGE AUTHORIZATION, whether additive or deductive, shall be determined by one or a combination of the methods set forth in A, B, or C, below, as applicable:

### A. Unit Prices

Those UNIT PRICES stipulated in the AGREEMENT shall be utilized where they are applicable. In the event the CHANGE ORDER or CHANGE AUTHORIZATION results in a change in excess of twenty-five percent (25%) of the original AGREEMENT quantity, and the total dollar change in value of that item exceeds twenty-five percent (25%), TAMPA BAY WATER will review the UNIT PRICE to determine if a new UNIT PRICE shall be negotiated. UNIT PRICES for new unit items not listed in the AGREEMENT shall be negotiated and mutually agreed upon.

### B. Lump Sum

A total lump sum amount for the WORK negotiated and mutually acceptable to the CONTRACTOR and TAMPA BAY WATER. LUMP SUM PRICE quotations for modifications to the WORK shall include substantiating documentation with an itemized breakdown of CONTRACTOR and SUBCONTRACTOR costs, including labor, material, rentals, approved services, overhead, and profit, all calculated as specified under "C" below.

### C. Cost Reimbursement Work

The term "cost reimbursement work" shall be for changes to be compensated for on a time and expense basis, that is, on an accounting of the CONTRACTOR'S forces, materials, equipment, and other items of direct cost as required for the change.

TAMPA BAY WATER, at its sole discretion, may direct the change to be accomplished on a cost reimbursement work basis, in which event the change will be priced based upon the labor, materials, equipment and other costs hereafter noted associated with such change. The cost items for cost reimbursement work shall be limited to the following items:

1. Labor, including superintendent and foremen, for those hours associated with the cost reimbursement work (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance and labor taxes as established by law). Expressly excluded from this item are all labor costs associated with negotiating the subject change. No other fixed labor burdens will be considered, unless approved in writing by TAMPA BAY WATER.

2. Material associated with the change, including sales tax, if paid for by the CONTRACTOR or its SUBCONTRACTOR.

3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a rental value in excess of \$100.00.

Rental or equivalent rental cost shall be allowed for only those DAYS or hours during which the equipment is (or would have been for deductive changes) in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment shall, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances shall be made for those items, unless specific agreement to that effect is made.

4. Additional bond, as required and approved by TAMPA BAY WATER.

5. Additional insurance (other than labor insurance) as required and approved by TAMPA BAY WATER.

6. To the costs noted above, for net additive changes, there shall be added the following fixed fees for the CONTRACTOR or SUBCONTRACTOR actually performing the change:

A. A fixed fee of twenty-five percent (25%) of the cost of item 1 above. For costs incurred for WORK performed by SUBCONTRACTORS, the CONTRACTOR'S fee shall not exceed ten percent (10%) and the SUBCONTRACTOR'S fee shall be the same as for the CONTRACTOR; and

B. A fixed fee of ten percent (10%) added to the cost of items 2 and 3.

7.2.3. The fixed fees noted above in the previous paragraph shall be considered to be the full compensation for all cost of general supervision, overhead, profit, and any other general expense.

7.2.4. The CONTRACTOR'S records shall make clear distinction between the direct costs of WORK paid for on a cost reimbursement work basis and the costs of other WORK. The CONTRACTOR shall furnish the ENGINEER report sheets in duplicate of each day's cost reimbursement work no later than the working day following the performance of said WORK. The report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the CONTRACTOR, SUBCONTRACTOR, or other forces. The report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

7.2.5. Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily reports or, if not available, they shall be submitted with subsequent daily report. Said daily report shall be signed by the CONTRACTOR or CONTRACTOR'S REPRESENTATIVE.

7.2.6. TAMPA BAY WATER reserves the right to furnish such materials and equipment as it deems expedient, and the CONTRACTOR shall have no claim for profit or added fees on the cost of such materials and equipment.

7.2.7. To receive partial payments and final payment for cost reimbursement work, the CONTRACTOR shall submit to the ENGINEER, in a manner approved by the ENGINEER and TAMPA BAY WATER, detailed and complete documented verification of the CONTRACTOR'S and any of its SUBCONTRACTORS' actual costs involved in the cost reimbursement work. Such costs shall be submitted within seven (7) DAYS after said WORK has been performed.

7.2.8. Except for CHANGE AUTHORIZATIONS and CHANGE ORDERS, no other written or oral order from TAMPA BAY WATER or the ENGINEER shall be treated as a change in the WORK or entitle the CONTRACTOR to an adjustment to the CONTRACT PRICE or CONTRACT TIME.

7.2.9. The ENGINEER, by issuing a CONSTRUCTION DIRECTIVE, may order minor changes in the WORK not involving extra cost, or additional times and not inconsistent with the purpose of the PROJECT, but otherwise, except in an emergency endangering life or property, additions or deductions from the WORK shall be performed only in pursuance of an approved CHANGE AUTHORIZATION or CHANGE ORDER.

7.2.10. Any compensation paid in conjunction with the terms of a CHANGE ORDER shall comprise the total compensation due the CONTRACTOR for the change defined in the CHANGE ORDER. By signing the CHANGE ORDER, the CONTRACTOR acknowledges that the stipulated compensation adjustment includes payment for alteration of the WORK, payment for the interruption of schedules, extended overhead, delay, or any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional adjustment to compensation or time in respect to the subject CHANGE ORDER.

7.2.11 TAMPA BAY WATER hereby delegates authority to its General Manager (and his/her designee) to approve any and all CHANGE ORDERS and CHANGE AUTHORIZATIONS in its name, so long as each such CHANGE ORDER or CHANGE AUTHORIZATION does not exceed \$\_\_\_\_\_, and further as long as the cumulative total of all CHANGE ORDERS or CHANGE AUTHORIZATIONS does not exceed \$\_\_\_\_\_, unless otherwise approved by the TAMPA BAY WATER'S Board. Each CHANGE ORDER or CHANGE AUTHORIZATION over \$\_\_\_\_\_, or which cumulatively exceeds \$\_\_\_\_\_ must be expressly approved by TAMPA BAY WATER'S Board, before it shall be binding upon TAMPA BAY WATER.

### 7.3 Claims for Additional Compensation

In any case where the CONTRACTOR may seek additional compensation, except for an emergency threatening imminent property damage or personal injury, the CONTRACTOR shall provide NOTICE to TAMPA BAY WATER and the ENGINEER of its intent to make a claim for such compensation before it begins the WORK on which it bases the claim, in order that such matter may be settled or other appropriate action promptly taken. If such notification is not given or the ENGINEER is not afforded proper facilities by the CONTRACTOR for keeping an accurate account of actual costs, the CONTRACTOR shall be deemed to have waived its claim for additional compensation.

7.3.2. The CONTRACTOR'S written NOTICE and the fact that the ENGINEER has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.

7.3.3. Claims for additional compensation shall be made in itemized detail and submitted in writing to TAMPA BAY WATER and ENGINEER within seven (7) DAYS following completion of that portion of the WORK for which the CONTRACTOR bases its claim. If the claim is found to be acceptable by TAMPA BAY WATER and the ENGINEER, the CONTRACTOR shall be paid as provided in the General Conditions, *Article 7.2. Payment for Change Orders*. No request by the CONTRACTOR for an equitable adjustment to the CONTRACT PRICE under this Article shall be allowed, unless the CONTRACTOR has given NOTICE within the times required.

7.3.4. The CONTRACTOR waives its right to file claims unless the claims are filed within the times specified in the CONTRACT DOCUMENTS. TAMPA BAY WATER'S final determination shall be

final and binding on the CONTRACTOR unless the CONTRACTOR files suit within thirty (30) days after receipt of TAMPA BAY WATER'S decision.

#### **7.4 Release of Liens or Claims**

7.4.1. The CONTRACTOR shall indemnify and hold harmless TAMPA BAY WATER and the ENGINEER from all claims for labor and materials furnished under the CONTRACT DOCUMENTS. Prior to the final payment, the CONTRACTOR shall furnish to TAMPA BAY WATER, as part of its final PAYMENT APPLICATION, a certification that all of the CONTRACTOR'S obligations on the PROJECT have been satisfied and that all monetary claims and indebtedness have been paid. The CONTRACTOR shall furnish releases or waivers, satisfactory to TAMPA BAY WATER, from all SUBCONTRACTORS and SUPPLIERS and of all liens and notices arising out of or filed in connection with the WORK. TAMPA BAY WATER may reduce the amount of retainage withheld upon receipt of an affidavit from CONTRACTOR identifying any amounts in dispute with SUBCONTRACTOR or SUPPLIERS, and provided the amount of retainage withheld continues to exceed the amount in dispute.

#### **7.5 Final Payment**

7.5.1. Upon completion of all of the WORK, the CONTRACTOR shall provide NOTICE to the ENGINEER, that it has completed its WORK and shall request final payment. Upon receipt of such NOTICE the ENGINEER, together with TAMPA BAY WATER, will inspect and, if acceptable, the ENGINEER will submit to TAMPA BAY WATER its recommendation as to acceptance of the WORK and as to the final PAYMENT APPLICATION of the CONTRACTOR. Within sixty (60) DAYS after the CONTRACTOR has submitted its final PAYMENT APPLICATION, together with the Sureties' consent to final payment, and upon approval of this PAYMENT APPLICATION request by TAMPA BAY WATER and compliance by the CONTRACTOR with provisions in the General Conditions, *Article 7.4. Release of Liens or Claims*, and all other provisions of the CONTRACT DOCUMENTS as may be applicable, TAMPA BAY WATER shall pay to the CONTRACTOR all monies due it under the provisions of these CONTRACT DOCUMENTS. Final payment is further subject to TAMPA BAY WATER'S receipt from CONTRACTOR of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees and warranties, and bonds relating to the WORK, and assignment of all guarantees and warranties from subcontractors, vendors, SUPPLIERS or manufacturers, all as required by the CONTRACT DOCUMENTS.

#### **7.6 No Waiver of Rights**

7.6.1. Neither the inspection by TAMPA BAY WATER, or the ENGINEER nor any payment for, or acceptance of, the whole or any part of the WORK by TAMPA BAY WATER or ENGINEER, nor any extension of time, nor any possession taken by TAMPA BAY WATER, shall operate as a waiver of any provision of the CONTRACT DOCUMENTS, or any right to damages, nor shall such waive any subsequent breach. Acceptance of final payment shall not release CONTRACTOR of any liability under the CONTRACT DOCUMENTS or otherwise, and shall not be deemed evidence of performance or be construed as acceptance of DEFECTIVE or improper WORK.

#### **7.7 Acceptance of Final Payment Constitutes Release**

7.7.1. The acceptance by the CONTRACTOR of the final payment shall release TAMPA BAY WATER and the ENGINEER from all claims and all liability to the CONTRACTOR for all things done or furnished in connection with the WORK, and every act of TAMPA BAY WATER and others relating to or arising out of the WORK except claims previously made in writing and identified by CONTRACTOR in its final PAYMENT APPLICATION as still unsettled. No payment, however, final or otherwise, shall operate to release the CONTRACTOR or its Sureties from obligations under the



CONTRACT DOCUMENTS and the Performance Bonds, Payment Bonds, and other bonds and warranties, as herein provided.

**7.8 Record Maintenance and Auditing Rights**

7.8.1. CONTRACTOR shall keep all books, records, files and other documentation, including all electronically stored items, which concern or relate to the WORK hereunder (collectively referred to herein as the “Records”), for a minimum of three (3) years from the date of expiration or termination of this CONTRACT or the date of FINAL COMPLETION or as otherwise required by law, whichever date is later. TAMPA BAY WATER, or any duly authorized agents or representatives of TAMPA BAY WATER, shall have the right to audit, inspect and copy all such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy CONTRACTOR’S Records shall include all of the Records of the SUBCONTRACTORS and SUPPLIERS.

**7.9 Hazardous Materials**

7.9.1. If CONTRACTOR encounters on the PROJECT site any materials reasonably believed by CONTRACTOR to be petroleum or petroleum-related products, or other hazardous or toxic substances which have not been rendered harmless, CONTRACTOR immediately shall (i) stop WORK in the area affected and (ii) report such condition to TAMPA BAY WATER in writing. If the WORK is so stopped and hazardous material is found, the WORK in the affected area shall not thereafter be resumed except by CHANGE ORDER. Any such CHANGE ORDER shall include, but not be limited to, an adjustment to the CONTRACT TIME as appropriate. If no hazardous material is found after the WORK has stopped, no CHANGE ORDER is required to resume the WORK in the affected area. Further, if the hazardous material was generated or caused by the CONTRACTOR, or any of its employees, agents, SUBCONTRACTORS or SUPPLIERS, no CHANGE ORDER will be required for an adjustment in the CONTRACT TIME and CONTRACTOR shall indemnify TAMPA BAY WATER for any costs incurred by TAMPA BAY WATER with respect to such hazardous material.

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End of General Conditions