

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH
CAROLINA UNIFORM ARBITRATION ACT.: SC CODE ANN. §15-48-10 ET SEQ.
AND THE FEDERAL ARBITRATION ACT 9 U.S.C. 1 ET SEQ.**

RENEWABLE WATER RESOURCES

GREENVILLE, SOUTH CAROLINA



CONTRACT DOCUMENTS

Indefinite Delivery Contract Construction Services

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WHEREAS, the Owner anticipates future demand for, and intends to employ the Contractor to provide construction services (the "Services"). These services are more fully described below;

WHEREAS, the Contractor desires to provide the construction services on an as needed by ReWa basis throughout the duration of this Agreement and in accordance with terms of this Agreement;

WHEREAS, the Parties hereto have reached an agreement on the terms and conditions pursuant to which Contractor will provide these future Construction Services, such agreement being properly authorized, adopted, and executed by the respective parties;

WHEREAS, Contractor and ReWa agree that the Services contemplated herein will be provided at all times in compliance with ReWa's Procurement Code including, without limitation, those sections addressing indefinite delivery contracts (said sections, as amended from time to time, being incorporated herein expressly by reference);

NOW THEREFORE, in consideration of the consents, mutual covenants and agreements set forth below, Owner and Contractor agree as follows:

1. Contractor's SERVICES

1.1 Basic Services and Scope of Work

- i. Contractor is a well-known commercial/industrial Contractor. Contractor has the skills, qualifications, and experience necessary to perform Construction Services described by the Parties herein, and has performed similar work for other customers in the past.
- ii. Nothing in this Agreement is intended to set forth a minimum level of Services that will be procured by Owner. The use of Contractor to provide Services shall be in Owner's sole discretion. Any communications regarding the timing or regularity of procurements that were exchanged between Owner and Contractor are estimates only and shall not commit Owner to procure those amounts of Services.
- iii. The Contractor agrees to perform construction services in connection with future Projects on an as needed basis.

1.2 Owner shall provide Contractor with twenty (20) days written notice of a Project (a "Notice"). Owner and Contractor may agree to a shorter notice period by consent. Upon receipt of this Notice, Contractor must be ready and able to commence work on the assigned Project within twenty (20) days. Contractor's inability to provide the Services upon receipt of such Notice shall be grounds for termination of this Agreement for cause as provided below. The following individuals are authorized on behalf of Owner to issue Notices and obtain the Services of Contractor:

- i. ReWa Executive Director
- ii. ReWa Executive Director Designee

1.3 Upon receipt of the Notice provided above, Owner and Contractor shall agree upon a date for completion of the Services and, if necessary, Milestones or deliverables (as defined below).

1.4 One of the following documents shall be used to execute authorized work per assigned Project after receipt of a Notice. At the minimum the document shall include agreed upon Project scope, dates of Project commencement and completion, Project cost stated as a “not to exceed amount”, and Project team.

1.4.1 Addendum to this Agreement outlining information listed in Section 1.4 above and any potential changes to this Agreement’s terms and conditions.

1.4.2 Contractor’s proposal for the assigned Project (the “Proposal”) so long as the Proposal includes the information listed in Section 1.4 above and no additional terms and conditions are included altering the terms and conditions of this Agreement. In the event additional terms and conditions are necessary, the use of Addendum as per Section 1.4.1 above is required.

Please note the following requirements:

- Any contract or contracts awarded under this project for Bids may be funded by a loan from the State Revolving Fund or by other grant or loans from DHEC/EPA or other agencies. Neither the State of South Carolina nor the United States nor any of their Departments, Agencies, or employees is or will be a party to this Advertisement for Bids or any resulting contract. The contract will be subject to regulations contained in Federal Register, Section 40 CFR.31 where applicable.
- Bidders must comply with the President’s Executive Order Nos. 11246 and 11375, which prohibit discrimination in employment regarding race, creed, color, sex, or national origin. Bidders must certify that they have performed prior work in compliance with Executive Order Nos. 11246 and 11375. (See Sections of the Contract Documents and Supplemental General Conditions).
- Furthermore, where applicable Bidders must comply with Title VI of the Civil Rights Act of 1964, the Davis-Bacon Act, the Anti-Kickback Act, the OSHA Contract Safety Work Hours, Contract Work Hours and minority-owned businesses goals.
- Each Bidder must be qualified under the provisions of the South Carolina Contractor’s Licensing Law, 1976 Code, Section 40-11-10, *et seq.* (as amended)

Contract Documents may be examined at the offices of the Owner and the Engineer. In addition, Contract Documents may be downloaded electronically from the ReWa website: www.rewaonline.org. Please follow the links to the tab “PURCHASING,” and then “Current Solicitations.”

Attention of Bidders is directed to applicable employment laws and regulations and to minimum wage and hour laws.

The Owner reserves the right to reject all Bids or an individual Bid, and to waive any informalities and technicalities in the Bid in accordance with its procurement code.¹ Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified will not be considered. No Bidder may withdraw a Bid after the actual date of Bid opening except in accordance with § 3-101 et seq. of the Owner's Procurement Code.

Renewable Water Resources

¹ The Procurement Code is available online at www.rewaonline.org, under the heading "Purchasing," "Procurement Code."

INFORMATION FOR BIDDERS

Each Bid must be addressed to Renewable Water Resources “ReWa”, at 561 Mauldin Road, Greenville, SC 29607. Each bid envelope containing must be plainly marked on the outside with project name and the envelope shall also bear on the outside the name of the Bidder and the Bidder’s address. Bidders must acquaint themselves with and comply with applicable state and local regulations on licensing. If forwarded by mail, the envelope containing the Bid must be addressed to the Owner at the above address. A Bidder may forward the Bid, meeting these requirements in an outer, overnight carrier envelope (such as DHL, FedEx, UPS). Subcontractors and major material suppliers shall be listed as required by the Bidding documents. In the event the work is to be self-performed by the Contractor, that fact shall be specifically set forth in the Bid Form and not left blank. All subcontractors shall have a valid South Carolina license. Failure to complete the Bid form will result in a Bid being determined nonresponsive.

1. The Owner may waive any formalities on minor defects or reject any and all Bids per Owner’s Procurement Code. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid after the actual date of Bid opening except in accordance with § 3-101 et seq. of the Owner’s Procurement Code. Should there be any reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder.
2. Preparation of Bid: All Bids must be made on the required Bid Form. All blank spaces for Bid prices must be filled in, in ink or typewritten. The Bid Form must be fully completed and executed when submitted. Only one copy of the Bid Form is required. In addition, the Bidder must submit a copy of all Bids on CD in Microsoft Word, Excel, or PowerPoint Form. Any documents may be submitted in Adobe PDF format. A conditional or qualified Bid will not be accepted.
3. Modification of Bid: Any Bidder may modify his Bid at any time prior to the scheduled closing time for receipt of Bids. The owner will not accept a modification delivered by electronic means or facsimile. All modifications must be submitted in the same manner as Bids pursuant to paragraph 2 above.
4. Addenda and Interpretations: The Contract Documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any conditions of the contract.
5. Interpretation: No interpretation of the meaning of the plans, specifications, or other Contract Document will be made to any Bidder orally. Every request for such interpretation should be in writing addressed to Engineer and, to be given consideration, must be received at least ten (10) days prior to the date fixed for the opening of Bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be posted on the ReWa website not later than seventy-two (72) hours prior to the time fixed for the opening of

Bids. In addition, all Bidders may sign up for enotifications to receive automatic emails when updates are posted on ReWa's website at: <http://www.rewaonline.org/rfp.php>
ReWa WILL NOT ENSURE THE RECEIPT OF THE E-MAIL. IT IS BIDDER'S OBLIGATION TO CHECK THE WEB SITE PRIOR TO BID OPENING FOR INTERPRETATIONS. BIDDER IS RESPONSIBLE FOR UPDATING THIS E-MAIL ADDRESS, SHOULD IT CHANGE. Failure of any Bidder to receive any such addendum or interpretation shall not relieve such Bidder from any obligation under its Bid as submitted. All addenda so issued shall become part of the Contract Documents.

6. Base Bid: The Bidder shall state in the blank space provided on the Bid Form, in **both** figures and words, the total price for the work to be performed under this Contract. A conditional or qualified Bid will not be accepted.
7. Equal Alternative Items: Whenever a product is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, etc., it is intended to establish a standard and any product of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the product so proposed is, in the opinion of the Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer's written approval.
 - a. Whenever a product specification includes minimum experience requirements which the selected manufacturer cannot meet, the manufacturer shall furnish the Owner with a cash deposit or bond, in an amount equal to the cost of the product, which shall remain in effect until the experience requirement has been met.
 - b. Prequalification Requirements: WHEN THE TERM "OR EQUAL" FOLLOWS THE NAMES OF MANUFACTURERS, THE OTHER MANUFACTURERS DESIRING APPROVAL OF AN "OR EQUAL" SHALL COMPLY WITH SECTION 3-302(2) OF THE PROCUREMENT CODE OF THE OWNER.

Section 3-202(2) ("Rejection of Initiation for Bids or Requests for Proposal") of the Procurement Code is quoted below but the Bidder is instructed to review the regulation itself for current provisions.

(2) Bidders'/Offerors' Lists and Prequalification of Major Equipment.

- a. Bidders'/Offerors' Lists. All sources requesting to be put on a Bidders'/offerors' list shall be so enlisted, unless the Purchasing Manager in conjunction with the Owner's Engineer makes a written determination that the source should not be enlisted in accordance with regulations of the Owner. Decisions to reject enlistment shall be appealable to the Executive Director. The Purchasing Manager shall ensure that the Bidders'/offerors' lists contain all known sources interested in participating in procurement and shall review periodically the Bidders'/offerors' lists and require the addition to such lists of any appropriate sources which are not contained therein.

b. Prequalification of Major Equipment Manufacturers. Until the end of the design phase of a project, the Owner will offer opportunities for major equipment manufacturers to be listed on the Major Equipment Bidders'/Offerors' List for future consideration if they pre-qualify major equipment. An evaluation of the equipment will be made by the Owner at no cost to the manufacturer if submittals are made before the end of the project design phase. (Subject to Owner's right to refuse the certification process). If a manufacturer misses this deadline for prequalification, and the contractor submits an "or equal" substitution during the Bidding process, the manufacturer or contractor shall pay the Owner's consulting engineer directly for the cost of the evaluation. The contractor must obtain the approval of the "or equal" substitution by the Owner prior to the contractor's submission of his Bid, ten (10) days prior to Bid Opening Date, unless otherwise specified. Any submission after the date defined in the Bid will not be allowed. The submittal by the manufacturer or the contractor for an "or equal" before or after that deadline shall include the following:

- (i) Descriptive literature including information on materials used, minimum design standards, standard design features, manufacturing processes and facilities, and similar information which indicate experience and expertise in the manufacture of the product being evaluated including costs, warranty information, electrical requirements and diagrams, and erection requirements and weights;
- (ii) Performance specifications applicable to the manufacturer's standard design which indicates the level of performance to be expected from the product;
- (iii) A complete set of submittal drawings of similar products which have been completed and placed into operation;
- (iv) A list of existing installations of products similar in type and size, information regarding experience at the installations;
- (v) A brochure or equivalent material indicating technical capabilities, field service capabilities and financial information;
- (vi) A complete list of all requirements of the Drawings and Specifications with which the manufacturer cannot conform, including reasons why alternate features are considered equivalent;
- (vii) References that can independently supply an operational and maintenance history of the equipment, including incidents of failure and repair during the warranty period of the product that will enable the Owner's engineer to develop a chart showing operation and maintenance and carrying costs based upon the above history. If no history is available equal to the time provided for in the warranty, then it should be provided from the time of origin of the product;

(viii) A chart showing the projection of the cost of operation, maintenance and carrying cost until the date the manufacturer estimates the equipment will have to be replaced, together with the documentation upon which the projection is based;

(ix) A list indicating the availability of spare parts and the time necessary for delivery.

(x) Any other information requested in writing by the Engineer.

BIDS BASED ON PRODUCTS WHICH HAVE NOT RECEIVED THE APPROVAL OF THE ENGINEER MAY BE DETERMINED NON-RESPONSIVE BY THE OWNER AND REJECTED.

Any Bidder intending to furnish substitute products is cautioned to verify that the item being furnished will perform the same functions and have the same capabilities as the item specified. The Bidder shall include in his Bid the cost of accessory items which may be required by the substitute product and the cost of any architectural, structural, mechanical, piping, electrical or other modifications required to accommodate the substitution.

Approval of the Engineer is dependent on his determination that the product offered is essentially equal in function, performance, quality of manufacture, ease of maintenance, reliability, service life and other criteria to that on which the design is based, and will require no major modifications to structures, electrical systems, control systems or piping systems.

8. Unit Prices: Each Bidder shall state in the blank spaces provided on the Bid form unit prices requested, and, opposite each unit price the total amount for the estimated quantity of each item of work or type of material. Unit prices shall be indicated in figures while the total Bid shall be indicated in both figures and words. The unit prices shall include all labor, materials, tools, equipment, apparatus, overhead, including home office overhead, and services necessary and required to complete the work in accordance with the Contract Documents. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

9. Rejection of Bids and Qualifications of Bidder:

- a. The Owner may, when in its interest, reject any or all Bids.
- b. The Owner may make such investigations as it deems necessary to determine the ability of a Bidder to perform the work, and the Bidder shall furnish to the Owner such information as the Owner may request.
- c. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

- d. Conditional Bids will not be accepted.
 - e. THE BIDDER SHALL SUBMIT A LIST OF THE SUBCONTRACTORS AND MAJOR MATERIAL SUPPLIERS. FAILURE TO SO LIST WILL RESULT IN A BID BEING DETERMINED NONRESPONSIVE.
 - f. Bonds:
 - g. Performance Bonds, and Payment Bonds, Insurance Contracts, and Certificates of Insurance shall be executed by or countersigned by an South Carolina resident attorney-in-fact or a South Carolina licensed agent of the surety or insurance company having his place of business in the State of South Carolina. Further, the said surety or insurance company shall be duly licensed and qualified to do business in the State of South Carolina. ***Surety companies signing bonds must appear on the Treasury Department's current list (Circular 570, as amended).***
10. Performance Bond, Payment Bond and Notice to Proceed: A Performance Bond and Payment Bond, each in the amount of one hundred (100%) percent of the contract price, with corporate surety listed on the Treasury Department's most current list (Circular 570, as amended), approved by the Owner, will be required for the faithful performance of the Contract.
- a. The Performance Bond shall remain in full effect through the warranty period specified in the Contract Documents.
 - b. Attorneys-in-Fact who sign Bid Bonds or Payment Bonds and Performance Bonds shall be residents of South Carolina and must file with each bond a certified and effective dated copy of their power of attorney.
 - c. The party to whom the contract is awarded will be required to execute the Agreement and obtain a Performance Bond, a Payment Bond and Certificates of Insurance within fifteen (15) calendar days from the date of the Notice of Award.
 - d. The Notice of Award shall be accompanied by the necessary Agreement and Bond forms. In case of failure by the Bidder to execute the Agreement, the Owner may at his option consider the Bidder in default, in which case the Bid Bond accompanying the Bid shall become the property of the Owner.
 - e. The Owner, within thirty (30) calendar days of receipt of the required Performance Bond, Payment Bond, Certificates of Insurance and Agreement signed by the party to whom the Agreement was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement.
 - f. Engineer shall be responsible for verifying the availability and adequacy of the insurance of its subcontractors and/or subconsultants.
 - g. Should the Owner not execute the Agreement within such period, the Bidder may, by written Notice, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the Notice by Owner.

- h. The Notice to Proceed shall be issued within fifteen (15) calendar days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the fifteen (15) calendar day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.
11. Time of Completion and Liquidated Damage: The Bidder must agree to commence work on or before a date to be specified in the Notice to Proceed.
- a. All work required by the Contract Documents shall be completed within the time for completion specified in the Bid unless modified by Change Order in which case the date for completion of all work shall be as specified therein. Measurement of the time for completion shall commence on the date specified in the Notice to Proceed.
- b. Bidders must agree also to pay as liquidated damages, the sum of money for each consecutive calendar day thereafter as shown below and as hereinafter provided in the Contract between Owner and Contractor.

Completion Time

To be determined per project

Liquidated DamagesSee Section 3.4.1 of the Agreement
Between Owner and Contractor

12. Bidders Duty to Become Informed About Conditions of Work: Each Bidder must inform himself fully of the conditions relating to the construction of this project and the employment of labor therein.
- a. Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents.
- b. Failure to do so will not relieve a successful Bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract.
- c. Insofar as possible, the Contractor, in carrying out his work must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.
- d. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning quantities of work or concerning the nature of the work to be done.
13. Notice of Special Conditions: Attention is particularly called to relevant parts of the Owner's Procurement Code, the Contract Documents, and Specifications which deal with the following:

- a. Procurement Procedures including protest procedures.
 - b. Insurance requirements.
 - c. Subcontracting.
14. Laws and Regulations: The Bidder's attention is directed to the fact that all applicable Federal, State, county, municipal ordinances, laws, and regulations (and all other authorities having jurisdiction over construction of this project) shall apply to the Contract throughout, and these shall be deemed to be included in the Contract the same as though herein written out in full. When related requirements of the various laws and regulations differ, the more stringent will be required and enforced.
15. State License: Each Bidder must meet the provisions of Section 40-11-10, *et seq.* of the Code of Laws of South Carolina 1976, as applicable.
16. Method of Award: The contract will be awarded to the responsive, responsible Bidder submitting the lowest Bid. The Bidder to whom the award is made will be notified at the earliest possible date. The Owner reserves the right to reject all Bids and to waive any informality in Bids received whenever such rejection or waiver is in its interest and as provided in Owner's Procured Code.
17. Determination of Bid Amount. In the event of discrepancy between the prices quoted in the Bid in words and those quoted in figures, the words shall control.
18. Basis for Determining Responsiveness and Responsibility:
- a. The Bidder shall submit its Bid on the forms furnished by the Owner. All blank spaces in the Bid forms **must be properly filled in for each and every item**. The Bidder shall state the price (written in ink or typed) for which it proposes to do the work.
 - b. The Bidder shall sign the Bid correctly and in ink (*See Article 2 of the General Conditions*).
 - i. If the Bid is made by an individual, his/her name and post office address must be shown. "Owner" must appear after the name.
 - ii. If made by a partnership, the name and post office address for each member of the partnership must be shown. Each partner must sign with the word "Co-Partner" following his/her name.
 - iii. If made by a corporation, the person signing the Bid shall give the name of the state under the laws of which the corporation was chartered and the name, titles and business address of the president, secretary, and the treasurer. A corporation shall seal the document with the corporate seal.
 - iv. Anyone signing a Bid as an agent shall file evidence of his authority to do so and that the signature is binding upon the firm or corporation.

- c. A responsive Bidder or offer or means a person who has submitted a Bid which conforms in all material respects to the Invitation For Bids. A non-inclusive list of reasons that a Bid shall be considered nonresponsive follows:
- i. If the Bid is on a form other than that furnished by the Owner, or if the Owner's form is altered, or if the Bid form fails to reference the Project Specifications and the Contract Documents.
 - ii. If there are unauthorized additions, conditions, or alternate pay items, or irregularities of any kind which made the Bid incomplete, indefinite, or ambiguous.
 - iii. If the Bid does not contain a unit price for each item listed in the Bid.
 - iv. If the Bids or prices on all or certain Bid items are unreasonably low or unreasonably high.
 - v. If the Bid contains unit prices that are obviously unbalanced.
 - vi. If the Bid is not accompanied by the Bid Bond specified by the Owner.
 - vii. If the Bid does not acknowledge addenda received.
- d. Responsibility will be based on the following, non-inclusive factors:
- i. Maintains a permanent place of business.
 - ii. Has adequate plant equipment to do the work properly and within the time limit that is established.
 - iii. Has adequate financial status to meet his obligations contingent to the work.
 - iv. Has a work history which indicates an ability to meet the obligations under the conditions of the Contract.
 - v. Has sufficient skill, judgment and integrity necessary to faithfully perform the Contract.
 - vi. Has sufficient facilities, equipment, personnel, and material necessary to do the job required under the Contract.

The determination by the Owner as to whether any or all of the above items, (c) or (d), are satisfactory shall be conclusive.

- e. Prior to the award of the Contract, the Owner may require any Bidder to furnish evidence of the competency and financial ability of said Bidder to perform the Work and, if after investigation, such evidence is not satisfactory, the Owner reserves the right to reject his Bid.

- f. The Owner reserves the right to reject any irregular Bid(s) and the right to waive informalities, minor defects or technicalities if such waiver is in the best interest of the Owner and conforms to local laws and ordinances pertaining to the letting of construction contracts. The Owner reserves the right to reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the Bidder.
19. Withdrawal of Bid, Failure to File Bond or Insurance Certificates:
- a. If the successful Bidder, for any reason whatsoever, withdraws from competition after the opening of Bids, or fails or refuses to execute the Contract or provide the Bonds and Insurance Certificates within fifteen (15) calendar days after Contractor has received notice of award, Contractor shall forfeit to the Owner the Bid security as liquidated damages for such withdrawal, failure or refusal, and, without limitation, shall be subject to any and all other remedies available to the Owner.
 - b. Failure on the part of the successful Bidder to execute a Contract and file acceptable bonds and certificates of insurance within fifteen (15) calendar days after Notice of Award shall be just cause for annulment of the award and forfeiture of the Bid security.
 - c. The Owner may then accept the Bid of the next lowest responsible Bidder, or re-advertise for Bids. If the Bid of the next lowest Bidder is accepted, this acceptance shall bind such Bidder as though that Bidder was the original successful Bidder.
20. Obligation of Bidder: At the time of the opening of Bids, each Bidder will be presumed to have visited and inspected the site in sufficient detail to fully acquaint itself with the site, local conditions, surface and subsurface, to have read and be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any Bidder to examine any form, instrument, or document to which mention is made, or to which reference is made, in the plans or Contract Documents, or Bidder's failure to sufficiently examine the site, or Bidder's failure to be aware of applicable laws, statutes, ordinances, rules or regulations, whether local, State or Federal, in no way will relieve any Bidder from any obligation in respect to the Bid or from the obligations to be assumed under the Contract.
21. Award: If the Contract is awarded, the Owner will accept the Bid and award the Contract to the successful Bidder within ninety (90) days after the opening of Bids, by written notice to the successful Bidder.
22. Safety: The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).

23. Two Percent Withholding Nonresident Contractors: **NOTICE:** If the Contractor is a nonresident, compliance must be shown with S. C. Code Ann. §12-8-550, quoted here:

A person hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall withhold two percent of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed ten thousand dollars. This section does not apply to a nonresident which registered with the Secretary of State or the Department of Revenue and by that registration agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Registering with the Secretary of State or the department is not an admission of tax liability nor does it require the filing of an income tax or franchise (license) tax return. If the person hiring, contracting, or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the department or with the Secretary of State, the person is not responsible for the withholding.

This is in addition to withholding for employees and state sales tax. Even if the out-of-state contractor has a South Carolina Tax number and is regularly filing state tax returns, this withholding requirement applies. The two percent is over and above the usual 10% retainage.

Under the law the contractor can assure payment to the South Carolina Tax Commission by posting an acceptable bond in the sum of two percent of the total contract in lieu of the withholding. The Tax Commission will then notify the Owner that withholding is not necessary.

NOTE: Owner will not bear the burden of withholding and accounting and requires any such out-of-state contractor to seek and obtain such a bond so that withholding will not be necessary. Proof of such a bond must be submitted to the Owner prior to any payments being made to the Contractor and must be submitted prior to certification by Owner's attorney.

Further information concerning this requirement is available from:

South Carolina Department of Revenue and Taxation
Income Tax Division – Withholding Tax Unit
P. O. Box 125
Columbia, South Carolina 29214
(803) 737-4757

24. Attention Regarding Notice and Claim Procedure: There are two Acknowledgment Forms, #1 and #2, about notices required under the contract document and claim procedures to be followed. Acknowledgement Form #1 is required to be executed at the pre-Bid conference and given to the Engineer. Acknowledgment Form #2 is to be executed and returned with the Bid package. Both forms are attached to these instructions for your use.

25. In addition, in a spirit of good faith and cooperation, the Owner, the Contractor and the Engineer, or their designees, are to meet monthly. At each monthly meeting written minutes shall be kept by the Owner's Engineer showing a monthly discussion of any and all pending claims to ascertain the status of pending claims. If there are not claims the minutes shall reflect the fact. No claim is to be discussed unless it has been presented in writing as required by the Contract Documents. No claim shall be resolved until reviewed by the Engineer and the Engineer's recommendation made to the Executive Director of the Owner. These monthly meeting minutes shall be circulated to the Owner and the Executive Director of the Owner. These monthly meeting minutes shall be circulated to the Owner and the Contractor for corrections or omissions, signed and returned to the Engineer.
26. The purpose of the notices, procedures and meetings requirement is to provide the Contractor with a means of giving notice and for making claims as they arise, in the belief that the earlier such are presented and considered, the quicker they may be resolved. At the same time, this formal written procedure brings exact knowledge to the Owner and Engineer, so that the Owner may have sufficient time to consider alternatives or methods as means to minimize costs and time delays. Both the parties and the Engineer are expected to expedite all disputes, to not let claims accumulate, and to strictly follow these requirements.
27. Contractor shall file any and every claim in the form and manner required by the Contract Documents. Failure to comply with the time requirements and the claims procedure shall result in the loss of the claim and may result in suspension of the Work or termination of the Contract by the Owner.
28. Claims are not to be held back or allowed to accumulate, but are to be timely presented so that the Owner may respond by appropriate action. The Owner must have an opportunity to consider the nature, extent and full cost of a claim and an opportunity to consider alternatives and options to contain costs.

2. GENERAL CONDITIONS GOVERNING AWARD OF CONTRACT

2.1 **Award.**

- 2.1.1 The award of the Contract, if it is awarded, will be to the responsible Contractor whose qualifications indicate the award will be in the best interest of the Owner and whose qualifications complies with all the prescribed requirements.
- 2.1.2 No Notice of Award will be given until the Owner has concluded such investigations as it deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to do the Work in accordance with the Contract Documents to the satisfaction of the Owner within the time prescribed.
- 2.1.3 The Owner reserves the right to reject the Bid of any Bidder who does not pass any such investigation as described in 1.1.2 to the Owner's satisfaction. In analyzing Bids, the Owner may take into consideration alternate line items and unit prices, if required by the Bid Schedule. Award decisions on alternate line items, if any as required by the Bid Schedule, shall be in Owner's discretion based on identifying the Bid alternate line items fair and reasonable as compared to the Project Engineer's estimate.
- 2.1.4 If the Contract is awarded, the Owner will give the successful Bidder a Notice of Award within ninety (90) days after the opening of the Bids. The Owner will have the right to waive minor technicalities (in accordance with its Procurement Regulations) and accept a Bid by a qualified Bidder.

2.2 **Execution of the Agreement**

- 2.2.1 At least three (3) counterparts of the Agreement and such other Contract Documents as practicable will be signed by the Owner and the Contractor within fifteen (15) calendar days from the date of the Notice of the Award.
- 2.2.2 The Contractor will submit to the Owner, within fifteen (15) calendar days from the date of the Notice of Award,
 - (a) three signed Agreements between Owner and Contractor, including the General Conditions of the Contract;
 - (b) three original Certificates of Insurance governing every policy required under the Contract Documents;
 - (c) three original, signed copies of Contractor's Corporate Resolution; and

- (d) Contractor's statement of compliance with S.C. Code § 12-8-550.

2.2.3 The Owner's attorney shall determine if the Certificates of Insurance, agreements, and other documentation are acceptable according to the requirements of the Contract Documents and will certify as to their acceptability by signing the Certificate of Owner's Attorney.

2.2.4 If the Owner's attorney determines that the required documents are unacceptable, the provisions of Article 2.5 of the General Conditions shall apply. If the Owner's attorney certifies that the required documents are acceptable, the Owner shall sign the Agreement within fifteen (15) calendar days of receipt of the Agreement and the other required documents from the attorney. The Contractor will identify those portions of the Contract Documents not so signed and such identification will be binding on all parties. The Owner, and the Contractor will each receive an executed counterpart of the Contract Documents.

2.3 Execution of Documents by Contractor

2.3.1 The Contractor shall execute each copy of the Bid, Contractas follows:

- (a) If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
- (b) If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
- (c) If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
- (d) If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable to each particular member.
- (e) All signatures shall be properly witnessed as required by the document.

- (f) If the contractor's license is held by a person other than an owner, partner or officer of a firm, then the licensee shall also sign and be a party to the contract. The title "Licensee" shall appear under his/her signature.

2.4 Delivery of Bonds and Insurance Certificates

- 2.4.1 When the Contractor delivers the executed Agreements to the Owner, the Contractor shall also deliver to the Owner such Certificates of Insurance as the Contractor may be required to furnish in accordance with the Contract Documents. Contractor shall submit three original copies of each set of documents.

2.5 Forfeiture of Bid Security

- 2.5.1 Failure of the successful Bidder to execute and deliver the agreement and deliver the required Bonds within fifteen (15) calendar days of the Notice of the Award shall be just cause for the Owner to annul the Notice of Award and declare the Bid and any security therefore forfeited.

2.6 Copies of Documents

- 2.6.1 The Owner will furnish to the Contractor up to five (5) copies of the Specifications and Drawings as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request at the cost of reproduction.

2.6.2 Commencement of Contract

The Contract Time will commence to run on the contract date.

NOTICE REGARDING CONTRACTUAL OBLIGATIONS AND CONTACT WITH
OWNER'S EMPLOYEES

(To be signed at Pre-Bid Conference by Contractor's Representative)

A Contractor submitting a Bid for this Project must have a Contractor's representative sign all of the forms listed below. Said Contractor's representative must be authorized to legally bind the Contractor. These forms are considered an indispensable part of the Contract and the omission of one or more of these forms in the Bid package shall be grounds for disqualifying the Bid as non-responsive.

1. Notice and Claim Procedures Acknowledgement Form
2. South Carolina Illegal Immigration Reform Act
3. ~~Compliance with State Revolving Fund Requirements (if applicable)~~
4. ~~Compliance with ARRA Buy American Requirements (if applicable)~~
5. Statement of Compliance with SC Code 12-8-550

Further, Renewable Water Resources ("ReWa") seeks to ensure the integrity of the complete procurement process as required by South Carolina Code Section 11-35-50. Toward that end, it is a violation of both state law and ReWa policy for a ReWa employee to discuss the terms and conditions of any pending procurement contract, including the terms and conditions upon which an award of the contract shall be made, with a prospective offeror, Bidder, contractor, or subcontractor ("a Prospective Offeror"). ReWa may have discussions with a Prospective Offeror only to clarify the terms of a request for proposal or an invitation to Bid and then only as authorized by the Executive Director or his delegate, the ReWa Purchasing Manager.

Any requests for interpretation of the Contract Documents must be directed to the ReWa Purchasing Manager as a formal request for interpretation as detailed in Paragraphs 6 and 7 of the Information for Bidders. Any questions regarding the project must be directed to ReWa's Purchasing Department. All communications with Prospective Offerors will occur only in writing and will be preserved. **Please be aware that any communications with Owner may be publicly published.**

Should ReWa become aware that a Prospective Offeror engaged in communications outside of the formal channels provided in these Contract Documents, it shall be grounds for the disqualification of that Prospective Offeror's Bid in accordance with Owner's Procurement Code. If Owner becomes aware of such unauthorized contact after the signing of the Contract, it shall be grounds for immediate termination of the Contract, for cause. Such termination shall be treated as though Contractor had ceased all work as of the day that ReWa became aware of the unauthorized contact.

By signing below, the Prospective Contractor represents that it has read the above disclosure, understands its terms, and assents to the provisions contained herein. Prospective Contractor realizes that unauthorized contact can lead to the disqualification of the Bid, or the termination of the Contract.

[SIGNATURE PAGE FOLLOWS]

Read and understood:

Name of Prospective Contractor

Sign: _____

Print Name: _____

Title: _____

Signed this, the ____ day of _____, 20____.

Notice and Claim Procedure Acknowledgment Form

(To be returned with the Bid)

We, the Contractor (Bidder) and Contractor's/Bidder's project manager acknowledge that we have read and understand the contract document sections about claims procedures, notice requirements for changes, including, but not limited to damage claims, extras, time extensions, etc. and have read and understand the claim procedure and agree to abide by these formal requirements. Further, that we understand failure to follow requirements will result in a complete loss of the claim.

Read and understood:

 Name of Contractor

Sign: _____

Print Name: _____

Title: _____

Signed this, the ____ day of _____, 20____.

If above signature is not that of the Project Manager:

Sign: _____

Print Name: _____

Title: Project Manager

Signed this, the ____ day of _____, 20____.

Compliance with State Revolving Fund Requirements

(To be returned with the Bid)

- If this box is checked, this Project may be funded in whole or in part with federal funds through the State Revolving Fund (“SRF”)

There are a number of Federal laws, executive orders and government-wide policies that apply to projects and activities receiving Federal financial assistance. Since Federal capitalization grant money was used to seed the State Revolving Fund program, any money received through the SRF program is subject to Federal Authorities. In addition, there are social policy and economic authorities that must be complied with in order to receive funding through the SRF program. The Contractor selected to perform the Work will be expected to comply with all applicable regulations governing SRF program funding. Additional information regarding these funding requirements is available through the South Carolina Department of Health and Environmental Control’s (“SCDHEC”) web-site:

www.scdhec.gov/environment/water/docs/fedreqcv.pdf.

These federal authorities include:

- Age Discrimination Act of 1975, Pub. L. 94-135
 - Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
 - Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (Clean Water Act)
 - Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
 - Uniform Relocation and Real Property Acquisition Act, Pub. L. 91-646, as amended
 - Women’s and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
 - Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
 - Equal Employment Opportunity, Executive Order 11246
 - Debarment and Suspension, Executive Order 12549
 - Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
-
- Place qualified disadvantaged businesses on solicitation lists;
 - Assure that disadvantaged businesses are solicited whenever they are potential sources;
 - Divide project requirements, when economically feasible, into small tasks or quantities to maximize participation by disadvantaged businesses;
 - Establish delivery schedules, where work requirements permit, that encourage disadvantaged business participation;
 - Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and

- Require the Subcontractors to take the affirmative steps identified above, if subcontracts are awarded.

In addition, Owner will actively assist Contractor in ensuring DBE firm participation throughout the course of the project. In addition, Owner will assist Contractor in identifying MBE firms. An excellent resource for locating MBE firms can be found at the U.S. Department of Commerce, Minority Business Development Authority's web-site, www.mbda.gov under "Business Locator."

Contractor, to the extent applicable, will be required to file the relevant certifications necessary for SRF funding. For a listing of these certifications, please go to www.scdhec.gov/environment/water/docs/fedreqcv.pdf. These forms are listed under the appendices to the document.

Bidder agrees to comply with these requirements. By signing below, Bidder understands that a failure to agree to and follow these requirements shall be grounds for rejection of the Bid or termination of the agreement between the Contractor and the Owner, for cause.

Read and understood:

Name of Contractor

Sign: _____

Print Name: _____

Title: _____

Signed this, the ____ day of _____, 20____.

South Carolina Illegal Immigration Reform Act

On June 4th, 2008, Governor Mark Sanford signed into law the South Carolina Illegal Immigration Reform Act (the "Act"), 2008 Act No. 280. Section 3 of this Act added Chapter 14 to Title 8 of the South Carolina Code of Laws. Titled "Unauthorized Aliens and Public Employment," this new Chapter contains the Act's primary restrictions regarding contracts between private businesses and governmental entities. According to the Act's title, Chapter 14 was added in order "to require contractors or subcontractors who contract with public employers for the physical performance of services to register and participate in the federal work authorization program or otherwise verify employees, to define terms, to establish deadlines for compliance by public employers, contractors, and subcontractors, to require that the provisions of the chapter are enforceable without regard to race, religion, gender, ethnicity, or national origin, and to authorize the director of the State Budget and Control Board to prescribe forms and promulgate rules necessary to administer the act and publish the rules and regulations on the Board's website."

Verification Requirements

In addition to completing and maintaining the federal employment eligibility verification form, more commonly known as the Form I-9, all South Carolina employers must within three business days after employing a new employee verify the employee's work authorization through the E-Verify federal work authorization program administered by the U.S. Department of Homeland Security and the Social Security Administration.

Employers shall no longer confirm a new employee's employment authorization with a driver's license or state identification card.

In addition, the Contractor must require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal verification of the employment authorization of all new employees. The Act allows contractors to comply with the Act by agreeing to employ only workers whose work authorization has been verified through the E-Verify federal work authorization program administered by the U.S. Department of Homeland Security and the Social Security Administration. To enroll in E-Verify, go to www.dhs.gov/e-verify.

By signing its Bid or proposal, Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the Owner, upon request, any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

Pursuant to South Carolina Code Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

The South Carolina Department of Labor, Licensing and Regulation has also posted information on its website regarding implementation of the South Carolina Illegal Immigration Reform Act. (<http://www.llr.state.sc.us/immigration>). Additional information on this topic is available from LLR's Office of Immigrant Worker Compliance. (<http://www.llr.state.sc.us/Immigration/index.asp?file=ContactUs.htm>).

Information about the E-Verify Program is available on the internet from the Department of Homeland Security's U.S. Citizenship and Immigration Services. (<http://www.uscis.gov/e-verify>).

Bidder agrees to comply with these requirements. By signing below, Bidder understands that a failure to agree to and follow these requirements shall be grounds for rejection of the Bid or termination of the agreement between the Contractor and the Owner, for cause.

Read and understood:

Name of Contractor

Sign: _____

Print Name: _____

Title: _____

Signed this, the ____ day of _____, 20____.

STATEMENT OF COMPLIANCE WITH S.C. CODE § 12-8-550

(To be returned with the Bid)

(Contractor must complete one of the two following statements)

I, _____, on behalf of and as authorized by _____, Contractor, represent that Contractor is a _____² organized and existing under the laws of the State of South Carolina. Contractor warrants that it is a South Carolina resident for purposes of S.C. Code Ann. § 12-8-550 (as amended).

-OR-

I, _____, on behalf of and as authorized by _____, Contractor, represent that Contractor is a _____³ organized and existing under the laws of the State of _____. Contractor has read and understands the requirements of S.C. Code §§ 12-8-550 and 12-8-560. Contractor has registered with the Secretary of State or the Department of Revenue and by that registration has agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Contractor has assured payment to the South Carolina Tax Commission through compliance with one of the waivers provided in S.C. Code § 12-8-560(B).

[SIGNATURE PAGE FOLLOWS]

² Insert type of business (corporation, limited liability company, partnership, sole-proprietorship).

³ Insert type of business (corporation, limited liability company, partnership, sole-proprietorship).

Contractor: _____

Signature

Address: _____

By: _____

Title: _____

Date: _____

(CORPORATE SEAL)

SWORN to and subscribed before me

this ____ day of _____, 2019

(L.S.)

Notary Public for the State of _____

My Commission Expires: _____

First Attest

Sign: _____

Name: _____

Second Attest

Sign: _____

Name: _____

BID
 FOR CONSTRUCTION OF
Construction Indefinite Delivery Contract
 FOR
 RENEWABLE WATER RESOURCES

BID SCHEDULE, BID SUMMARY, TABULATION OF MAJOR EQUIPMENT ITEMS
 SELECTED SUBCONTRACTORS

Bid of _____ (hereinafter called "Bidder"), a _____
 _____⁴ organized and existing under the laws of the State of _____, to the
 Renewable Water Resources, a special purpose district organized and existing under the laws of
 the State of South Carolina (hereinafter called "Owner").

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all Work⁵
 for the Construction Indefinite Delivery Contract Project in strict accordance with the Contract
 Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, each Bidder certifies, and in the case of a joint Bid, each party thereto
 certifies as to his own organization, that this Bid has been arrived at independently, without
 consultation, communication, or agreement as to any matter relating to this Bid with any other
 Bidder or with any competitor.

Bidder hereby agrees to commence Work under this contract on a date to be specified in the
 Notice to Proceed and to fully complete the Project within _____
 consecutive calendar days thereafter. Bidder represents that the Bidder has reviewed the
 provisions and amounts set forth as liquidated damages and agrees that under this Contract that
 sum is just and reasonable and the Bidder agrees to pay as liquidated damages the sums as
 provided in Section 3.4.1 of the Contract between Owner and Contractor, plus any consent order
 fines imposed by appropriate regulatory authority which are incurred by reason of the
 Contractor's delay in performance of the contract.

Bidder acknowledges receipt of the following Addenda:

- _____
- _____
- _____

(If Addenda have been issued, they **MUST** be listed herein).

⁴ Insert type of business. (e.g. sole proprietorship, partnership, corporation, limited liability company).

⁵ Capitalized terms make reference to terms more fully defined in the Contract, which follows.

Bidder hereby agrees that preference will be given to domestic construction material and further agrees to require subcontractors, material men, and suppliers to also give preference to domestic construction material.

BID SCHEDULE

The Bidder acknowledges that the Bid submitted herewith is based upon the materials and articles specified by the Engineer and shown in the Tabulation of Major Equipment Items.

The Bidder agrees to perform all work described in the Contract Documents for the following Lump Sum or Unit Prices including all labor, materials, equipment sales, and other applicable taxes and fees.

NOTE: Bids shall include sales tax and all other applicable taxes and fees.

Major Equipment Items: In connection with major items of equipment to be furnished and installed on this Project, as described in the Specifications, if any, the undersigned shall agree to the following provisions.

That the Bid stated hereinbefore shall include the furnishing and installing of all Items of Major Equipment of the manufacturers or suppliers listed in the following "Tabulation of Major Equipment Items."

That the equipment listed within the "Tabulation of Major Equipment Items" is of the named acceptable manufacturer or an equal substitute as defined in the Information for Bidders.

That the installed price stated in the Bid on all sub-items includes the preparation and submission to the Engineer by the undersigned of detailed drawings showing all modifications (if any) of the Contract Drawings necessary to accommodate any substitute equipment. Should a substitute unit be selected, all redesign costs required to accommodate such equipment shall be included within the installed cost by the Contractor.

That the installed cost stated in the Bid on all sub-items includes a complete operating installation, including the furnishing and installing of any and all changes or additions in structures, piping, buildings, mechanical and electrical work, accessories, controls, etc., necessary to accommodate the equipment.

That if awarded a Contract on this project, all Items of Major Equipment be guaranteed by the undersigned and his Surety to meet the performance requirements of the Contract specification and General Conditions of Contract and will not affect the ability or efficiency of other systems or equipment to perform their intended purpose.

A list of Major Items must be shown on the attached sheets.

BID SCHEDULE

BID SUMMARY**FOR**

	Lump Sum	\$
	Lump Sum	\$
	Lump Sum	\$
	Bid Total	\$

BID SUMMARY

The Total Bid for all Work is _____ and ___/100 (\$_____._____) dollars.

Name of Prospective Contractor

Sign: _____

(SEAL)

Print Name: _____

Its: _____

Signed this, the ____ day of _____, 20____.

Address: _____

South Carolina General Contractor's License Number

If the Bidder is a Corporation or Limited Liability Company, the seal of the business must be impressed above.

Witnesses (the above signature must be witnessed by two individuals).

Sign: _____

Name: _____

Sign: _____

Name: _____

LIST OF MAJOR EQUIPMENT ITEMS

EQUIPMENT/SYSTEM	MANUFACTURER/SUPPLIER
<hr/>	<hr/>
<hr/>	<hr/>
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LIST OF SELF-PERFORMED WORK BY SPECIALTY

Portion of the Work as identified vital to the Project by Owner and Engineer;
Please Type Bidder's Name on each of the specified lines, indicating whether all, part or none of this Portion of the Work is to be Self-Performed. Examples:

- Site Work; XYZ Inc. self-performing all
- Underground Piping; XYZ Inc. self-performing none
- Concrete; XYZ Inc. self-performing part

- (1) Portion of the Work: **Site Work** _____
- (2) Portion of the Work: **Underground Piping** _____
- (3) Portion of the Work: **Concrete** _____
- (4) Portion of the Work: **Concrete Reinforcement** _____
- (5) Portion of the Work: **Process Piping/Equipment** _____
- (6) Portion of the Work: **Building Structures** _____
- (7) Portion of the Work: **Painting/Coatings** _____
- (8) Portion of the Work: **Electrical** _____
- (9) Portion of the Work: **I&C Systems** _____
- (10) Portion of the Work: **HVAC/Plumbing** _____

Bidder Name: _____
Bidder License Number: _____
Signed: _____
By: _____
Its: _____
Dated: _____

LIST OF SELECTED SUBCONTRACTORS

List Subcontractors' information by specialty for all portions of subcontracted Work where by specialty the subcontracted amount is equal to or greater than 3% of the base Bid amount. Identify the Subcontractor, if any, for any specialty areas identified below as vital to the Project by Owner and Engineer. **Please Type Subcontractor's information on the specified line if all or part of this Portion of the Work is to be subcontracted.**

(1) Portion of the Work: _____

Subcontractor: _____

Address of Subcontractor: _____

Subcontractor's License Number _____

(2) Portion of the Work: _____

Subcontractor: _____

Address of Subcontractor: _____

Subcontractor's License Number _____

(3) Portion of the Work: _____

Subcontractor: _____

Address of Subcontractor: _____

Subcontractor's License Number _____

(4) Portion of the Work: _____

Subcontractor: _____

Address of Subcontractor: _____

Subcontractor's License Number _____

(5) Other Work: _____

Subcontractor: _____

Address of Subcontractor: _____

Subcontractor's License Number _____

(6) Other Work: _____

Subcontractor: _____

Address of Subcontractor: _____

Subcontractor's License Number _____

Bidder Name: _____
Bidder License Number: _____
Signed: _____
By: _____
Its: _____
Dated: _____

STATEMENT OF BIDDER'S QUALIFICATIONS

Pursuant to SC Labor Licensing Regulations, the contractor is required to have the following designation(s) to Bid on this Project. WP

In determining a firm's qualifications, the following factors will be considered: Work previously completed by the firm, and whether the firm (a) maintains a permanent place of business, (b) has adequate personnel, plant, and equipment to perform the Work properly and expeditiously, (c) has the financial and management resources to meet obligations incident to the Work, and (d) has appropriate technical experience.

Due to the size and critical nature of the Project, Bidder shall submit evidence that Bidder, under the current company name, has satisfactorily completed, at least two projects with similar type construction and with a construction cost of not less than fifty (50%) percent of the Contract Sum proposed in the Bid within the past five years. Experience on projects performed by any of the Bidder's related or affiliated companies will not be considered in the evaluation of the Bidder's experience as required herein.

Every Bidder shall disclose any history where any officer of the Bidder, the Bidder Company or entity, its subsidiaries or affiliates, or predecessor companies held an interest in a construction contract and where that contract was terminated for cause or where there was a failure to perform.

If termination or failure of performance occurred, the time, place, personnel involved, contract parties and the circumstances shall be fully disclosed. These facts may result in a determination the Bidder is not responsible.

Material misstatements on this questionnaire may be grounds for rejection of the firm's Bid on this Project. Any such misstatement, if discovered after award of the contract to such firm, may be grounds for immediate termination of the contract. Additionally, the firm will be liable to the Owner for any additional costs or damages to the Owner resulting from such misstatements, including the cost of rebidding or increment construction costs between the original and the replacement Bid, and including costs and attorney's fees for collecting such costs and damages.

The apparent low Bidder shall submit supplemental information as required in Section 00320.

QUALIFICATION FORM

INSERT

In determining a firm's qualifications, the following factors will be considered: Work previously completed by the firm (under its current name only), work previously completed by the firm's proposed project manager and superintendent, and whether the firm (a) maintains a permanent place of business, (b) has adequate personnel, plant, and equipment to perform the Work properly and expeditiously, (c) has the financial and management resources to meet obligations incident to the Work, and (d) has appropriate technical experience.

Bidder shall submit evidence that Bidder, under the current company name, has satisfactorily completed, at least five wastewater treatment plant projects at existing, operating facilities similar in scope to the Project, in an amount of at least 50% of project total, within the past ten years. Experience on projects performed by any of the Bidder's related or affiliated companies will not be considered in the evaluation of the Bidder's experience as required herein.

Bidder shall submit evidence that the proposed project manager has satisfactorily completed at least five wastewater treatment plant projects at existing, operating facilities similar in scope to the Project, in an amount of at least 50% of project total, within the past ten years. Experience on projects performed by any of the Bidder's related or affiliated companies will not be considered in the evaluation of the Bidder's experience as required herein.

Bidder shall submit evidence that the proposed project superintendent has satisfactorily completed at least five wastewater treatment plant projects at existing, operating facilities similar in scope to the Project, in an amount of at least 50% of project total, within the past ten years. Experience on projects performed by any of the Bidder's related or affiliated companies will not be considered in the evaluation of the Bidder's experience as required herein.

Every Bidder shall disclose any history where any officer of the Bidder, the Bidder Company or entity, its subsidiaries or affiliates, or predecessor companies held an interest in a construction contract and where that contract was terminated for cause or where there was a failure to perform.

If termination or failure of performance occurred, the time, place, personnel involved, contract parties and the circumstances shall be fully disclosed. These facts may result in a determination the Bidder is not responsible.

Material misstatements on this questionnaire may be grounds for rejection of the firm's Bid on this Project. Any such misstatement, if discovered after award of the contract to such firm, may be grounds for immediate termination of the contract. Additionally, the firm will be liable to the Owner for any additional costs or damages to the Owner resulting from such misstatements, including the cost of rebidding or increment construction costs between the original Bid and the replacement Bid, and including costs and attorney's fees for collecting such costs and damages.

The apparent low Bidder shall submit supplemental information as required in the Request for Bid.

QUALIFICATION FORM

1. How many years has this organization been in business as a construction company under the present business name? _____

List any other names this organization has, does, or anticipates operating under, including the names of related companies presently doing business.

2. Has any officer or partner of this organization ever been an officer or partner of some other organization that failed to complete a construction contract?

If so, state the name of the individual, current title, other organization, and give full details.

3. Has your organization ever failed to complete any work awarded to it? _____

If yes, give full details:

4. Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or its officers? _____

If yes, give full details:

5. Has your organization filed any lawsuits or requested arbitration with regard to construction contract within the last five years? _____

If yes, give full details:

6. Has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract, or when it had a project terminated for cause? _____

If yes, give full details:

7. Has this organization ever been released from a Bid or terminated from a project for cause?

If yes, list the name of the project; Owner's name, address, and phone number; and state the reason for each instance.

8. Has this organization or a principal or partner in this organization who was with another company been denied Contractor prequalification within the last two years on a project?

If yes, give full details:

9. What pump station, water or wastewater treatment plant construction projects (50% of project total) does this organization currently have under contract? Complete a Project Information Form (as included at the end of this Section or an equivalent form with the same data) for each Project. Indicate if Joint Venture and identify Joint Venture Partner.

10. Indicate five wastewater treatment plant projects of 50% of project total or more that your organization has completed during the last 10 years. Complete a Project Information Form (as included at the end of this Section or an equivalent form with the same data) for each Project. The listing of names shall indicate to Renewable Water Resources that your organization has no objection to contacting the named individuals. Indicate if a Joint Venture and identify Joint Venture partner.

11. Indicate five wastewater treatment plant projects of 50% of project total or more that your proposed project manager has completed during the last 10 years. Complete a Project Information Form (as included at the end of this Section or an equivalent form with the same data) for each Project. The listing of names shall indicate to Renewable Water Resources that your organization has no objection to contacting the named individuals. Indicate if a Joint Venture and identify Joint Venture partner. Any substitutions or replacements for the proposed project manager during construction shall meet the same requirements as listed herein and receive prior approval from the Owner.

12. Indicate five wastewater treatment plant projects of 50% of project total or more that your proposed project superintendent has completed during the last 10 years. Complete a Project

Information Form (as included at the end of this Section or an equivalent form with the same data) for each Project. The listing of names shall indicate to Renewable Water Resources that your organization has no objection to contacting the named individuals. Indicate if a Joint Venture and identify Joint Venture partner. Any substitutions or replacements for the proposed project superintendent during construction shall meet the same requirements as listed herein and receive prior approval from the Owner.

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the information comprising within this Statement of Bidder's Qualifications.

I, _____, certify that I am _____ of the Bidder, and that the answers to the foregoing questions and statements contained therein are true and correct.

BIDDER: _____

By: _____

(name signed)

(name printed or typed)

Title: _____

Date: _____

Subscribed and sworn to me this ___ day of _____, 2015.

NOTARY PUBLIC: _____

(name signed)

(name printed or typed)

Commission Expires: _____

(Date)

(SEAL)

Project Information Form

Project Title: _____

Project Description:

Bidder's Project Manager: _____

Bidder's Project Superintendent: _____

Project Owner:

- Owner Name: _____
- Contact Person: _____
- Phone Number: _____

Engineer/Construction Manager:

- Company Name: _____
- Contact Person: _____
- Phone Number: _____

Contract Amount:

- Initial: _____
- Final: _____

Contract Time

- Initial: _____
- Final: _____
- Completion Date: _____

Surety Company: _____

END OF SECTION

COPY OF CONTRACTOR'S LICENCE

INSERT

RISK ANALYST REVIEW

Worker's Compensation – State of South Carolina Statutory
Employers Liability – \$500k/\$500k

Automobile Liability

\$ 1,000,000 Per Accident - Combined Single Limit

Coverage shall include bodily injury and property damage and cover all vehicles including owned, non-owned and hired.

Commercial General Liability

\$ 1,000,000 Per Occurrence

(Including products and completed operations liability)

Umbrella Liability

\$1,000,000

INSURANCE DOCUMENTS

(To be attached following this Cover Page)

CONTRACTOR'S CORPORATE RESOLUTION (OR EQUIVALENT)
(To Be Executed if Contractor is a Limited Liability Company, Corporation,
Limited Liability Partnership, or Partnership)

NOTE: OWNER'S ATTORNEY MAY REQUIRE ADDITIONAL INFORMATION

BE IT RESOLVED, we, the board of directors⁶/members⁷/partners⁸ (circle one) of _____
_____ (the "Contractor") do hereby authorize and direct _____
_____ (the "Authorized Signer"), the _____
⁹ of the Contractor, to enter into a contract with Renewable Water Resources ("Owner") for
Work relating to the _____ Project (the "Project") in accordance
with the Contract Documents into which this authorization is incorporated. We further authorize
and direct the Authorized Signer to provide such information and to take such action as
necessary to execute such other documents as may be needed in order to perform the
Contractor's obligations with regards to the Project or to execute such documents as may be
required by the Owner, including amendments, rescissions, and revisions thereto. The
Authorized Signer, by this document, is empowered and authorized to bind the corporation,
company, or partnership (circle one).

Authorization was granted through an action of the directors/members/partners (circle one)
at their meeting held on the _____ day of _____, 20____.

(Signature)

Date

(Typed or Printed Name)

Secretary

(Corporate Seal)
Must Be Impressed Here

⁶ Circle if a Corporation.
⁷ Circle if a Limited Liability Company.
⁸ Circle if a Partnership.
⁹ Insert title of Authorized Signer.

STATEMENT OF COMPLIANCE WITH S.C. CODE § 12-8-550

(Contractor must complete one of the two following statements)

I, _____, on behalf of and as authorized by _____, Contractor, represent that Contractor is a _____¹⁰ organized and existing under the laws of the State of South Carolina. Contractor warrants that it is a South Carolina resident for purposes of S.C. Code Ann. § 12-8-550 (as amended).

-OR-

I, _____, on behalf of and as authorized by _____, Contractor, represent that Contractor is a _____¹¹ organized and existing under the laws of the State of _____. Contractor has read and understands the requirements of S.C. Code §§ 12-8-550 and 12-8-560. Contractor has registered with the Secretary of State or the Department of Revenue and by that registration has agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Contractor has assured payment to the South Carolina Tax Commission through compliance with one of the waivers provided in S.C. Code § 12-8-560(B).

[SIGNATURE PAGE FOLLOWS]

¹⁰ Insert type of business (corporation, limited liability company, partnership, sole-proprietorship).

¹¹ Insert type of business (corporation, limited liability company, partnership, sole-proprietorship).

Contractor: _____

Signature

Address: _____

By: _____

Its: _____

Date: _____

(CORPORATE SEAL)

SWORN to and subscribed before me

this ____ day of _____, 2019

(L.S.)

Notary Public for the State of _____

My Commission Expires: _____

First Attest

Sign: _____

Name: _____

Second Attest

Sign: _____

Name: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS: that we, the undersigned:

_____, as Principal,

and _____, as Surety, are hereby held and firmly bound unto Renewable Water Resources, as Owner in the penal sum of _____ for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this, the ____ day of _____, 20__.

The condition of the above obligation is such that whereas the Principal has submitted to Renewable Water Resources a certain Bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for the:

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body, the day and year first set forth above.

This Bond being executed in three (3) counterparts.

PRINCIPAL:

Signature

Principal: _____

Address: _____

By: _____

Its: _____

(SEAL)

SURETY:

Signature

Surety: _____

Address: _____

By: _____

Its: Attorney-in-Fact (SC Resident)

(SEAL)

ATTEST (2 individuals):

Signature

Name: _____

Signature

Name: _____

ATTEST (2 individuals):

Signature

Name: _____

Signature

Name: _____

NOTE: If Contractor is partnership, all partners should execute the Bond. **IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list. **NOTE:** If this Bond is executed by way of a power of attorney, an original of the power of attorney must be attached hereto.

NOTICE OF AWARD

To: _____

Project Description: Construction Indefinite Delivery Contract Project.

The Owner has considered your Bid submitted on the ____ day of _____, 20____ for the above-described Work in response to its Invitation for Bids and Information for Bidders.

The Owner has approved your Bid in the amount of _____ (\$____.____) dollars for award of the above described Work pending and conditioned upon the following:

- Execution of a written contract by both parties and delivery of the executed contract to the Contractor after approval and certification by ReWa's legal counsel;
- Delivery of the Contractor's Performance Bond, Payment Bond, and the required Certificates of Insurance with fifteen (15) calendar days from the date of this Notice of Award;
- Obtaining any and all required regulatory, agency, or governmental approvals; and
- Procurement of all rights-of-way. In this instance, your acceptance of this award will be acknowledgement that you understand no notice to proceed will be issued until final procurements of all rights-of-way for the project. The Contractor and the Owner may agree for the Contractor to begin work in other areas of the Project avoiding unprocured properties.

This Notice of Award is NOT a contract.

If you fail to execute said Agreement and to furnish said Bonds and Certificates of Insurance within fifteen (15) calendar days from the date of this Notice, the Owner may elect to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner may also pursue all other rights and remedies it may have under law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this ____ day of _____, 20_____.

Renewable Water Resources

By: _____

Title: _____

Acceptance of Notice of Award

Receipt of the above Notice of Award is hereby acknowledged by _____

_____,¹² this ____ day of _____, 20____.

Signature: _____

By: _____

Title: _____

¹² Name of business receiving award

MINUTES OF COMMISSION MEETING

(To be attached following this Cover Page)

GENERAL CONDITIONS

AIA DOCUMENT A201 (2007) AS MODIFIED BY THE PARTIES

(To be attached following this Cover Page)

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA
UNIFORM ARBITRATION ACT.: SC CODE ANN. §15-48-10 ET SEQ. AND THE FEDERAL
ARBITRATION ACT 9 U.S.C. 1 ET SEQ.**

General Conditions of the Contract for Construction for the following PROJECT:
(Name and location or address)

Construction Indefinite Delivery Contract Project

THE OWNER:

(Name and address)

Renewable Water Resources d.b.a. ReWa, a special purpose district and political subdivision of the State of South Carolina
561 Mauldin Road
Greenville, South Carolina 29607

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Engineer.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor except as set forth in Paragraph 5.3 and Paragraph 5.4, (3) between the Owner and the Engineer or the Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 KNOWLEDGE

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonable inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contract shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Engineer's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraph 3.2 and 3.7. In case of conflict between the drawings and specifications, the specifications shall govern. Figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings. In cases where products or quantities are omitted from the specifications, the descriptions and quantities shown on the drawings shall govern. Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported in writing to the Engineer, who shall promptly correct in writing such discrepancies, inconsistencies, or ambiguities. Work done by the Contractor after his discovery of such discrepancies, inconsistencies, or ambiguities and prior to the Engineer's correction shall be done at the Contractor's risk.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

- .1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, an Environmental Protection Agency Standard, a South Carolina Department of Health and Environmental Control Standard, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Engineer or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Engineer or specified, support test data shall be submitted to substantiate compliance.
- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Article 7. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified so long as Contractor uses the named major equipment and/or manufacturers in accordance with Contractor's Bid.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Engineers.

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Engineer and the Engineer’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. Owner shall be granted an unlimited license to use the Instruments of Service, Drawings and Specifications. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer’s or Engineer’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 CONFIDENTIALITY

§ 1.7.1 The Contractor warrants and represents that the Contractor shall not knowingly, recklessly, or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act of omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of Drawings, Specifications, and other documents which the Contractor is permitted to retain under Paragraph 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner’s particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.7.2 The Contractor, at any time, upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Engineer to the Contractor.

§ 1.7.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Paragraph 1.7.

§ 1.7.4 The representations and warranties contained in this Paragraph 1.7 shall survive the complete performance of the Work or earlier termination of the Agreement.

§ 1.7.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor’s discussions with the Owner or performance of the Work which are based substantially on

the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the Owner at its expense to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

§ 1.8 DEFINED TERMS

§ 1.8.1 **Acceptance.** The taking possession of the Project when completed in accordance with the Contract Documents.

§ 1.8.2 **Acceptance of the Work.** That point in time where the Owner, upon the Engineer's recommendation, accepts the Project, or a portion of the Work.

§ 1.8.3 **Addenda.** Written or graphic instruments issued prior to the opening of Bids or Proposals which clarify, correct or change the Bid Documents or the Contract Documents.

§ 1.8.4 **Agreement.** The written agreements covering the work to be performed. This includes all Contract Documents.

§ 1.8.5 **Application for Payment.** The format furnished by the Owner to be used by the Contractor in requesting progress payments or final payments. THE FAILURE TO USE THE FORM PROVIDED BY OWNER AND APPROVED BY THE ENGINEER SHALL BE REASON FOR OWNER TO REFUSE AN APPLICATION FOR PAYMENT.

§ 1.8.6 **Bid.** The offer of the Bidder submitted on the prescribed form setting forth the prices for the Work to be Performed.

§ 1.8.7 **Bidder.** Any person, firm or corporation submitting a Bid for the Work.

§ 1.8.8 **Bonds.** Performance, and payments Bonds and other instruments of security, furnished by the Contractor and his Surety in accordance with the Contract Documents.

§ 1.8.9 **Change Order.** A written order upon the form provided herein to the Contractor signed by the Owner authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Agreement as provided herein.

§ 1.8.10 **The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Engineer, or (4) between any persons or entities other than the Owner and Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of their respective duties.

§ 1.8.11 **The Contract Documents.** The Agreement, Addenda (which pertain to the Contract Documents), the Contractor's Bid or Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award), the Bonds, the Notice of Award, the Notice to Proceed, these General Conditions, the Supplemental Conditions, Renewable Water Resources and EPA Supplemental General Conditions and Special Conditions, the Specifications, the Drawings, together with all Modifications issued after the effective date of the Agreement.

§ 1.8.12 **Contract Price.** The total monies payable to Contractor under the Contract Documents.

§ 1.8.13 Contract Time. The number of calendar days stated in the Contract Documents for the completion of the Work.

§ 1.8.14 Contractor (Construction Contractor or Construction Manager at Risk). The person, firm or corporation with whom the Owner has executed an agreement for the Work and construction of the Project.

§ 1.8.15 CPM. The critical path method giving a detailed scheduling method used to allocate the time required for a construction project, and a means of controlling costs and manpower that has been reviewed by the Engineer and accepted by the Owner.

§ 1.8.16 Day. A calendar day of twenty-four (24) hours measured from midnight to the next midnight.

§ 1.8.17 Default. The failure of the Contractor to meet the obligations agreed to in the Contract Documents.

§ 1.8.18 Defective. An adjective which, when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient (which may be apparent or latent), or does not conform to the Contract Documents or does not meet the requirements of any inspection, test, or approval referred to in the Contract Documents.

§ 1.8.19 The Drawings. The Drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the Engineer and which are referred to in the Contract Documents, are included in and are a part of the Contract Documents.

§ 1.8.20 Effective Date of the Agreement. The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed by the last of: the two (2) parties to sign and deliver the agreement, or the execution of the Certificate of Owner’s Attorney.

§ 1.8.21 Engineer. The person, firm or corporation named as such in the Agreement, or its replacement.

§ 1.8.22 Field Order (sometimes referred to as a “Minor Change in the Work”). A written order issued by the Engineer which clarifies or interprets the Contract Documents in accordance with this Agreement or effects minor no cost changes in the Work in accordance with paragraph 7.4.

§ 1.8.23 Final Certificate. Certificate issued by the Owner when the Contractor submits proper evidence that the Contractor has met all obligations for labor, materials and equipment and has also paid all Subcontractors up to date of the previous Application for Payment. The Contractor, by submission of this evidence, certifies that all Work is complete as described in the Contract Documents and all obligations have been met.

§ 1.8.24 Guaranty. Guaranty is the liability assumed by the Contractor for the performance of the work and the products used.

§ 1.8.25 Manufacturer’s Representative. The person who is a full-time employee of the company supplying the materials, equipment or supplies to the Project. This person will be trained in the operation and use of the materials, equipment or supplies manufactured and used on the Project.

§ 1.8.26 Modification. A modification is: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by the Engineer in accordance with the Contract Documents, or (d) a written order for minor change or alteration in the Work issued by the Engineer pursuant to paragraph 7.4. A modification may only be issued after the effective date of the Agreement.

§ 1.8.27 Notice of Award. The written notice by the Owner to the Contractor that the Contractor is the successful Bidder/Proposer and that upon compliance with the conditions precedent to be fulfilled by the Contractor within the time specified, the Owner will execute and deliver the Agreement with Contractor.

§ 1.8.28 **Notice to Proceed.** A written notice given by the Owner to the Contractor (with a copy to the Engineer) fixing the date on which the Contract Time will commence to run and on which the Contractor will start to perform his obligation under the Contract Documents.

§ 1.8.29 **Owner.** Renewable Water Resources, “ReWa”, the public body for whom the work is to be performed

§ 1.8.30 **The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.8.31 **The Project Manual.** The Project Manual is a volume assembled for the Work which may include the Bidding/proposal requirements, sample forms, Conditions of the Contract and Specifications and all items listed in the Table of Contents.

§ 1.8.32 **Proposal.** The Proposal of the Proposer submitted on the prescribed form setting forth the proposal for the Work to be Performed.

§ 1.8.33 **Proposer.** Any person, firm or corporation submitting a Proposal for the Work.

§ 1.8.34 **Resident Project Representative.** The authorized representative of the Engineer who is assigned to the Project site or any part thereof.

§ 1.8.35 **Resident Project Superintendent.** The on-site representative named by the Contractor who is assigned to the Project to oversee the trades and Subcontractors and has the authority to make decisions affecting the accomplishment of the Work.

§ 1.8.36 **Shop Drawings.** All drawings, diagrams, illustrations, schedules, descriptive literature, prints, test reports, samples, calculations, material lists and other data which are specifically prepared by the Contractor, a subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

§ 1.8.37 **The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.8.38 **Subcontractor.** An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site or for the furnishing of materials or equipment.

§ 1.8.39 **Substantial Completion.** The date the project or sectionalized part of the project is sufficiently completed in accordance with the Contract Documents so that it may be used for the purpose for which it was intended; provided, however, if the completed Work is only a part of an integral whole (i.e., a portion of a pipeline which is an integral part of a trunk line designed to serve a whole basin and requiring approval before connection to an existing system before any testing of the flow can be made or is but a part of a treatment process which must function as a whole and must be completed to a point where it may be safely operated), then the Contractor may not claim substantial completion and the percentage of work completed shall have no bearing or relevancy to the determination of whether substantial completion has been reached.

§ 1.8.40 **Warranty.** Warranty is the liability assumed by the Contractor for the quality of work including materials and equipment and other warranties in this Agreement by the Contractor or by others.

§ 1.8.41 **The Work.** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided

or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

ARTICLE 2 OWNERS

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Engineer does not have such authority. The term "Owner" refers to Renewable Water Resources, a special purpose district and political subdivision of the State of South Carolina. The Executive Director of Owner and his/her designees (confirmed in writing) are hereby designated by Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by Owner.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for development of real estate, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor should not and will not rely on the accuracy of information furnished by the Owner and shall exercise proper precautions relating to the safe performance of the Work. Any such information shall be obtained by Contractor from third parties, subject to the approval of the Engineer. Information furnished by the Owner regarding surveys, subsurface investigation reports, soil borings, and other material of a similar nature is for general information only and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. Contractor shall verify all existing grades, conditions, and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Engineer. Contractor shall establish all lines and levels required to execute the Work and shall bear all costs involved, and shall be responsible for their accuracy and maintenance.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor will be furnished, at its sole cost and expense, any additional copies.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 EXTENT OF OWNER'S RIGHTS

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, (iii) under statute, or (iv) in equity.

§ 2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

Non-Appropriation: This Agreement shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

ARTICLE 3 CONTRACTOR**§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. All of Contractor's Work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior review by the Engineer and the approval of the Owner. Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for the performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Engineer and the Owner, and the Engineer shall furnish such information or interpretation in the form and Engineer's Supplemental Instruction or other written or drawn form or drawing. Where only one part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either document not clarified by Addendum, the better quality or greater quantity shall be provided in accordance with the Engineer's interpretation at no extra cost to the Owner.

§ 3.1.3 The phrase "or equal" shall be construed to mean that material or equipment will be acceptable only when in the judgment of the Engineer, they are composed of parts of equal quality, or equal workmanship and finish,

designed and constructed to perform or accomplish the desired result as efficiently as the indicated brand, pattern, grade, class, make or model. The Contractor's attention is directed to Paragraph 8 of the Information for Bidders which addresses equal, alternate items and prequalification requirements for submittals.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Prior to the execution of the Agreement, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Paragraph 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum, the GMP, or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Subparagraph 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in the design information contain in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawing issued by the Engineer, or the work installed by other contractors, is not guaranteed by the Engineer or Owner.
- .2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities unless such laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities bear upon the performance of the Work. The Contractor shall promptly report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract

Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor and its Subcontractors may not use the Owner's tools, equipment, or materials unless authorized in advance by the Owner.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Engineer in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provision apply:

- .1 The Contractor must submit to the Engineer and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Engineer. Proposals for substitutions shall be submitted in triplicate to the Engineer in sufficient time to allow the Engineer no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinabove.
- .2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with

interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability to of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Engineer, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

- .3 Whether or not any proposed substitution is accepted by the Owner or the Engineer, the Contractor shall reimburse the Owner for any fees charged by the Engineer or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

- .1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Engineer or the Owner, any conflict between the Contract Documents and any arrangements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.
- .2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that the other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the two (2)-year period following the date of Substantial Completion, referred to in Paragraph 12.2.

§ 3.5.3 The Contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of two (2) years following the date of final acceptance of the Work and shall replace such defective materials or workmanship without cost to the owner.

§ 3.5.4 Where items of equipment or material carry a manufacturer's warranty for any period in excess of the two (2)-year period, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The

contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

§ 3.5.5 If, after ten (10) days' notice, the Contractor fails to proceed to cure any breaches of these warranties, the Owner may have the defects corrected and the Contractor and its surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the Owner or the Engineer, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to the Contractor, but the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this subparagraph are not exclusive, but are cumulative of any other remedies the Owner may have.

§ 3.5.6 Additionally, the Owner may bring an action for latent defects caused by the negligence of the Contractor which is hidden or not readily apparent to the owner at the time of use or final acceptance in accordance with applicable law.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when Bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Except as set forth in Subparagraph 2.2.2, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, construction permits, and certifications. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Engineer's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately

suspend any operations that would affect them and shall notify the Owner and Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Reference Points. The Owner will establish such general reference points as in its judgment will enable the Contractor to proceed with the Work. The Contractor shall be responsible for the layout of the Work and will protect and preserve the established reference points and will make no changes or relocations without the prior written approval of the Owner. The Contractor shall report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grade or location. The Contractor shall replace and accurately relocate all reference points so lost, destroyed, or moved, and bear all expenses incurred.

§ 3.7.6.1 Compliance with S.C. Code § 12-8-550. Contractor is aware that the South Carolina Code provides “A person hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall withhold two percent of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed ten thousand dollars. This section does not apply to a nonresident which registered with the Secretary of State or the Department of Revenue and by that registration agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Registering with the Secretary of State or the department is not an admission of tax liability nor does it require the filing of an income tax or franchise (license) tax return. If the person hiring, contracting, or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the department or with the Secretary of State, the person is not responsible for the withholding.”

§ 3.7.6.2 This withholding is in addition to withholding for employees and state sales tax. Even if the out-of-state contractor has a South Carolina Tax number and is regularly filing state tax returns, this withholding requirement applies. The two percent is over and above the retainage.

§ 3.7.6.3 Under the South Carolina Code, the Contractor can assure payment to the South Carolina Tax Commission by posting an acceptable bond in the sum of two percent of the total contract in lieu of the withholding. The Tax Commission will then notify the Owner that withholding is not necessary. ***Owner will not bear the burden of withholding and accounting.***

§ 3.7.6.4 Contractor must seek and obtain such a bond so that withholding will not be necessary. Proof of such a bond must be submitted to the Owner prior to any payments being made to the Contractor

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor’s costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. A site superintendent shall be at the Site during all times at which Work is being performed. This shall include all times in which Subcontractors and material suppliers are on the Site. In addition, a site superintendent shall be present during all deliveries to the Site. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the name and qualifications of a proposed superintendent. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to the proposed superintendent or (2) that the Engineer requires additional time to review. Failure of the Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract (and in a time not to exceed thirty (30) days), shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Engineer's approval. The Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer.

§ 3.10.4 The construction schedule ("CPM Schedule") shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Engineer that shall:

- .1 provide a graphic representation of all activities and events that will occur during the performance of the Work;
- .2 identify each phase of construction and occupancy;
- .3 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as the "Milestone Dates");
- .4 consists of an overall time-scaled Project Schedule (Overall Project Schedule). The Overall Project Schedule ("OPS") shall consist of detailed activities and their restraining relationships, including the milestones and constraints from the Award of Contract date and any interfaces with separate Owner-awarded contracts for the total duration of the project. Also, all temporary construction required for

new construction and/or to maintain existing facilities in operation shall be shown on the OPS. The OPS shall include the Contractor's information relative to shop drawings and other submittal preparation and approval, and fabrication and delivery of all materials and equipment deemed to be significant to the scheduling process. Each activity of the schedule will be assigned an identifying number.

- .5 be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format. The CPM Schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the work to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all required inspections. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.
- .6 identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time shall not be considered for the exclusive use or benefit of either the Owner or the Contractor, but must be allocated in the best interest of completing the Work within the Contract time. Extensions to the Contract time, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change.
- .7 demonstrate that the Contractor can complete the overall project and meet all required interim milestones. All construction schedules shall be developed using precedence diagramming.

Upon review and acceptance by the Owner and the Engineer of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit C. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Engineer and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions and "progress reports") as set forth in Subparagraph 3.10.1 or if requested by either the Owner or the Engineer. In the event any progress payment report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.

- .1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.
- .2 The Owner may exercise the rights furnished to the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as to the Owner deems necessary to ensure that the Contractor's performance of the Work shall comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenant or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1., and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain in a safe place at the site for the Owner and Engineer one record each as-built copies of the Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner upon completion of the Work, certified in writing by the Contractor to show complete and exact "as-built" conditions, stating sizes, kind of materials, underground piping, conduit locations, and similar matters.

§ 3.11.2 The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible at the Project site to governmental inspectors and other authorized agencies. All approved drawings shall be wrapped, marked, and delivered to the Owner within sixty (60) days of Substantial Completion.

§ 3.11.3 The Contractor must continuously maintain at the Project site all material safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work and to establish compliance with life safety policies, hazardous materials requirements, and the Contract Documents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals. In the absence of such written notice, the Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site, land and areas identified in and permitted by the Contract Documents, other land and areas permitted by Laws, Regulations, rights-of-way, permits and easements. The Contractor shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for all and any damage to any such real property, right-of-way or easement, or to the Owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance or non-performance of the Work. Should any claim be made against the Owner or the Engineer by any such Owner or occupant because of the performance of the Work, the Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner which may be withheld in the sole discretion of Owner.

§ 3.13.4 Without limitation of any other provisions of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more fully described in Paragraph 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.5 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and Building, as amended from time to time. The Contractor shall also comply with all insurance requirements applicable to the use and occupancy of the Project site and the Building.

§ 3.13.6 Prior to the commencement of the Work, the Contractor shall review the Project site with the Owner in detail and identify the area of the Work, staging areas, connections or interfacing with existing structures and operations, and restrictions on the work site area. The Contractor will ensure that all forces on the Project site are instructed about the acceptable working and staging areas and restrictions on use of the site. The Contractor, with advance consent of the Owner, will erect such barriers and devices as are necessary to restrict access to the worksite to approved areas and to prevent unauthorized access to non-Work areas.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a

patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

§ 3.17.2 It is the intention of the Contract Documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The Contractor shall protect and save harmless the Owner against suit on account of alleged or actual infringement. The Contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent, reckless, or intentional acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Paragraph 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnities from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnities in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under the Contract. The Contractor shall indemnify and hold harmless all of the Indemnities from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnities in defending any action that asserts or alleges Contractor's negligent, reckless, or intentional conduct.

ARTICLE 4 ENGINEER

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an Engineer lawfully licensed to practice Engineering or an entity lawfully practicing Engineering in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Engineer" refers to the firm identified on the first page of this Agreement. Any reference in the Contract Documents to the Engineer's taking action or rendering a decision with a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a successor Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate For Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Engineer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for

installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an Exhibit A to be incorporated in the Contract Documents.

§ 4.2.11 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Engineer's decisions on matters relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Engineer will review and respond to requests for information about the Contract Documents. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 All awards of Subcontractor contracts shall be made in accordance with the Owner's Procurement Code, including, without limitation, Sections 3-101 (Competitive Bidding) and 4-104(5) (Subcontracting under Construction Manager At-Risk Procurement). Unless specified in the Proposal or Bid provided by Contractor, all Subcontractor contracts shall be subject to competitive Bidding. If Contractor was required to provide the names of

Subcontractors in Contractor's Bid or Proposal, those Subcontractors shall be treated as pre-qualified. If Contractor's Bid included work to be done by Subcontractors, those Subcontractors performing Work included in the fixed price Bid shall be treated as pre-qualified. All existing Subcontractors may perform Additional Work pursuant to a Change Order or Change Directive as though pre-qualified.

Should a Subcontractor, identified by name in the Bid, be unable to provide the work, Contractor must comply with Owner's competitive Bidding requirements for re-selection of Subcontractor. No later than thirty (30) days subsequent to the execution of this Agreement, the Contractor, if not previously selected in the Bid, shall begin the selection of entities (including those who are to furnish materials or equipment fabricated to a special design) for each principal portion of the Work in accordance with the provisions of this Subparagraph 5.2.1. Contractor shall furnish the Owner and the Engineer, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. Upon submission of the name of the selected Subcontractor, the Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to any such proposed person or entity or (2) that the Engineer requires additional time for review. Failure of the Owner or Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 In no event shall the Contractor enter into a subcontract or purchase order without the approval of the Owner and without ensuring compliance with Owner's Procurement Code. The Contractor shall not assign any portion of the Work subject to this Contract to any entity without the prior approval of the Owner.

§ 5.2.3 If the Owner or Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected without re-Bidding the sub-contract or if the Owner or Engineer makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part hereof as Exhibit B, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Paragraph 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer; a Construction Change Directive requires agreement by the Owner and Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraphs 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claims that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor and Engineer stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustment to the Contract Sum and the construction schedule.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others. Unless otherwise established in the Contract, (i) the rental value of the Contractor's own equipment shall not be more than seventy-five (75%) percent of the rates in the current edition of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors, Oak Brook, Illinois (to be supplied by Contractor as evidence of Costs), and (ii) the aggregate amounts charged to the owner for such equipment shall not exceed seventy-five (75%) of the fair market value;

- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.
- .6 Costs shall not include: (i) Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, superintendents, and other personnel employed by the Contractor whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications all of which are to be considered administrative costs covered by the Contractor's fee; (ii) expenses of the Contractor's principal and branch offices other than the Contractor's office at the site; (iii) any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments; (iv) cost of premiums for all Bonds and for all insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of the changes in the Work); (v) costs due to the negligence of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property; and (vi) Other overhead or general costs of any kind and the costs of any item not specifically and expressly included in Subparagraph 7.3.7

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified. The Engineer's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Engineer and shall be binding on the Owner and Contractor.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum that are based on other than the unit prices method, the Contractor agrees to change and accept, as payment for overhead and profit, the following percentages of costs attributable to the change in the Work:

- .1 Ten (10%) percent for Work by the Contractor not involving Subcontractors;
- .2 Five (5%) percent for Work by Subcontractors;
- .3 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

- .4 For additional Work ordered as described above that will be executed by Subcontractors, it is agreed that the Subcontractors will be permitted to charge ten (10%) percent for work not involving Sub-subcontractors and five (5%) percent for work involving Sub-subcontractors;

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Engineer in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. It is further agreed by and between the Contractor and the Owner that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further agreed that the work embraced in this contract shall be commenced on a date to be specified in the Notice to Proceed.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. In the event that the Contractor fails to attain Substantial Completion within the Contract Time, Owner shall be entitled to liquidated damages and more specifically described herein. Further, if Substantial Completion is not attained within the Contract Time, Contractor shall be responsible to Owner for the reimbursement of any additional expenses payable by Owner to Engineer (as determined solely in the Engineer’s discretion) caused by the Contractor’s failure to achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Engineer, or of a designated representatives of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or could not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor’s timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution,

or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this Subparagraph as "Delays") whether or not such Delays are foreseeable, within the contemplation of the parties, or caused by the acts of the Owner or its agents. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

§ 8.3.5 The Contract Time may only be changed by a written Change Order. Any claim for an extension in the Contract Time shall be in writing delivered to the Owner and the Engineer within thirty (30) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order. Any outstanding claim shall also be listed upon each "Application for Payment Summary" form. This Paragraph 8.3 applies to all claims for a change in Contract Time for any reason whether or not compensation is sought. Neither the Engineer nor any employee or officer of the Owner has the power or authority to waive this requirement of written notice by any act or failure to act or by any oral or written instruction or consent.

§ 8.3.6 The Contract Time will be extended in an amount equal to time lost or to delays beyond the control of the Contractor if: (1) Contractor gives proper notice, (2) Contractor makes a timely claim therefore as provided in Paragraph 8.3, and (3) the Claim is allowed under the Contract Documents. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by the Owner, fires, floods, labor disputes, epidemics, adverse weather conditions not usually anticipated, or acts of God. The burden to prove such delays will be upon the Contractor. The Contractor must prove that the cause of the delay was beyond Contractor's control. Furthermore, the Contractor must justify the time extension by showing how the critical path of the CPM Schedule was impacted by the delay. This will require clear identification of the CPM activities at the time, the type Work being performed and the effect of the weather or other event on the Work. Claims for time extensions will not be considered unless they can be clearly documented by the Contractor's CPM Schedule.

§ 8.3.7 Claims for delays due to adverse weather not usually anticipated shall be handled on a quarterly basis. The Contractor shall submit a notice of a claim for a weather delay for each particular quarter on the last day of that particular quarter (Jan. 1 to March 31, April 1 to June 30, July 1 to September 30, October 1 to December 31). Failure to submit the notice as required shall constitute a waiver of any claim because of adverse weather for that quarter. The Contractor shall submit the notice to the Engineer. Within seven (7) calendar days after the submission of the weather claim notice, the Contractor will submit to the Engineer evidence to justify the claim. This evidence will include the following: (a) the days of the quarter on which the adverse weather occurred, (b) the hours of the day during which the adverse weather occurred at the job site, (c) a detailed description of the CPM activities that were affected by the adverse weather, (d) a detailed description of claim for the impact of the adverse weather on the critical path of the CPM schedule. The Engineer will review the claim evidence submitted by the Contractor. The Engineer will compare the adverse weather received during the quarter against the weather that could have been anticipated for that quarter. Anticipated weather for a quarter will be defined as the average of the weather conditions that have occurred in that quarter for the years 1962-2000, as documented by the South Carolina State Climatology Office at the Greenville-Spartanburg Airport. Adverse weather in the form of rainfall will be compared by the Engineer against the mean number of days in which the precipitation meets or exceeds 1/10-inch for the years 1962-2000 as follows:

January to March: 24 days
 April to June: 20 days
 July to September: 18 days

October to December: 17 days

In the event that Work starts or ends during the pendency of a quarter (an incomplete quarter), the Engineer shall use the above number of expected adverse weather days expected for that quarter and pro-rate the number of allotted adverse weather days by the number of days that Work occurs. This number shall be calculated based on the number of days in the quarter actually Worked by Contractor. The resulting percentage is then multiplied by the above number of expected days in the quarter for the number of allotted adverse weather days for the incomplete quarter. When work begins or ends on the first or last day of a quarter, no pro-rating shall occur. As an example:

Contractor starts November 15, 2008.

Number of days from November 15 until December 31, 2008 = 47 days

Number of day in the October to December Quarter = 93

Percentage of Quarter worked = 51%

Number of Adverse Days allotted for quarter = 17 days

Pro-Rated Days = 51% x 17 days = 8.67

(automatically rounded up in every case) = 9 adverse weather days allotted for incomplete quarter

§ 8.3.8 The Engineer will not approve any claim for delay due to adverse weather if: (a) the Contractor does not submit the evidence as required, (b) the adverse weather had no impact on the critical path of the CPM schedule, or (c) the adverse weather did not exceed the anticipated weather for a quarter as previously defined. Any claims for extensions in time due to adverse weather must be submitted within thirty (30) days of the close of the quarter and as more fully provided in Article 15.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Engineer, upon full execution of the Agreement, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved the Engineer and the Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Engineer as necessary to reflect (i) the description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, is not submitted on Owner's form, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure and adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least twenty (20) days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Owner and Engineer an itemized Application for Payment prepared in accordance with the schedule of values, required under Section 9.2., for completed portions of the Work. Such application shall be notarized, and supported by such data substantiating the Contractor's right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect the retainage provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in the form and substance satisfactory to the Owner and on the form provided by the Owner (including, in electronic form, if applicable): (i) a current Contractor's waiver of all claims and a duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of claims from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Engineer. **The failure to use any such forms provided by Owner for the Application for Payment will be grounds for Owner to reject the Application for Payment.** The Application for Payment must include each of the following documents which must be fully completed:

- (i) Application for Payment using Owner's form;
- (ii) Payment Breakdown using the Owner's form;
- (iii) Stored Materials Log using the Owner's form;
- (iv) Updated CPM schedule;
- (v) Stored material invoices from the preceding Pay Applications which are stamped "PAID" by the vendor. These invoices will also include the vendor's signature, the date of its signature, and the check number used to pay the invoice.
- (vi) An up to date set of "as-built" Drawings that reflect any changes made to the Specification or Drawings since the last Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate costs of materials stored off site shall not exceed one million (\$1,000,000.00) dollars at any time without written approval by Owner;
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and Owner's financing/bond sources, including without limitation, recorded financing statements, UCC filings, and UCC searches;
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored, including materials stored off the Project site,

and the value of materials at each location (the “Stored Materials Log”). This Stored Materials Log must be submitted in the manner provided by the Owner. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total dollar value thereof;

- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site;
- .5 Representatives of the Owner and Engineer shall have the right to make inspections of the on and off-site storage areas at any time;
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of Owner and the Engineer, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.

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

- .1 The Contractor further expressly undertakes to defend the Indemnities, at the Contractor’s sole expense, against any actions, lawsuits, or proceedings brought the Indemnities as a result of claims or liens asserted or filed on account of the Work, claims asserted against Work, the site of any Work, the Project site, payments due the Contractor, or any portion of the property of any of the Indemnities. Contractor hereby agrees to indemnify and hold harmless the Indemnities against any such claims and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Engineer will, within seven (7) days after receipt of the Contractor’s Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer’s reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer’s evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Engineer’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer’s opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised

amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Engineer withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer and the Engineer will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Engineer has issued a Certificate for Payment, and contingent upon the Engineer's issuance of the Certificate for Payment, the Owner shall, subject to reasonable refusal, make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Engineer. Owner shall make progress payment based on Applications for Payment received and approved by the Owner and the Engineer within thirty (30) days of the month following the month in which the Work covered by the Application for Payment was performed.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and each subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as party of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against Owner.

§ 9.6.3 The Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact

Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If (i) the Contractor has properly submitted an application for payment, complete and accurate in all respects (as later determined by the Engineer), that meets all of the requirements of the Contract Documents and the Engineer does not issue a Certificate for Payment or a notice of deficiency within fourteen (14) days after receipt of the Contractor's Application for Payment, or (ii) if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Engineer or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up as more fully provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amounts against the Contract Sum and may, in the Owner's sole discretion, elect to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.7.3 Any amounts due and unpaid by the Owner under the Contract Documents shall not bear interest or be subject to any penalty of fine.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, certifications, inspections, licenses, and other documents from any governmental or regulatory authority or body having jurisdiction thereof necessary for the beneficial use and/or occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not

included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, as certified by the Owner, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, as approved by the Owner, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Engineer as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Engineer until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected

with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, (6) submission by the Contractor to the Engineer and the Owner of as-built drawings, (7) submission by the Contractor to the Owner of a complete list of Subcontractors and principal vendors on the Project, including addresses and telephone number, (8) submission by the Contractor to the Owner of an indexed, loose leaf binder of complete installation, operation, and maintenance manual, including all manufacturers' literature, of equipment and materials used in the Work, (9) submission by the Contractor to the Owner, in an indexed, loose leaf binder, of all inspection reports, permits and temporary and final certificates of occupancy or use of the Project, (10) any and all other items required pursuant to the Contract Documents..

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and Engineer reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

§ 10.2.8.1 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and the Engineer all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Engineer.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a concealed and undisclosed hazardous material or substance (as defined in CERCLA) not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the

Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and with a Best Insurance Rating of A- or above such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than two (2) years following final payment; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The Contractor shall, for the protection and benefit of the Indemnities and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Subparagraph 11.1.1, procure, pay for, and maintain in full force and effect, at all times for the duration of the contract or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, in accordance with the Bidding/proposal requirements, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance set forth in the Agreement between the Owner and the Contractor. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

§ 11.1.3 The Contractor hereby agrees to deliver to the Owner, within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work and the Project site, certified copies of all insurance policies procured by the Contractor under or pursuant to this Paragraph 11.1 or with the consent of the Owner, Certificates of Insurance in form and substance satisfactory to the Owner evidencing the required coverages with limits not less than those specified in the Agreement between the Owner and the Contractor. The coverage afforded under any insurance policy obtained under or pursuant to this Paragraph 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnities. Furthermore, all policies and Certificates of Insurance shall expressly provide on their face that no less than thirty (30) days' prior written notice shall be given the Owner in the event of a material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance with endorsements.

§ 11.1.4 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under Paragraph 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner or the Engineer of the Contractor's obligations to obtain insurance provided in this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Paragraph 11.1, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal of replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit

only a Certificate of Insurance with endorsements for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.7 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this project separately.

§ 11.1.8 The Contractor shall cause each Subcontractor to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Indemnities as additional insureds under the Subcontractor's commercial general liability policy. The additional insured endorsement included on the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 11.1.9 The commercial general liability and automobile liability insurance policies shall be endorsed to name the Owner and Engineer as additional insured.

§ 11.1.10 The certificates of insurance for Contractual Liability-Residual Coverage Insurance as required under the Contract Document shall include the following statement: "Includes Contractual Liability Coverage for Hold Harmless Agreement in Contract."

§ 11.1.11 The Contractor's Public Liability Policies covering property damage shall include an "Installation Floater or Rigger's Insurance Policy" covering the full amount of any damage to machinery and equipment. Property damage insurance coverage shall include explosion, collapse and underground hazards.

§ 11.1.12 Contractor's policies shall include Blasting Coverage. Blasting insurance shall be provided for the full term of the contract.

§ 11.1.13 The Contractor shall provide All Risk Builder's Insurance, including but not limited to fire, extended coverage, vandalism and malicious mischief, collapse, flood and earthquake to be furnished by the Contractor. This insurance shall be in the name of the Owner, the Engineer, the Contractor, and Subcontractors and shall cover the work, materials and equipment which are on the site and incorporated or to be incorporated in the work to the full extent of their insurable value. Before work is started, the Contractor shall furnish the Owner and the Engineer a Certificate of Insurance and a copy of the endorsement showing evidence that the interests of all parties mentioned above are protected by the policy in a like manner as the Contractor and that they are not subject to subrogation by the insurance company. Any loss caused by hazards insured by this All Risk Builder's Insurance and not covered due to the application of deductibles shall be for the amount of the Contractor. The Owner may elect to provide this All Risk Builder's Insurance through the South Carolina General Services Agency and reserves that right. If Owner so exercises this right, any amounts paid by Owner shall be immediately reimbursed by Contractor.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, and with a Best Insurance Rating of A- or above, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Engineer’s and Contractor’s services and expenses required as a result of such insured loss. In the event that Owner is to provide property insurance, such property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this Subparagraph 11.3.1 shall include a waiver of subrogation in accordance with the requirements of Subparagraph 11.3.7

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then affect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. Notwithstanding, if the cause of any loss payment under such insurance is the fault of the Contractor, then the Contractor shall pay such deductible.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused to the extent (i) of actual recovery of any insurance proceeds under policies obtained pursuant to this Subparagraph 11.3.3 and (ii) permitted by the applicable policies of insurance..

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section

11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a certificate of insurance evidencing such insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

If permitted by the Owner's and Contractor's insurance companies, without penalties, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner in good faith shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received in good faith. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as in good faith shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of South Carolina for each project assigned over Fifty Thousand (\$50,000) dollars, in form and substance satisfactory to the Owner and, without limitation, complying with the Bidding/proposal documents and the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.

- .2 Bonds shall be executed by a responsible surety licensed in the State of South Carolina, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer. All Bonds shall be issued by sureties named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U. S. Treasury Department.
- .3 The Performance Bond and the Labor and Material Bond shall each be in an amount equal to the Contract Sum and all subsequent increases. Multiple sureties will not be permitted for any given bond.
- .4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power. Attorney in fact shall be a resident of South Carolina.
- .5 Every bond under this Subparagraph 11.4.1 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - (i) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - (ii) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interests, privileges, and benefits under and pursuant to any bond issued in connection with the work.

§ 11.4.4 If Contractor fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time specified in the Contract Documents, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the Contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the Contractor and his surety of such delay, neglect or default, specifying the same, and if the Contractor within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified.

§ 11.4.5 In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that surety is

taking the same over and stating that surety will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in Owner's opinion shall be required for the completion of said contract in an acceptable manner. In such an event, all costs and charges incurred by the Owner, together with the costs of completing the Work under the Contract Documents, shall be deducted from any monies due or which may become due said Contractor and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said Contractor, then the said Contractor and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of said excess pursuant to the General Terms and Conditions.

§ 11.5 GENERAL REQUIREMENTS

§ 11.5.1 All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings no lower than "A" and financial ratings not lower than "XII" in the *Best's Insurance Guide*, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

§ 11.5.2 If the Owner or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required under Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable thereto.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 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 requested in writing by the Engineer, be uncovered for the Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Engineer has not specifically requested to examine prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents,

any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two (2) year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The two (2) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Paragraph 12.2, the two (2) year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two (2) year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the South Carolina Uniform Arbitration Act and the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 or set forth elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after Bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and costs of testing services related to remedial operations performed to correct deficiencies in the Work, shall be done by the Contractor.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Engineer.

§ 13.5.5 If the Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 The authorized representative and agents of the Environmental Protection Agency, the South Carolina Department of Health and Environmental Control, and any other interested governmental agency shall have access to the work at all times and shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records. Contractor shall provide proper facilities for the access and inspection of the Work by such persons.

§ 13.6 INTEREST

No interest shall be paid by Owner.

§ 13.7 GENERAL PROVISIONS

§ 13.7.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs and subparagraphs are for convenience only and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word “including,” when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters, whether or not non-limiting language (such words as “without limitation,” or “but not limited to,” or word of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.7.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable. Should a provision be declared ineffective, the parties agree that such provision will be stricken, replacing it with an effective provision that most nearly effectuates the intent of the ineffective provision.

§ 13.7.3 Each party agrees to do all acts and things and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.7.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor’s responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 13.8 NO ORAL WAIVER

§13.8.1 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor’s duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by the Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No “constructive” changes shall be allowed.

§ 13.9 EQUAL OPPORTUNITY CLAUSE

§13.9.1 Where required by law, the non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the secretary of Labor, are incorporated herein.

§ 13.10 RECORD KEEPING

§13.10.1 Contractor shall maintain reasonable records reflecting all financial transactions between the Parties resulting from the Agreement and regarding the performance of the Services.

§13.10.2 Contractor will cooperate with all regulatory audits and will cooperate with Owner in connection with any audits of Owner that relate to the Agreement. Upon five (5) business days advance notice (unless a governmental agency requires that less notice be allowed in a particular circumstance in which case Contractor will use all reasonable efforts to comply with the shortened notice period), Contractor shall provide to Owner, its auditors (including internal audit staff and external auditors), inspectors, regulators and other Owner representatives as Owner may from time to time designate in writing, direct necessary access during regular business days and hours to

any data, books and records directly related to the Project for the purpose of performing audits, inspections or compliance reviews of either Contractor or any of its subcontractors to:

- .1 verify the accuracy of charges and payments and conformity to the commitments and obligations of Contractor under this Agreement; and
- .2 verify the integrity and performance of the materials and installation.

§13.10.3 Contractor shall provide to such auditors, inspectors, regulators, and other Owner representatives such assistance as they reasonably require. Contractor shall cooperate fully with Owner or its designees in connection with audit functions and with regard to examinations by regulatory authorities. Notwithstanding anything to the contrary in this Agreement, Contractor will not be required to provide access to the proprietary data of Contractor that does not relate to the Owner engagement.

§ 13.11 CONFLICTS OF INTEREST

§13.11.1 Except with the Owner's knowledge and consent, the Contractor shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Contractor's professional judgment with respect to this Project.

§13.11.2 The Contractor warrants and represents that neither the Contractor, nor its principals or employees, shall use information and data relating to this Project or the planning thereof, its location and capacities as well as any other information to or for its own benefit, personal or corporate, either directly or indirectly, and that as near as is practical, such information shall be held in confidence until released to the general public by the Owner. The Contractor warrants and represents that neither the Contractor, nor its principals or employees, shall benefit, directly or indirectly, from the location or siting of any line, adjuncts or treatment facilities involved in this Project, nor from the acquisition of property or rights-of-way necessary to this Project, except as to property owned and purchased prior to knowledge of the location of this Project. The Contractor further warrants and represents that any Ownership interest or financial interest of every kind and nature of any amount which the Contractor, its principals or employees, may have in any property which may be affected by this Project is set forth in a full, written disclosure to Owner.

§ 13.12 ABSENCE OF CERTAIN COMMERCIAL PRACTICES

§13.12.1 Contractor and any Subcontractors or Sub-subcontractors acknowledge that neither they nor any officer, director, employee or agent (nor any person acting on behalf of any of the foregoing), has given or agreed to give any gift or similar benefit, including, without limitation, any contribution, payment or expenditure, of more than nominal value to any customer, supplier, or other governmental employee or official or any other person who is or may be in a position to help or hinder Contractor including in the securing of this contract.

§ 13.13 PUBLIC RECORD

§13.13.1 The Parties understand that Owner is subject to the South Carolina Freedom of Information Act, ("FOIA") S.C. Code Ann. §§ 30-4-10, et seq. However, to the extent that any information disclosed to Owner in connection with this Agreement is exempt from disclosure under, *inter alia*, S.C. Code Ann. §§ 30-4-40 (a)(1) (trade secrets), (a)(2) (information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy), (a)(5) (documents incidental to proposed contractual arrangements under consideration) and (a)(5)(c) (confidential proprietary information provided to a public body for economic development or contract negotiations purposes), Owner agrees not to disclose said exempt material.

§13.13.2 Provided, however, that any documents or information provided Owner by Contractor which may fall under any FOIA exemption must be marked on each page (or section thereof) indicating that it is exempt.

§13.13.3 Contractor recognizes that documents subject to the "proposed contractual negotiation" exemption under S.C. Code Ann. § 30-4-40(a)(5) only applies while the Agreement is under consideration, and that after this Agreement becomes effective, documents formerly exempt under this section will no longer be exempt from FOIA.

§13.13.4 Owner is under no duty to withhold documents for which an exemption is erroneously asserted. Contractor shall be responsible for clearly marking any information it deems proprietary based on provisions of the Freedom of Information Act. Owner assumes no responsibility for the release of information not clearly and properly labeled as exempt under the FOIA.

§ 13.14 PERSONAL LIABILITY/NO THIRD PARTY BENEFICIARIES

§13.14.1 Nothing in the Contract Documents shall be construed as creating any personal liability on the part of any officer or agent of the Owner, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Owner and the Engineer.

§13.15 **Force Majeure.** Any delays in, or failure of, performance by ReWa or Engineer shall not constitute breach hereunder, if and to the extent such delays or failures of performance are caused by Acts of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or request of, or other action taken by, any governmental (including judicial) authority; act of war; rebellion, sabotage or damage resulting therefrom; fires, floods, hurricanes, ice storms, tornado, and other like storms and disasters, explosions, calamities, accidents; riots, strikes, labor disputes or shortages, or other concerted acts of workmen, whether direct or indirect and whether foreseen or unforeseen; acts or omissions of the other Party in conflict with the terms of this Agreement; or any causes whether or not of the same class or kind as those specifically named, which are not within the control of that, and which by the exercise of reasonable diligence, that Party is unable to prevent (collectively, "Force Majeure").

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS**§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Engineer, if the Engineer is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. However, the claimant shall use its best efforts to furnish the Engineer and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such a claim is recognized, and shall cooperate with the Engineer and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Subparagraph 15.1.2. If a claim is reserved, the Resolution of Claims and Disputes procedures described in Article 15 shall not commence until a written from the claimant is received by the Engineer. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be addressed pursuant to the provisions of Paragraph 8.3.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Except to the extent covered by the valid and collectible insurance required respectively to be carried by the Contractor or Owner under Article 11, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract; provided, however, that in no event shall this mutual waiver be deemed to preclude (i) an award of liquidated damages recoverable under the Agreement; (ii) the use of diminished income stream in the calculation of "diminution of value" of the Work, in the event the Owner exercises its rights under Paragraph 12.3 to reduce the Contract Sum by an appropriate amount; or (iii) the obligation of the Contractor to reimburse the Owner for any fines from governmental entities or additional costs and expenses for the Engineer or other consultants, or separate contractors, arising out of any act or omission of the Contractor. The parties agree that would be difficult to determine the damages sustained by each party. The parties agree that the amounts contained in the Contract Documents as liquidated damages are the parties' good faith estimates of the harm caused by a delay in the completion of the Work or the Project. The above waiver is made upon the parties consent as to the enforceability of the liquidated damages provisions in the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision if the claimant first recognizes the claim prior to the date of final payment. The Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Engineer, if the Engineer is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Engineer in response to a claim shall not be a condition precedent to arbitration in the event (1) the position of the Engineer is vacant, (2) the Engineer has failed to render a decision within the agreed

time limits, (3) the Engineer has failed to take action required under Subparagraph 15.2.5 within thirty (30) days after the Claim is made, or (4) the Claim relates to a Construction lien.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by an attorney licensed to practice in South Carolina (who shall be jointly selected by the Parties) in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In no event shall any mediator in connection with a Claim be permitted to serve as an arbitrator for that, or any other, Claim that is not resolved pursuant to mediation.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be conducted by an attorney licensed in the State of South Carolina pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association in effect on the date of the Agreement. The parties shall mutually agree upon the arbitrator. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration. The parties may use all methods of discovery available under the Federal Rules of Civil Procedure and shall be governed thereby. Prior to the deposition of any expert witness, the party proposing to call such a witness shall provide a full and complete report by the expert, together with the expert's calculations and other data by which the expert reached any opinions concerning the subject matter of the arbitration. The report shall be provided no more than ten (10) days prior to the date set forth

in the expert witness's deposition. The Federal Rules of Evidence shall be applied by the arbitrator but liberally construed to allow for the admission of evidence that is helpful in resolving the controversy.

§ 15.5 CONSOLIDATION OR JOINDER

§ 15.5.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.5.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.5.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

§ 15.5.4 **LITIGATION** To the extent that the prior, binding arbitration shall be deemed unenforceable, the parties agree that any dispute between them, whether or not relating to this Agreement, and whether arising in law, statute, or equity shall be resolved exclusively in the State Court of Common Pleas for the State of South Carolina, Greenville County or in the Federal Courts for the District of South Carolina, Greenville Division. Both parties consent to personal jurisdiction and venue in the selected venue and acknowledge that such location is the most convenient forum for the resolution of any such Claim or dispute.

ARTICLE 16 CONTRACTOR'S OBLIGATIONS WITH REGARD TO WORK

§ 16.1 SEQUENCING OF THE WORK

§ 16.1.1 When the Work is related to existing wastewater flows, the Contractor shall conduct his work in a manner and sequence that will provide for the continued transportation of wastewater flows during construction. Any bypass, diversion or interruption of any wastewater flows required shall be performed in a manner that will prevent discharge (on the ground directly or indirectly into any water way or water supply) or back-up of the flow into private residences. Any lines, systems, or facilities constructed under this contract shall not be used to transport flow until approval is secured from the S. C. Department of Health and Environmental Control by the Contractor. Prior to beginning construction and when requested by Owner of the Engineer, the Contractor shall submit for the Engineer's review, a proposed construction sequence that outlines the Contractor's plan for maintaining flow and shall be furnished by the Contractor. Upon project completion the Contractor shall remove all temporary structures and equipment and repair all damage caused by such installation.

§ 16.2 EXISTING UTILITIES

§ 16.2.1 Special precautions shall be taken by the Contractor to avoid damage to existing overhead and underground utilities owned and operated by the Owner or by public or private utility companies. Contractor shall be solely liable for any damage to Owner's or third-parties' existing utility infrastructure caused by the Work.

§ 16.2.2 With particular respect to existing underground utilities, all available information concerning their location has been shown on the plans. While it is believed that the locations shown are reasonably correct, neither the Engineer nor the Owner can guarantee the accuracy or adequacy of this information.

§ 16.2.3 Before proceeding with the work, the Contractor shall confer with all public or private companies, agencies or departments that own and operate utilities in the vicinity of the construction work. The purpose of the conference, or conferences, shall be to notify said companies, agencies, or departments of the proposed construction schedule, verify the location of, and possible interference with, the existing utilities that are shown on the plans, arrange for necessary suspension of service and make arrangements to locate and avoid interference with all utilities (including house connections) that are not shown on the plans. The Engineer and the Owner have no objection to the Contractor arranging for the said utility companies, agencies, or departments to locate and uncover their own

utilities; however, the Contractor shall bear the entire cost of and responsibility for locating and avoiding or repairing damage to said existing utilities.

§ 16.2.4 The Contractor will locate all unknown metallic hazards and all underground utilities, namely buried pipe, metals, cabling etc. by using a locator device. Contractor's use of the locator device shall immediately precede the trench ditching and all hazards located and marked in such manner as to notify the machine operator of such hazard.

§ 16.2.5 When existing utilities or appurtenant structures, either underground or above ground are encountered, they shall not be displaced or molested unless necessary, and in such case shall be replaced in as good or better condition than found as quickly as possible. Permanent or temporary relocation and replacement of all utilities and appurtenant structures to accommodate the construction work shall be at the Contractor's expense.

§ 16.2.6 Contractor shall advise the Owner and Engineer of all tie-ins that will be completed with existing utilities. In addition, Contractor shall be responsible for securing the approval and arranging for inspections by any utilities that must certify a "tie-in" or connection to existing utility infrastructure. To the extent Contractor will be establishing "tie-ins" to Owner's infrastructure, Contractor must coordinate said "tie-ins" and any necessary certifications with Owner. Contractor and Owner will cooperate on the attachment and location of any planned utility infrastructure. Contractor must meet and confer with the Owner and Engineer at least ninety (90) days before the planned Work.

§ 16.3 WORK TO BE EXECUTED BY CONTRACTOR'S FORCES

§ 16.3.1 Contractor shall execute on site, with Contractor's forces (exclusive of executive, supervisory and clerical forces), actual contract construction work equivalent to not less than fifty percent (50%) of the contract award price.

§ 16.3.2 Construction work shall consist of the Work accomplished on the site by laborers, mechanics, and foremen on Contractor's payroll and under Contractor's direct supervision. Cost of material and equipment installed by such labor may not be included in the above percent of work required to be performed by the Contractor. If, during the progress of the work hereunder, Contractor requests a change in activities of work to be performed by the Contractor's forces and the Owner determines it to be in his best interests, the Owner may, in its sole discretion, authorize a change in such activities of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the Contractor's forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

§ 16.3.3 In the event Contractor fails or refuses to meet the requirements of Paragraph 16.3, it is expressly agreed that the contract price will be reduced by fifteen percent (15%) of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this provision, it is agreed that fifteen percent (15%) is an acceptable estimate of the Contractor's overhead and profit, or markup, on that portion of the work which Contractor fails or refuses to perform, with Contractor's forces, in accordance with Paragraph 16.3.

§ 16.4.3 The Contractor will participate in Project Coordination Meetings to be held on the site monthly, or more often if conditions warrant, to establish the current state of completion of the Work and revise the CPM Schedule as necessary. The Project Coordination Meeting will be conducted by the Engineer. Before each Project Coordination Meeting, the Contractor shall develop and refine detailed Near Term Schedules to aid in the short range implementation of the OPS. The Near Term Schedule shall depict day-to-day activities with committed completion dates which must be performed during the upcoming six to ten week period. These detailed schedules shall represent the Contractor's best approach to the work which must be accomplished to maintain progress consistent with Overall Project Schedule.

§ 16.4.4 At each Project Coordination Meeting, the Contractor shall present and distribute to the Engineer a written report including: (1) job progress relative to the OPS, including an Early/Late Start, Early/Late Finish and Total Report; (2) updated Near Term Schedules, (3) a status review of the project, (4) problems encountered and action being taken to resolve them, (5) a Trend Chart showing project completion dates of significant areas of the project, (6) a listing of critical work to be performed prior to the next Project Coordination Meeting, (7) a listing of behind-schedule materials and equipment procurement activities, (8) a listing of any significant changes in the activities and

restraints occurring since the last Project Coordination Meeting, (9) an up-dated relationship report with all activities and restraints shall be furnished if requested by the Engineer, and (10) a safety report in a form or in such a manner as requested by Owner or Engineer.

§ 16.4.5 Contractor's failure to submit the required reports may be a cause for withholding of payment.

§ 16.5 CONTRACTOR'S SCHEDULING OPERATIONS

§ 16.5.1 Contractor shall implement the detailed Near Term Schedule of activities to the fullest extent possible between Project Coordination Meetings.

§ 16.5.2 If a current activity or series of activities on the OPS is behind schedule and if the late status is not due to an excusable delay for which a time extension would be forthcoming, the Contractor shall attempt to reschedule the activity to be consistent with the Overall Project Schedule so as not to delay any of the Contract milestones. The Contractor agrees that Contractor will attempt to expedite the activity completion so as to have it agree with the OPS. If, within two weeks of identification of such behind-schedule activity, the Contractor is not successful in restoring the activity to an on schedule status, he shall: (1) carry out the activity with the scheduled crew on an overtime basis until the activity is complete or back on schedule without a cost increase to the Owner; or (2) increase the crew size or add shifts so the activity can be completed as scheduled without a cost increase to the Owner; commit to overtime or increased crew sizes for subsequent activities, or some combination of the above as deemed suitable by the Engineer without a cost increase to the Owner. These actions shall be taken at no increase in the Contract amount.

§ 16.6 SILTATION AND EROSION CONTROL

§ 16.6.1 Surface drainage from cuts and fills within the construction limits, whether or not completed, and from borrow and waste disposal areas, shall, if turbidity producing materials are present, be graded by Contractor to control erosion within acceptable limits. Temporary erosion and sediment control measures such as berms, dikes, silt fences, or drains, if required to meet the above standards, shall be provided and maintained by Contractor until permanent drainage and erosion control facilities are completed and operative.

§ 16.6.2 Contractor shall use its reasonable best efforts to keep the area of bare soil exposed at any one time by construction operations to a minimum. Fills and waste areas shall be constructed by selective placement to eliminate silts or clays on the surface that will erode and contaminate adjacent streams.

§ 16.6.3 Any land disturbing activity performed by the contractor(s) in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with federal, state, and local law. Contractor's attention is drawn to the Standards for Stormwater Management and Sediment Reduction as promulgated by the South Carolina Department of Health and Environmental Control pursuant to the authority of S.C. Code § 48-18-10 *et seq.*, and enforced by the respective counties of South Carolina. Contractor shall comply with any additional requirements imposed by a County or other local government governing siltation and erosion control.

§ 16.7 SALVAGE

§ 16.7.1 Materials indicated on the Drawings to be removed and salvaged for Owner shall be carefully removed and transported to the Owner's appropriate material storage yard. Contractor shall transport these salvage materials to the location specified in the Contract Documents or as specified by Owner or Engineer.

§ 16.8 WORK INVOLVING EASEMENTS

§ 16.8.1 When the work to be performed is within an easement obtained by the Owner over the property of another, the contractor shall notify such other property owner over whose property the easement was obtained of the following: (i) that this Contractor has been awarded the work, giving the full and proper name of the Contractor and permanent address; (ii) the name, telephone number and address of the Contractor's representative in charge of the job; (iii) an estimate as to when work may be begun in the area; (iv) a description of the Contractor's responsibility as set forth below including a statement that the Contractor is directly responsible to such Owner for damages; and (v) that the Contractor, during and after construction, shall be responsible to such property owner and review any claim of damage to the property, and make such repairs as are required by this Contract.

EXHIBIT A

DESIGNATION OF PROJECT REPRESENTATIVES

(To be attached following this Cover Page)

EXHIBIT B

CONTRACTOR'S STANDARD FORM SUBCONTRACT

(To be attached following this Cover Page)

EXHIBIT C

CONSTRUCTION SCHEDULE

(To be attached following this Cover Page)

DIGITAL DATA PROTOCOL

AIA DOCUMENT E201 (2007) AS MODIFIED BY THE PARTIES

(To be attached following this Cover Page)

CONTRACT FOR CONSTRUCTION

AIA DOCUMENT A101 (2007) AS MODIFIED BY THE PARTIES

(To be attached following this Cover Page)

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA
UNIFORM ARBITRATION ACT.: SC CODE ANN. §15-48-10 ET SEQ. AND THE FEDERAL
ARBITRATION ACT 9 U.S.C. 1 ET SEQ.**

AGREEMENT made as of the [] day of [] in the year []
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Renewable Water Resources “ReWa”, a special purpose district and political subdivision of the State of South Carolina
561 Mauldin Road
Greenville, South Carolina 29607
Telephone Number: (864) 299-4000

and the Contractor:
(Name, address and other information)

for the following Project:
(Name, location and detailed description)

Construction Indefinite Delivery Contract

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in Article 9 of this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk, and expense shall construct, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents and governmental/regulatory codes and regulations as they apply to the performance of the Work.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner to the Contractor in writing, which shall be issued no less than fifteen (15) days prior to the date of commencement..

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 3.2 The Contractor's period of service shall commence upon execution of this Agreement and shall remain in effect for three (3) years with an option for renewal for four (4) one-year extensions up to a total of seven (7) years duration of this Agreement.

§ 3.3 Assigned Projects may include a schedule of "Milestones" communicated and agreed upon by Contractor and Owner; this schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over assigned Project. Time limits established by schedules on assigned Projects shall not, except for reasonable cause, be exceeded by the Contractor.

§ 3.3.1 The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that the Owner has entered into, or will enter into, binding agreements regarding all of part of the Project where the Work is to be completed based upon the Contractor's achieving Substantial Completion of the Work within the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and the Contractor agree as set forth below in this Paragraph 3.4.

§ 3.3.2 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day of the following the expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work.

Substantial Completion Not Achieved:

1 or more days after expiration of Contract Time: \$500 per day

Final Completion Not Achieved:

1 or more days after expiration of Contract Time: \$500 per day

§ 3.3.3 The Owner may deduct liquidated damages described in Subparagraph 3.4.1 from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at the lower of the South Carolina post-judgment statutory interest rate or the highest lawful rate of interest payable by the Contractor.

§ 3.3.4 The Contractor shall not be entitled to an extension of time nor to additional compensation until notice of such conduct or delay in the form of a request for information, letter, or other request is first given to Owner and Engineer, and the same remains uncured for forty-eight (48) hours thereafter.

§ 3.3.5 No extension of time shall be granted unless the Contractor shall demonstrate that the delay in completion of the Work was caused by a delay in a portion of the Work that was on the critical path of the Project. The completion time contemplated by this Agreement anticipates a certain number of lost days due to normal weather conditions. Only unusual or severe weather conditions, beyond the contemplation of the Contract Documents, will be considered as justification for a delay in completion of the Work.

ARTICLE 4 CONTRACT SUM

§ 4.1 Total expenditure per this Agreement shall not exceed Four Million and 0/100 (\$4,000,000.00) Dollars per three-year period. (Calculated as three, twelve month periods from the Effective Date).

Each individual Project expenditure shall not to exceed One Million and 0/100 (\$1,000,000.00) Dollars annually.

4.1.1 Contractor shall be compensated for the Services in accordance with the provisions of Compensation Schedule:

Compensation Schedule
(To be attached following this Cover Page)

4.1.2 Additional services provided by the Contractor which are not included in the above amounts shall be provided for at the same rates and charges as set forth in the Compensation Schedule.

§ 4.2 The Contract Sum includes the following alternatives, which are described in the Contract Documents and may be accepted by the Owner in Writing; provided, however, that the Contractor shall furnish the Owner with no less than fourteen (14) days' prior written notice of the date upon which any of the alternatives set forth in the Paragraph 4.2 must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternatives for the price set forth in this Paragraph 4.2 and without any adjustment to a Milestone Date or in the Contract Time. *(State the numbers or other identification of accepted alternates. If the Bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

§ 4.3 Unit Prices are set forth in the "Schedule of Unit Prices" attached hereto and made a part hereof as Exhibit A. Such Unit Prices are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead, and profit and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such Unit Prices apply.

§ 4.4 Allowances are set forth in the "Schedule of Allowances" attached hereto and made a part hereof as Exhibit B.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment, including all required supporting documentation, submitted to the Owner and the Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents, including, but not limited to, Article 9 of the General Conditions of the Contract.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Timing of the submission, approval, certification, and payment of an Application for Payment shall be as provided in the General Conditions and the Contract Documents.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. An Application for Payment must comply with all requirements of the General Conditions. Contractor's failure to comply with the requirements of the Contract Documents shall be grounds for Owner and/or Engineer to refuse the Application for Payment. In addition to the other required items, each Application for Payment shall be accompanied by all of the items required in Subparagraph 9.3.1.3 of the General Conditions of the Contract.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of **Ten percent (10.00%)**. Pending final determination of cost to the Owner of changes in the Work, amounts not in

dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended by the parties;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of **Ten percent (10.00%)**;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007, as amended by the parties.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Engineer shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007, as amended by the parties.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Except as hereinafter provided, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor or (ii) any other right or remedy that the Owner has under the Contract Documents, under statute, at law, or in equity.

If the work is fifty percent (50%) complete (not including the value of stored material), the Contractor may request in writing to the Owner and the Engineer that retainage be reduced on all future Applications for Payment. The Engineer will have fifteen (15) calendar days to review the Contractor's request and to either approve or reject the request in writing. The criteria on which the Engineer will base his decision are as follows:

- (a) The job must be progressing on time and in accordance with the Contractor's CPM schedule.
- (b) The dollar value of work completed must be greater than fifty percent (50%) of the total contract amount. This dollar value of work completed will not include stored material.
- (c) There must be no other specific reason to maintain ten percent (10%) retainage.

If the Engineer approves the request, Engineer will inform the Owner of the suggested amount of the reduction. The reduction will not exceed five (5%) percent. The Owner may or may not grant the request in its sole discretion, however, the Owner will notify the Engineer of his decision in writing within fourteen (14) days of the receipt of the Engineer's recommendation.

If the Owner approves of the retainage reduction, such reduction shall be made and will apply to all Applications for Payment submitted by the Contractor after the date of approval.

The Owner may reinstate up to the original ten percent (10%) withholding if the Owner determines, at its discretion, that the Contractor is not making satisfactory progress towards Substantial Completion or Final Completion or there is another specific cause for such withholding.

Payments will be made in accordance with the terms of the Contract Documents.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Engineer;
- .3 all punch list items have been completed to the Owner's satisfaction;
- .4 all certifications and inspections have been completed, passed, and received from any governmental or regulatory body having authority over the Work;
- .5 Contractor has submitted a marked set of field record drawings reflecting "as-built" conditions;
- .6 Contractor has provided all maintenance, service, and operating manuals as required by the General Conditions of the Contract; and
- .7 Contractor has met all of the requirements of Paragraph 9.10 of the General Conditions of the Contract.
- .8 Contractor has resolved any outstanding disputes with subcontractors relating to the Project and as requested by Engineer has obtained claim/bond/lien releases.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

As provided in Article 9 of AIA Document A201-2007, General Conditions of the Contract, as modified.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Engineer will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, as modified, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Engineer.)

As provided in Section 15.2 of AIA Document A201-2007, General Conditions of the Contract, as modified.

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007 as modified, the method of binding dispute resolution shall be as provided in Article 15 of AIA Document A201-2007 as modified.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007, as modified by the parties.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007, as modified by the parties.

§ 7.3 In addition to any other basis specified in the Contract Documents, the following shall constitute bases for termination by the Owner:

- .1 Contractor's failure to commence the Work in accordance with the terms of the Contract;
- .2 Contractor's failure to prosecute the Work, or any work reflected in a Change Order or Construction Change Directive in writing and agreed to by the Contractor in a diligent, efficient, workmanlike, skillful, and careful manner, and in accordance with the terms of the Contract Documents;
- .3 failure to use an adequate amount of quality personnel or equipment to complete the Project on schedule; or
- .4 failure to make prompt payments to Contractor's Subcontractors, material suppliers, and laborers.

These bases are in addition to those specified in Article 14 of the AIA A201 General Conditions as modified by the parties.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Owner shall not be required to pay any late penalties or interest on any amounts claimed to be overdue.

§ 8.3 The Owner's representative:

(Name, address and other information)

As specified in Exhibit A to AIA Document A201–2007, General Conditions of the Contract, as modified.

§ 8.4 The Contractor's representative:

(Name, address and other information)

As specified in Exhibit A to AIA Document A201–2007, General Conditions of the Contract, as modified.

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 WARRANTIES

§ 8.6.1 The Contractor represents and warrants the following to the Owner (in addition to any other representations and/or warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final Completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder;

- .3 that is authorized to do business in the State of South Carolina and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- .4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, familiarized him/herself with the local and special conditions under which the Work is to be performed, and correlated his/her observations with the requirements of the Contract Documents; and
- .6 that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§ 8.7 WORKING HOURS

§ 8.7.1 No work shall be done between the hours of 5:00 pm ET and 7:00 am ET (Monday through Friday) without the permission of the Owner. No work shall be done from 5:00 pm ET Friday until 7:00 am ET Monday (the weekend) without the permission of Owner. Owner, except as provided in this section 8.7, shall not be responsible for any overtime work performed on the Project. Any requests for overtime shall be received by Owner a minimum of five (5) working days before the requested overtime work is to begin. Nothing herein shall be construed as a prohibition on overtime work during emergencies, as defined herein.

§ 8.7.2 Night Work (occurring between the hours of 5:00 pm ET and 7:00 am ET) shall not be a regular procedure. However, Night Work may be undertaken as a regular procedure with the express, written permission of the Owner. Owner's permission, however, may be revoked at any time in Owner's sole discretion. Owner shall revoke the permission granted for Night Work if Contractor fails to maintain adequate equipment and supervision for the proper, workmanlike prosecution and control of the Work.

§ 8.7.3 Except in an emergency, in no event shall Contractor perform Work in any easements that lie within one-quarter (1/4) mile of a residence, during the period from two hours after sunset until one hour before sunrise ("Daylight Hours"), Monday through Saturday. Except in an emergency, in no event shall Work be performed on a Sunday if within one-quarter (1/4) mile of a residence, church, synagogue, temple, mosque, or other place of worship.

§ 8.7.4 If the Contractor works more than eight (8) hours per day or forty (40) hours per week, Contractor shall reimburse Owner for overtime on account of overtime inspection and supervision costs. Engineer and Owner shall be solely responsible for determining if overtime inspection and supervision is required. In determining the overtime costs that will be passed on to Contractor, they shall be all charged incurred by Owner. For purposes of estimating costs or fixing sums to be paid by Owner to Contractor, the Contractor shall assume that both Engineer and Owner will provide an inspector at all times when the Contractor or any subcontractor is performing any Work or is present on the site of the Project. For estimating purposes, the Contractor shall assume that 1.5 hours of engineer's project representative's time will be charged for each hour of overtime that the Contractor is on the jobsite." Contractor shall insure that a project superintendent is on-site during the performance of any Work by Contractor or any subcontractors, including during Night Work or overtime Work.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed, AIA Document A101–2007, as modified, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction as modified by the Parties.

§ 9.1.3 The entire volume of Contract Documents as bound by the Owner, which includes any Addenda (which pertain to the Contract Documents), the Contractor’s Bid or Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award), the Bonds, the Notice of Award, the Notice to Proceed, these General Conditions, the Supplemental Conditions, any Supplemental or Additional Conditions, the Specifications, the Drawings, together with all Modifications issued after the effective date of the Agreement.

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Specifications, Exhibit C

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Schedule of Drawings, Exhibit D

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to Bidding requirements are not part of the Contract Documents unless the Bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following: N/A

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007, as modified.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007, as modified.)

Type of insurance or bond	Limit of liability or bond amount (\$ 0.00)
Workers’ Compensation and Employer’s Liability -Workers’ Compensation -Employer Liability	Statutory Limits \$500,000 per occurrence/\$500,000 aggregate
Commercial General Liability -Contractor’s Public Liability -Contractor’s Protective (contingent) liability -Contractual Liability (broad form) -Broad Form Contractual Coverage -Projects/Completed Operation Liability -Personal Injury and Liability	Each Policy, individually: \$1,000,000 per occurrence, \$1,000,000 aggregate. (NOTE: the above CGL policy shall include coverage for explosion, collapse, and underground (XCU) hazards, and loss arising from nuisance, taking, whether inverse or direct taking or negligence).

-Property Damage Liability (broad form)	Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the work performed under the contract.
Comprehensive Automobile General Liability including owned, non-owned, and hired vehicles (Business auto liability, symbol 1)	Bodily Injury and Property Damage, \$1,000,000 each occurrence
Umbrella Liability policy (Comprehensive Umbrella—excess of all coverages above)	\$1,000,000 per occurrence

This Agreement entered into as of the day and year first written above.

OWNER (*Signature*)

Graham W. Rich, Chief Executive Officer

(*Printed name and title*)

CONTRACTOR (*Signature*)

(*Printed name and title*)

EXHIBIT A

SCHEDULE OF UNIT PRICES

(To be attached following this Cover Page)

EXHIBIT B

SCHEDULE OF ALLOWANCES

(To be attached following this Cover Page)

EXHIBIT C

SPECIFICATIONS

*(See Sections 01010 et. seq. of the Contract Documents (“Technical Specifications”),
incorporated herein by reference)*

EXHIBIT D

SCHEDULE OF DRAWINGS

*(See Section 00910 of the Contract Documents (“Schedule of Drawings”),
incorporated herein by reference)*

SUPPLEMENTAL CONDITIONS

INSERT

ADDENDA

(To be attached following this Cover Page, As Issued)

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned attorney, the duly authorized and acting legal representative of Renewable Water Resources "ReWa", do hereby certify as follows:

I have examined the attached contract(s), surety bonds, and certificate of insurance with endorsements and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

Attorney for Renewable Water Resources

Date

NOTE: This Certificate must be obtained prior to final delivery of the executed contract to the Contractor and prior to the issuance of the Notice to Proceed. Allow a minimum of five (5) days for review by the Attorney.

At the time this certificate is presented to the Owner's Attorney, the following shall also be presented for final review:

1. Executed copies of all documents, except plans and specifications.
2. Bid Bond, Performance Bond and Payment Bond which are:
 - a. On the Owner's Forms;
 - b. Not to be dated prior to the date stated as the "Effective Date" of the Contract (applies to the Performance Bond and Payment Bond);
 - c. By a surety listed upon U.S. Treasury Department's most current list (Circular 570, as amended);
 - d. Reflect a Power of Attorney or an Attorney-in-Fact registered in South Carolina.
3. Minutes of the Authority authorizing the execution of the Contract by the person signing.
4. A copy of a corporate resolution, partnership agreement, power of attorney, or other documentation which authorized the Contract and authorizes and identifies the person signing on behalf of the contracting entity. If a sole proprietorship, a certificate by the owner of that fact is to be furnished. If a partnership, a certificate of that fact is to be supplied by every partner.
5. If the Contractor is a non-resident, compliance (including execution of the attached affidavit) must be shown with S.C. Code Ann. §12-8-550, quoted here:

A person hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall withhold two percent of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed ten thousand dollars. This section does not apply to a nonresident which registered with the Secretary of State or the Department of Revenue and by that registration agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Registering with the Secretary of State or the department is not an admission of tax liability nor does it require the filing of an income tax or franchise (license) tax return. If the person hiring, contracting, or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the department or with the Secretary of State, the person is not responsible for the withholding.

6. Documentation (including execution of the attached affidavit) demonstrating Renewable Water Resources will not bear the burden of withholding and accounting and requires any such out-of-state contractor to seek and obtain such a bond so that withholding will not be necessary. Proof of such a bond must be submitted to the Owner prior to any payments being made to the Contractor and must be submitted prior to certification by Owner's attorney.

NOTICE TO PROCEED

To: _____

Project Description: Construction Indefinite Delivery Contract Project

Date: _____

You are hereby notified to commence Work in accordance with the Agreement dated the _____ day of _____, 20____ on or before the _____ day of _____, 20____, and you are to complete the Work within _____ consecutive calendar days thereafter.

The date of completion of all Work is therefore the _____ day of _____, 20____.

Renewable Water Resources

By: _____
Title: _____

Acceptance of Notice to Proceed

Receipt of the above Notice to Proceed is hereby acknowledged by _____
_____,¹³ this _____ day of _____, 20____.

Signature: _____
By: _____
Title: _____

¹³ Name of business receiving award

PAYMENT BOND

KNOWN BY ALL MEN BY THESE PRESENTS that:

(Name of Contractor)

with an address of:

a _____,¹⁴ organized and existing under the laws of the state
of _____,¹⁵ hereinafter called the "Principal," and

(Name of Surety)

with and address of:

hereinafter called the "Surety," are held and firmly bound unto Renewable Water Resources "ReWa" with an address of 561 Mauldin Road, Greenville, South Carolina 29607, hereinafter called "Owner," in the penal sum of _____ (\$____.____) dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the ____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of the:

Construction Indefinite Delivery Contract Project

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due to materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment, and tools, consumed or used in connection with the construction of such

¹⁴ Insert whether business is a sole proprietorship, partnership, limited liability company, corporation, etc.

¹⁵ If sole proprietorship or partnership, insert the primary place of business. If a limited liability company or corporation, insert the state of formation or incorporation.

Work whether by Subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

This Bond being executed in three (3) counterparts.

PRINCIPAL:

ATTEST (2 individuals):

Signature

Signature

Principal: _____

Name: _____

Address: _____

By: _____

Signature

Title: _____

Name: _____

Date: _____

(CORPORATE SEAL)

SURETY:

ATTEST (2 individuals):

Signature

Signature

Surety: _____

Name: _____

Address: _____

By: _____

Signature

Name: _____

Its: Attorney-in-Fact (SC Resident)

Date: _____

(CORPORATE SEAL)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is partnership, all partners should execute Bond. **IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of South Carolina. *Please see the detailed requirements of Paragraph 11.4 of the General Conditions.*

NOTE: If this Bond is executed by way of a power of attorney, an original of the power of attorney must be attached hereto stating the limits of that authority.

PERFORMANCE BOND

KNOWN BY ALL MEN BY THESE PRESENTS that:

(Name of Contractor)

with an address of:

a _____,¹⁶ organized and existing under the laws of the state
of _____,¹⁷ hereinafter called the "Principal," and

(Name of Surety)

with and address of:

hereinafter called the "Surety," are held and firmly bound unto Renewable Water Resources "ReWa" with an address of 561 Mauldin Road, Greenville, South Carolina 29607, hereinafter called "Owner," in the penal sum of _____ (\$____.____) dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the ____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of the:

Construction Indefinite Delivery Contract Project

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the two year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner

¹⁶ Insert whether business is a sole proprietorship, partnership, limited liability company, corporation, etc.

¹⁷ If sole proprietorship or partnership, insert the primary place of business. If a limited liability company or corporation, insert the state of formation or incorporation.

from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

This Bond being executed in three (3) counterparts.

PRINCIPAL:

ATTEST (2 individuals):

Signature

Signature

Principal: _____

Name: _____

Address: _____

By: _____

Signature

Title: _____

Name: _____

Date: _____

(CORPORATE SEAL)

SURETY:

ATTEST (2 individuals):

Signature

Signature

Surety: _____

Name: _____

Address: _____

Signature

By: _____

Name: _____

Its: Attorney-in-Fact (SC Resident)

Date: _____

(CORPORATE SEAL)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is partnership, all partners should execute Bond. **IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of South Carolina. *Please see the detailed requirements of Paragraph 11.4 of the General Conditions.*

NOTE: If this Bond is executed by way of a power of attorney, an original of the power of attorney must be attached hereto stating the limits of that authority.

CHANGE ORDER

Owner: Renewable Water Resources "ReWa" Change Order Number: _____

Project: Indefinite Delivery Contract Construction Services Date: _____

Engineer: Date of Submission to Engineer: _____

The following changes are made to the Contract Documents (explain change and reason for change):
(Attach any drawings or other documentation necessary to explain or demonstrate this change.)

Original Contract Price: \$ _____.

Current Contract Price as adjusted by previous Change Orders: \$ _____.

Change to Contract Price from Previous Change Orders: \$ _____.

The Contract Price due to this Change Order will be (increased)/(decreased) by: \$ _____.

The new Contract Price including this Change Order will be: \$ _____.

The Contract Time will be (increased)/(decreased) by this many calendar days: _____ days

The date of completion of all the Work due under the Contract Documents will therefore be: _____, 20__

THE CONTRACTOR AFFIRMS, REPRESENTS AND WARRANTS AS OF THIS DATE THAT THERE ARE NO OTHER OUTSTANDING CHANGE ORDERS REQUIRED BY THE CONTRACTOR, OR OUTSTANDING CLAIMS FOR ANY ADDITIONAL MONEY OR COSTS, INCLUDING IMPACT COSTS OR DAMAGES OR CLAIMS FOR TIME EXTENSION, OR CLAIMS OF ANY OTHER KIND OR NATURE AGAINST THE OWNER, EXCEPT THE FOLLOWING: (Describe separately here each and every claim, state the total dollar amount and/or time extension sought per claim alleged to be due from the Owner, and the status of the claim as of

this date to keep the status of claims current. **This must be done on each change order** even though the claim may have been listed on prior change orders or payment requests.)

Requested by: _____
 (Requestor's Signature and Title)

on behalf of the Contractor pursuant to those provisions of the Contract Documents. *Contractor hereby certifies that its Bonding Company will be notified forthwith that the contract has been increased/decreased by the amount of this Change Order, and that a copy of the approved Change Order will be mailed upon Contractor's receipt by Contractor to Contractor's Surety.*

Recommended by: _____
 (Engineer's Signature and Title)

on behalf of _____ (Engineer) pursuant to those provisions of the Contract Documents.

- | | | |
|--|-----|----|
| 1.) Can Contractor mitigate this change without requiring a contract time extension? | Yes | No |
| 2.) Are additional costs indicated by reason of the time extension? | Yes | No |
| 3.) Is the Contractor's estimate of time and expenses reasonable? | Yes | No |
| 4.) Does Engineer certify that it has reviewed all aspects of this Change Order and have determined that it is in the best interest of Owner to have the work accomplished? Does Engineer recommend acceptance by the Owner? | Yes | No |

AGREED.

Renewable Water Resources "ReWa"

Contractor

 Signature

 Signature

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

CONSTRUCTION CHANGE DIRECTIVE

Owner: ReWa

Construction Change Directive Number: _____

Project: Indefinite Delivery Contract Construction Services

Date: _____

Engineer:

Date of Submission to Engineer: _____

Description of Work Covered by this Directive *(Attach any drawings or other documentation necessary to explain or demonstrate this change.):*

Reason for the Directive:

Method of Adjustment:

- Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation
- Unit prices stated in the Contract Documents or subsequently agreed upon
- Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee
- As provided in 00610 Section 7.3.7

Details of Adjustment:

Adjustment Applied to:

- Contract Price

Original Contract Price: _____

Change to Contract Price from previous Change Directives: _____
Contract Price due to this Change Directive (differential) increased/decreased by: _____
New Contract Price as adjusted by this Change Directive: _____

Contingency Allowance
Original Contingency Amount: _____
Change to Contingency from previous Change Directives: _____
Contingency due to this Change Directive (differential) increased/decreased by: _____
New Contingency as adjusted by this Change Directive: _____

Adjustment to Contract Time:

Contract time will be increased/decreased by: _____
The date of completion of all the work due under the contract documents for this Subproject will therefore be: _____
The Contract Time will be increased/decreased by this many calendar days: _____
The date of completion of all the work due under the contract documents will therefore be: _____

Recommended by: _____
(Engineer's Signature and Title)

on behalf of _____ (Engineer) pursuant to those provisions of the Contract Documents, the Engineer recommends acceptance by the Owner for the following reasons:

ReWa

Contractor

Signature

Signature

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPLICATION FOR PAYMENT

THIS IS A SAMPLE, THE PAY APPLICATION, PAYMENT BREAKDOWN, AND STORED MATERIALS LOG MUST BE COMPLETED IN ELECTRONIC FORMApplication for Payment Summary, Payment Breakdown,
Stored Material Log, and Affidavit of Contractor**Owner:** Renewable Water Resources
"ReWa"

Application for Payment Number: _____

Project: Indefinite Delivery Contract Construction
Services

Date: _____

Engineer:

Date of Submission to Engineer: _____

Total Contract Work Performed to Date: **(From Column H)** \$ _____.

Current Value of Stored Materials: \$ _____.

Total Change Order Work to Date: \$ _____.

Subtotal to Date: \$ _____.

Less ten (10%) percent Retainage: \$ _____.

Subtotal to Date less Retainage: \$ _____.

Less Previous Payments: \$ _____.

Amount Due this Payment Request Estimate: \$ _____.

Previous Retainage withheld to date (including for this Payment Request): \$ _____.

Remaining Balance Due under Contract: \$ _____.

Total of Balance Due under the Contract plus Retainage to date (including for this Payment Request): \$ _____.

THE CONTRACTOR BY PRESENTING THIS PAY ESTIMATE STATES, REPRESENTS AND WARRANTS THAT AS OF THE DATE OF THIS REQUEST THERE ARE NO OUTSTANDING CLAIMS ON HIS BEHALF AGAINST THE OWNER FOR ANY ADDITIONAL MONEY, COSTS, OR DAMAGES, (INCLUDING IMPACT COSTS OR DAMAGES), OR CLAIMS ARISING FROM DELAY OR FROM THE DENIAL OR THE GRANTING OF TIME EXTENSIONS, OR FROM CLAIMS OF ANY OTHER KIND OR NATURE EXCEPT (A) FOR THAT REMAINING BALANCE SHOWN ABOVE TO BE DUE UNDER THIS CONTRACT, AND (B) FOR THE FOLLOWING:

(DESCRIBE HERE THE NATURE OF ANY SUCH CLAIMS, THE DATE EACH CLAIM AROSE, THE DATE NOTICE WAS GIVEN PURSUANT THE GENERAL CONDITIONS AND SECTION 4 OF THE SUPPLEMENTAL CONDITIONS OF THIS CONTRACT, THE EXACT AND TOTAL DOLLAR AMOUNT CLAIMED, AND/OR WHETHER OR NOT A TIME EXTENSION IS CLAIMED, AND THE STATUS OF EACH CLAIM AS OF THIS DATE:

List here the following: (use supplemental pages if necessary)

	Date Claim Arose	Date Written Notice Given	Requested Change in Price (if any)	Time Extension Requested (if any)	Nature of the Claim	Status of the Claim as of this Date
1.			\$____.____	____ days		
2.			\$____.____	____ days		
3.			\$____.____	____ days		
4.			\$____.____	____ days		
5.			\$____.____	____ days		

Note: Notwithstanding any other provision of the contract and contract documents, the Contractor is required to give written notice of any claim pursuant to the General Conditions and Section 4 of the Supplemental Conditions, and the listing of the claim here and/or upon any change order form does not constitute either compliance with, or a waiver of, the requirement to file such written notice nor a waiver of the requirement that such claims be filed within the time periods specified therein. **Furthermore, the Contractor is again notified, instructed and advised that neither the Engineer nor any employee or officer of the Owner may waive these requirements as to notice. The failure to so list a claim upon this current pay estimate shall constitute a waiver of any claim not listed, and the claim shall be considered abandoned.**

Application for Payment Number: _____

Project: Indefinite Delivery Contract Construction Services Project

Engineer:

SUBMITTED

Contractor

Signature

By: _____

Its: _____

Date: _____

RECOMMENDED FOR APPROVAL

Engineer

Signature

By: _____

Its: _____

Date: _____

APPROVED

Renewable Water Resources “ReWa”

Signature

By: _____

Its: _____

Date: _____

PAYMENT BREAKDOWN
(Sample of Electronic Format)

STORED MATERIALS LOG
(Sample of Electronic Format)

The following is a description of items required on the payment breakdown and storage material log:

NOTE: CONTRACTOR'S SUBMISSIONS **MUST COMPLY** WITH THESE REQUIREMENTS. A FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL GIVE ENGINEER AND OWNER AN **ABSOLUTE RIGHT TO REJECT THE SUBMISSION** in accordance with the Contract Documents.

- THE PAYMENT BREAKDOWN
 - Activity Number with Description: This column is to list activities which will be billed by the Contractor during the course of the project. These activities should be briefly described and should show the number which identifies it on the Contractor's CPM schedule.
 - Schedule of Value: The dollar value assigned to each activity by the Contractor. These values are to be approved by the Engineer.
 - % Completed To Date: The units completed to date and percentage completed to date.
 - Work Previously Completed (\$): The dollar value of work completed as of the previous Application for Payment.
 - Work completed This Month (\$): The dollar value of work performed during the month covered by the Application for Payment.
 - Total Contract Work Performed to Date (\$): The total dollar value of work previously completed and work completed this month.
 - Balance to Finish: The total dollar value of work necessary to complete the Activity (this number is automatically calculated).

- THE STORED MATERIAL LOG
 - Item No. (1., 2., 3., etc.): Consecutive number designating each distinct item.
 - Site Location: Where the particular material is stored. (E.g., "Site" or other storage facility approved subject to Subparagraph 9.3.2 ("Mauldin Road Warehouse")).
 - Billed on Pay App. Num.: List the pay request number on which the particular stored material invoice was billed to and paid for by the Owner.
 - Invoice Number: The Vendor's invoice number.
 - Invoice Date: The date which the Vendor places on its invoice to the Contractor.

- Description: A brief description of the stored material.
 - Examples: “Tyton Joint DI Pipe” or “Sluice Gates”
- Vendor: The name of the vendor which appears on the invoice.
- Original Value (\$): The dollar value of the material as stated on the vendor's invoice.
- Previous Current Value (\$): The original dollar value of the stored material less the dollar value of material which has been installed prior to the Application for Payment.
- Installed This Month (\$): The dollar value of material that was installed during the month and that is no longer stored.
- Current Value Stored Material (\$): The dollar value of stored material up to the cut off date for the Application for Payment. This value is arrived at by subtracting the dollar value for material installed during the month from the Previous Current Value.
- Applicable Activity No.: Each stored material invoice **must be assigned to an applicable activity** from the activities listed on the Payment Breakdown. The activity numbers are to be listed here. They are to be the same as shown on the Payment Breakdown.

AFFIDAVIT OF THE CONTRACTOR

(This MUST accompany each Application for Payment)

Progress payments previously received from the Owner on account of the work for Indefinite Delivery Contract Construction Services Project have been applied by the Contractor to discharge in full all of the Contractor's obligations incurred in connection with the Work covered by all prior Applications for Payment.

As of the date of this Affidavit, there are no: (i) outstanding claims against the Owner for any additional money, costs, or damages (including impact costs or damages), (ii) claims arising from delay or from the denial or the granting of time extensions, or (iii) from claims of any other kind of nature except: (a) for that remaining balance shown in this Application for Payment to be due under this Contract, and (b) for claims listed in the table attached to the Application for Payment.

CONTRACTOR

Signature: _____

Contractor: _____

By: _____

Title: _____

Date: _____

SWORN to and subscribed before me

this ____ day of _____, 2019

_____(L.S.)

Notary Public for the State of _____

My Commission Expires: _____

SUBMITTALS

(To be attached following this Cover Page)

PERMITS

(To be attached following this Cover Page)

EASEMENTS/RIGHT OF WAYS

(To be attached following this Cover Page)

TECHNICAL SPECIFICATIONS

INDEFINITE DELIVERY CONTRACT
CONVEYANCE CONSTRUCTION
PROJECT REQUEST FORM

Requester:		Date:	
Approving Manager:		Date:	
Project Name:			
Project Description:			
Type of expense (check only one):			
<input type="checkbox"/> O&M; User Dept charged with the expense:			
<input type="checkbox"/> Capitalized capital; existing Project account number (if applicable)			
Vendor ID:		Vendor Name:	
<input type="checkbox"/> If new project; attach a new Project Form or list existing project number <input type="checkbox"/> Attached Scope, Technical Specifications, Supplemental Conditions, and Drawings <input type="checkbox"/> Attached Bids and/or Basis of Compensation with Engineer's estimate <input type="checkbox"/> Major Equipment Items, List of Self-Performance, and List of Subcontractors <input type="checkbox"/> Addenda <input type="checkbox"/> Schedule			
PLEASE SUBMIT FORM WITH ALL OF ABOVE CONTENTS ATTACHED TO_PURCHASING			
<input type="checkbox"/> 100% Performance and Payment Bonds (assignments > \$50,000)			
<input type="checkbox"/> Current COI <input type="checkbox"/> Current GC License <input type="checkbox"/> Notice To Proceed			
Committed \$ Since Umbrella IDC Contract		Requested \$ for Above Task	
Committed \$ for IDC Task			
PLEASE SUBMIT TO_Accounting			
Cost Category:	GL:		
Project Name:			
PLEASE SUBMIT TO _STEPHANIE SELMAN			
Paramount Contract ID = Cost Category_Vendor	Contract Max:		
Umbrella IDC Effective Through Date:	IDC Task Effective Through Date:		