CONTRACT DOCUMENTS

&

TECHNICAL SPECIFICATIONS

HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT

Prepared by:

The Town of Hilton Head Island

Beaufort County, South Carolina

October 26, 2014

TOWN OF HILTON HEAD ISLAND

HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS

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Hargray to Shelter Cove Town Centre Pathway Project

INVITATION FOR BID

TOWN OF HILTON HEAD ISLAND

INVITATION FOR BID

for

HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT

IFB 2014-0030

TOWN OF HILTON HEAD ISLAND
INVITATION FOR BIDS

HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT

IFB 2014-0030

The Town of Hilton Head Island is soliciting sealed bids from qualified contractors for the **HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT**. This project consists of installing a multi-use pathway along US278B Eastbound (William Hilton Parkway) from Hargray to Shelter Cove Town Centre. The constructions plans and specifications will be used as the primary basis for developing bids.

Plans and Specifications are open to inspection at or may be purchased from Savannah Blue Print Company, at 807 William Hilton Parkway #200, Hilton Head Island, South Carolina 29928, www.savannahblue.com, (800) 672-7260 or (843) 686-6663 or fax (843) 686-4090. Construction plans and specifications may also be viewed on the Town's web site www.hiltonheadislandsc.gov.

A mandatory pre-bid conference will be conducted at 2:00 PM on Wednesday, October 29, 2014, at Town Hall, One Town Center Court, Hilton Head Island, SC. The Town will only accept bids from those in attendance at this meeting. A question and response period will be open until Friday, October 31, 2014.

Sealed bids are due no later than 2:00 PM, Wednesday, November 12, 2014. All bids must be sealed and clearly marked on the outer package, "**TOWN OF HILTON HEAD ISLAND – IFB 2014-0030, HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT"**, Attention Galen Knighten. Sealed bids shall be hand delivered to the receptionist at Town Hall or delivered by traceable service (FedEx, UPS, etc.), to the Town of Hilton Head Island, Attn.: Galen Knighten, One Town Center Court, Hilton Head Island, SC 29928. Bids sent by facsimile machines will not be accepted.

Bidders shall be licensed to perform the work described herein as required by Section 40-11-10 et seq., South Carolina Code of Laws, 1976 (as amended) and Section 10-1-10 et seq., Code of the Town of Hilton Head Island, South Carolina, 1983 (as amended).

The Contractor shall be required to meet all tasks of this contract within 90 calendar days of *Notice to Proceed.* This deadline may be extended as needed upon demonstrated necessity by the Contractor and written approval of the Town. Liquidated Damages of Five Hundred Dollars ($500.00) per day shall be assessed for each day exceeding the performance period, until the work is completed.

A certified check or Bond, in an amount equal to at least 5% of the amount of the bid, must accompany each bid exceeding $100,000. Additionally for all bids exceeding $100,000, a

Contract Performance and Payment Bond in the amount of 100% of the contract amount will be required, once a contract has been awarded and before a notice to proceed is issued.

The Town reserves the right to reject any and all bids and to waive any technicalities and formalities. No bidder may withdraw the bid within 90 days after the actual date of the opening.

The Town reserves the right to accept or reject any or all bids received as a result of this request or to negotiate with all qualified bidders or to cancel in part or in its entirety this solicitation if it is in the best interest of the Town to do so. The Town further reserves the right to delete or reduce the quantities of certain items at its sole discretion.

Any bidder who qualifies for consideration under the Town's Local Vendor Preference Program should include a copy of their certification form with their bid. Should you have any questions about this preference, please contact Tom Fultz at 341-4600 or log on to the Town's Website at www.hiltonheadislandsc.gov.

This solicitation does not commit the Town to award a contract or to pay for any costs incurred in the preparation of your proposal or to procure or contract for any articles of goods or services.

The bid must be signed by an official authorized to bind the bidder, and it shall contain a statement to the effect that the proposal is firm for a period of at least 90 days from the date of opening.

The Town does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provision of services.

For additional information concerning this solicitation, please contact Galen Knighten at galenk@hiltonheadislandsc.gov or 843-341-4778.

Hargray to Shelter Cove Town Centre Pathway Project

INSTRUCTIONS

INSTRUCTIONS TO BIDDERS

1. **INTENTION:**

   It is intended that the Instructions to Bidders, Special Conditions, General Conditions, and Technical Provisions shall cover the complete work to which they relate.

2. **PROPOSED FORMS:**

   All bids must be made upon the provided forms hereto annexed, and shall state the amount bid for each item as shown in Exhibit C, and all bids must be for materials and work called for in the specifications.

3. **RIGHT TO REJECT BIDS:**

   The Owner reserves the right to accept or reject any or all bids and to waive any technicalities and formalities. No bids will be received after the time set for opening bids. Any unauthorized conditions, limitations, or provisions attached to the bid, except as provided herein, will render it informal and may cause its rejection. Any bidder may withdraw his bid, either personally or by telegraphic or written request at any time prior to the scheduled closing time for receipt of bids.

4. **DETERMINATION OF LOW BID:**

   The Contract will be awarded, if it is awarded, to the lowest responsible bidder. The Owner shall decide who the lowest responsible bidder is, and in determining such bidder, the following elements are to be considered whether the bidder involved:

   a) Is the lowest qualified bid for this project;
   b) Maintains a permanent place of business;
   c) Has adequate plant equipment to do the work properly and expeditiously;
   d) Has suitable financial status to meet obligations incident to the work; and
   e) Has appropriate technical experience.

5. **ACCEPTANCE OF BIDS:** Bids may not be revoked or withdrawn after the time set for the opening, but shall remain open for acceptance for a period of ninety (90) calendar days following that time.

6. **BIDS:** The Bids must be complete and are to be enclosed in a sealed envelope addressed as follows:

   Mr. Galen Knighten
   Town of Hilton Head Island
   One Town Center Court
   Hilton Head Island, SC 29928

   and clearly labeled:

   IFB 2014-0030
   HARGRAY TO SHELTER COVE TOWN CENTRE
   PATHWAY PROJECT

Each bid must be accompanied by a certified check or bid bond for the amount equal to at least 5% of the amount of the bid, to guarantee that the successful bidder will within 10 days from the date of the Notice of Award of Contract enter into a contract with the Owner and execute to said in the form set forth in the contract bond and specifications referred to in said request for bids.

7. **INTERPRETATION OF PLANS AND SPECIFICATIONS:** If any person contemplating submitting a bid for the proposed project is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, he may submit to the Project Manager a written request no later than November 5, 2014 for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by Addendum duly issued, and a copy of such Addendum will be e-mailed or delivered to each person receiving a set of such documents.

8. **BIDDER'S UNDERSTANDING:** Bidders should visit the work site(s) to ascertain by inspection pertinent local conditions such as location, character and accessibility of the site including existing surface and subsurface conditions in the work area, availability of facilities, location and character of existing work within or adjacent thereto, labor conditions, etc.

9. **MODIFICATIONS OF QUANTITIES:** If the selected bid exceeds the money available for the work, the Owner may delete enough of the work to bring the cost within the available funds. The Owner reserves the right to delete whichever items or portions of items he considers to be the best interest of the Owner.

10. **CONTRACT COMPLETION TIME:** The time for completion of the work under this contract shall be **90 calendar days** from the date specified in written notice to the Contractor to proceed with the work. A penalty of Five Hundred dollars ($500.00) per day will be assessed for each day required to complete the work past the Substantial Completion deadline.

11. **CONTRACT SECURITY:** The successful Bidder shall deliver to the Owner an executed Performance and Payment Bond in an amount equal to at least 100% of the accepted bid as security for the faithful performance of the contract and for payment of all persons performing labor and furnishing materials and equipment in connection with this contract. The sureties of all bonds shall be such surety company or companies as are approved by the Owner, and as are authorized to transact business in the State of South Carolina. The Contractor will be required to have a current business license from the Town of Hilton Head. The Bond shall cover the one-year service and guarantee on equipment.

12. **GENERAL CONDITIONS:** The Final Contract Documents will include the "Standard General Conditions of the Construction Contract" N.S.P.E. 1910-8 (2013 Edition) prepared by the National Society of Professional Engineers – Exhibit A.

13. **CONTRACTOR'S AND SUB-CONTRACTOR'S INSURANCE:**

The Contractor shall not commence work under this agreement until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Town, nor shall the Contract allow any Sub-contractor to commence work on his subcontract until the insurance required of the Sub-contractor has been so obtained and accepted.

a) Employer's Liability Insurance: The Contractor shall take out and maintain during the life of the contract the South Carolina statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under the contract and, in case any such work is sublet, the Contractor should require the Sub-contractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all the latter's employees to be engaged in such work.

b) General Liability, Bodily Injury and Property Damage Liability Insurance: The Contractor shall take out and maintain during the life of the contract a General Liability Insurance policy for an amount not less than One Million dollars ($1,000,000.00.) The policy shall include the Bodily Injury Liability and Property Damage Liability Insurance to protect him and any Sub-contractor performing work covered by the contract from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under the contract, whether such operations be by himself or by a Sub-contractor or by anyone directly or indirectly employed by either of them and the amount of such insurance should be not less than:

Bodily Injury Liability Insurance, in an amount not less than $1,000,000.00 for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than $500,000.00 on account of one accident.

Property Damage Insurance in an amount not less than $350,000.00 for damages on account of any one accident, and in an amount not less than $1,000,000.00 for damages on account of al accidents.

c) Proof of Carriage of Insurance: Prior to commencing work hereunder, Contractor, at his expense, shall furnish a current insurance certificate showing the certificate holder as Town of Hilton Head Island, One Town Center Court, Hilton Head Island, SC 29928, Attention: Galen Knighten, and with a special notation naming The Town of Hilton Head Island as an additional insured on the liability coverage. The Contractor shall furnish the Town with certificates showing the type, amount, class of operations, effective dates and date of expiration of policies. Such certificates shall contain a clause to the effect that the policy shall not be canceled or reduced, restricted, or limited until thirty (30) days after the Town has received written notice, as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcript from the proper office of the insurer, the location, and the operations to which the insurance applies, the expiration date, and the above mentioned notice of cancellation clause.

Contractor shall either:

(a) require each of his sub-contractors to procure and maintain during the life of his subcontract, Sub-contractor Comprehensive General Liability, Automobile Liability and Property Damage Liability Insurance of the type and in the same amounts as specified in this contract; or

(b) insure the activities of his sub-contractors in his own policy.

Certificates of Insurance must be filed at time of bid opening through the Owner on form provided in specifications or on AIA Document G705, November, 1978 Edition by an insurer authorized to do business in the State of South Carolina by the South Carolina Insurance Commission. All blanks and questions on Certification must be filled out completely. Incomplete or inadequate Certificate will be returned to Contractor as unsatisfactory and commencement of his work will be delayed until satisfactory Certificate is submitted. Such delay will not warrant extension of contract time.

14. **PERFORMANCE AND PAYMENT BONDS**

A Contract Performance and Payment Bond in the amount of 100% of the contract amount will be required if the contract exceeds $100,000.00. These bonds shall be kept effective and in full force for one year after completion and acceptance of the work. These bonds shall serve as a guarantee of function and workmanship of the work. These bonds shall make the Contractor's sureties responsible for underwriting the work against faulty workmanship or defective materials. Final acceptance of the work shall not relieve the sureties of responsibility for a period of one year after this final acceptance.

It is distinctly agreed and understood that any change made in the drawings and specifications for the work, (whether such changes increase or decrease the amount thereof) or any change in the manner or the time of payment made by the Town to the Contractor, shall in nowise annul, release, or affect the liability of the surety on the bond given by the Contractor.

The successful Contractor shall furnish, within ten (10) days after written notice of acceptance of bid, a Payment Bond for the protection of all persons supplying labor and materials to the Contractor and his subcontractors for the performance of work as specified in this Agreement. The Bond shall be in the amount of One Hundred Percent (100%) of the amount specified in this Agreement, issued by a Surety Company licensed in South Carolina. The bond shall be written on EJCDC C-615 Performance Bond, 2007 edition.

Every person who has furnished labor or materials to the contractor or its sub-contractors for the work provided pursuant to this contract, in respect of which a payment bond is furnished under this Article and who has not been paid in full therefore before the expiration of a period of ninety (90) days after the day on which the last of the labor was performed by such person, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit, and to prosecute said action for the sum or sums justly due such person; provided, however, that

any person having a direct contractual relationship with a sub-contractor of the contractor, but no contractual relationship expressed or implied with the contractor furnishing said payment bond shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid in an envelope addressed to the Contractor at any place the contractor maintains an office or conducts his business.

Every suit instituted upon payment bond shall be brought in a court of competent jurisdiction for the town, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

15. **LAWS AND REGULATIONS:** The Contractor shall comply with District, County, State and Federal laws applicable to the work.

16. **SAFETY AND HEALTH REGULATIONS:** 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 and Safety Standards Act (PL 91-54). The regulations are administered by the Department of Labor and the Contractor shall allow access to project to personnel from that Department.

17. **TERMINATION OF CONTRACT:** If the Owner is made to stop construction of the work because of an order from a Court or State Department, the contract may be terminated. Payment will be made for work completed and a pro-ration of the work underway, and for the overhead and profit of the completed work and work underway. Payment will not be made for anticipated profit and overhead on work not completed or underway.

18. **PERMITS:** Town and State Permits apply to the work and will be made part of the Contract. At the time of Notice to Proceed for Construction, all permits will have been issued.

Hargray to Shelter Cove Town Centre Pathway Project

BID

BID

BID DOCUMENTS

The Contractor shall complete all of the Bid Documents included as part of this section. All Bid Documents shall be part of the Bid and shall include the following:

A. Bid Transmittal

B. Bid Schedule

C. Exhibit C - List of Estimated Quantities

D. Certificate of License

E. Certificate of Insurance

F. Collusion Statement and Professional Liability/Performance Statement

G. Bid Surety

H. Bid Bond

I. Payment Bond

J. Performance Bond

K. References

BID TRANSMITTAL

TO: **Town of Hilton Head Island, South Carolina**

ATTENTION: **Galen Knighten**

PROJECT: **Hargray to Shelter Cove Town Centre Pathway Project**

DATE: _____

FROM: _____ (Company Name)

_____ (Address)

_____

_____ (Telephone No.)

Having carefully examined the plans, specifications and documents contained within this solicitation, dated _____, and also having carefully inspected the work site, the undersigned hereby agrees to furnish all necessary materials, equipment and labor required, as well as all other things necessary for the complete execution of all work which is issued pursuant to this contract. The sum total of all costs reflected in Exhibit C covered by and in conformity with the aforesaid plans, specifications and contract documents is $_____

BY: _____ **DATE:** _____

TITLE: _____

WITNESS: _____

(CORPORATE SEAL)

BID SCHEDULE

TO:

Submitted _____, 2014

The undersigned, as Bidder, hereby declares that the only person or persons interested in the bid as principal or principals is or are named herein, and that no other person than herein mentioned has any interest in this bid or in the Contract to be entered into; that this bid is made without connection with any other person, company, or parties making a bid or bid; and that it is in all respects fair and in good faith without collusion or fraud.

The Bidder further declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the Plans and Specifications for the work and contractual documents relative thereto, and has read all technical Provisions, Special Conditions, and General Conditions, furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed.

The Bidder declares that they are a full service contractor, with the capabilities to construct and repair asphalt paving and storm drainage infrastructure.

The Bidder proposes and agrees, if this Bid is accepted, to contract with the Owner in the form of Contract specified, to furnish all materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary, and to complete the **Hargray to Shelter Cove Town Centre Pathway Project** in full and complete accordance with the shown, noted, described, and reasonably intended requirements of the Specifications and Contract Documents to the full and entire satisfaction of the Town with a definite understanding that no money will be allowed for extra work except as set forth in the attached General Conditions and Contract Documents, for the prices reflected in Exhibit C.

EXHIBIT C – BID SCHEDULE

HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT

IFB 2014-0030

LIST OF ESTIMATED QUANTITIES

The following is an itemized list of the elements covered in this Proposal. This is a list of estimated quantities provided to obtain competitive Proposal pricing. Quantities should be accurate to within 10% of scope of work represented in the Proposal documents.

THESE QUANTITIES ARE FOR BID PURPOSES ONLY!

The unit prices given on this document, along with negotiated changes in quantities, shall become the basis for, and included in, the contract agreement, to be known as Exhibit C. Offerors are responsible for verifying all quantities and notifying the Owner of any discrepancies greater than **10**% of estimate, in writing, prior to the closing of the question and response period..

All prices shall be based on the plans, details, and specifications provided or referenced. If an item does not have a written specification provided or there is a conflict within the specifications, the default specifications shall be the 2007 Edition of the South Carolina Department of Transportation Standard Specifications for Highway Construction.

The owner reserves the right to delete portions or all of the work. All work shown, specified or implied MUST be accounted for in the contractor's bid.

Please complete the following fee proposal schedule with the bid:

EXHIBIT C

HARGRAY TO SHELTER COVE PATHWAY PROJECT FEE SCHEDULE

DAY TIME WORK HOURS (7 AM – 7 PM)

*****UNIT COST SCHEDULE *****

Item Number	SCDOT Specification	Description	Estimated Quantity	Pay Unit	Unit Cost	Total
1	1031000	MOBILIZATION	1.00	LS		**$0.00**
2	1050800	CONST. STAKES, LINES & GRADES	1.00	LS		**$0.00**
3	1052000	UTILITY RELOCATION NO. 1(ADJUST WATER VALVES & METERS)	3.00	EA		**$0.00**
4	1052000	UTILITY RELOCATION NO. 2 (TELEPHONE PEDESTAL)	2.00	EA		**$0.00**
5	1052000	UTILITY RELOCATION NO. 3 (FIRE HYDRANTS)	1.00	EA		**$0.00**
6	1071000	TRAFFIC CONTROL	1.00	LS		**$0.00**
7	2011000	CLEARING & GRUBBING	1.00	LS		**$0.00**
8	2016000	SELECTED REM.OF MARKED TREES	1.00	LS		**$0.00**
9	2024100	REM. & DISP. OF EXISTING CURB	742.00	LF		**$0.00**
10	2025000	REM. & DISP.OF EXIST. ASPH. PVMT.	1,160.00	SY		**$0.00**
11	2026000	REM.&DISP.OF EXIST CONC PVMT.	68.00	SY		**$0.00**
12	2031000	UNCLASSIFIED EXCAVATION	585.00	CY		**$0.00**
13	2052000	NO. 57 STONE FOR PERVIOUS ASPHALT PAVEMENT	130.00	TON		**$0.00**
14	2081001	FINE GRADING	10,000.00	SY		**$0.00**
15	305010X	GRADED AGGR.BASE COURSE-4.5" UNIF	4,335.00	SY		**$0.00**
16	4013200	MILL. EXIST. ASPH. PVMT. 2.0"	435.00	SY		**$0.00**
17	4030340	H/M ASPH.SURF.CR. TYPE C (3,862 S.Y. COMPACTED - 1.5" DEPTH)	315.00	TON		**$0.00**
18	4030340	H/M ASPH.SURF.CR. TYPE C (435 S.Y. COMPACTED - 2" DEPTH)	47.00	TON		**$0.00**
19	6271010	4" WHITE SLD SINGLE EDGE LNE PVT EL TH-90 ML	414.00	LF		**$0.00**
20	6271074	4" YELLOW SLD SINGLE LNE PVT EL TH-90 ML	558.00	LF		**$0.00**
21	6271020	12" WH. CROSSWALK/STOP BAR SOLID LINES THERMO.-125 MIL	1,287.00	LF		**$0.00**
22	6271020	24" WHITE STOP BARS THERMO-125 MIL.	101.00	LF		**$0.00**
23	6271030	WHITE SINGLE ARROWS (LT, STRGHT, RT) THERMO.-125 MIL.	1.00	EA		**$0.00**
24	6271040	WHITE COMBINATION ARROWS(STR&RT.OR STR&LT)THERMO-125MIL	1.00	EA		**$0.00**
25	6319505	REMOVAL OF PAVEMENT MARKINGS	270.00	LF		**$0.00**
26	6510105	FLAT SHEET,TYPE III,FIXED SIZE	40.00	SF		**$0.00**
27	6531210	U-SEC.POST FOR SGN SUPP. - 3P	50.00	LF		**$0.00**
28	7141142	18" CLASS III SMOOTH WALL ELLIPTICAL R.C.P.	724.00	LF		**$0.00**
29	7141885	15" CLASS V SMOOTH WALL R.C.P	203.00	LF		**$0.00**
30	7141929	18" PERFORATED PIPE	274.00	LF		**$0.00**
31	714192B	24' PERFORATED PIPE	72.00	LF		**$0.00**
32	7142512	15" FLARED END SECTION	1.00	EA		**$0.00**
33	7142513	18" FLARED END SECTION	1.00	EA		**$0.00**
34	7143615	15" CLASS III SMOOTH WALL R.C.P.	142.00	LF		**$0.00**
35	7143618	18" CLASS III SMOOTH WALL R.C.P.	815.00	LF		**$0.00**
36	7192010	DROP INLET (24" X 24")	8.00	EA		**$0.00**
37	7192011	DROP INLET (24"X24" W/48" X 48" ADAPTOR)	4.00	EA		**$0.00**
38	7192012	DROP INLET (24"X24" W/60" X 60" ADAPTOR)	2.00	EA		**$0.00**
39	7192105	MANHOLE	4.00	EA		**$0.00**
40	7191605	TYPE 16 CURB INLET	6.00	EA		**$0.00**
41	7200420	HANDICAP RAMP (CONCRETE)	10.00	EA		**$0.00**
42	7201100	CONCRETE TRANSITION CURB	168.00	LF		**$0.00**
43	7203110	CONCRETE CURB & GUTTER(1'-6" VERTICAL FACE)	944.00	LF		**$0.00**
44	7203210	CONCRETE CURB & GUTTER(2'-0" VERTICAL FACE)	197.00	LF		**$0.00**
45	7204100	CONCRETE SIDEWALK(4" UNIFORM)	446.00	SY		**$0.00**
46	7204900	DETECTABLE WARNING SURFACE	470.00	SF		**$0.00**
47	8080000	MOVING ITEMS	1.00	LS		**$0.00**
48	8100100	PERMANENT VEGATIVE COVER	2.00	ACRE		**$0.00**
49	8100200	TEMPORARY COVER	2.00	ACRE		**$0.00**
50	8114010	TREE PROTECTION	2,200.00	LF		**$0.00**
51	8131000	SODDING	3,070.00	SY		**$0.00**
52	8152004	INLET PROTECTION "TYPE F"	14.00	EA		**$0.00**
53	8152007	SEDIMENT TUBE	48.00	LF		**$0.00**
54	8153000	SILT FENCE	5,200.00	LF		**$0.00**
55	SP 1	SPECIAL CONTRACT BID ITEM NO. 1 – TRAFFICPATTERNS XD	435.00	SY		**$0.00**
56	SP 2	SPECIAL CONTRACT BID ITEM NO. 2 – PATHWAY SIGNAGE	29.00	EA		**$0.00**
57	SP 3	SPECIAL CONTRACT BID ITEM NO. 3 – WHITE WORD MESSAGE "STOP/YIELD" – TEMP. PAINT & THERMO	34.00	EA		**$0.00**
58	SP 4	SPECIAL CONTRACT BID ITEM NO. 4 - TIMBER RETAINING WALL	170.00	LF		**$0.00**
59	SP 5	SPECIAL CONTRACT BID ITEM NO. 5 - CONCRETE ROOT BRIDGE	206.00	SY		**$0.00**
60	SP 6	SPLIT RAIL FENCE	136.00	LF		**$0.00**
61	SP 7	PERVIOUS ASPHALT PAVEMENT	370.00	SY		**$0.00**
					TOTAL CONTRACT AMOUNT	**$0.00**

*This is the **TOTAL UNIT COST BID** for furnishing and installing all labor, equipment, and materials listed for the construction of the **US 278B PATHWAY BETWEEN HARGRAY AND SHELTER COVE,** complete as indicated by the Contract Document. This schedule includes design based estimates, actual quantities may vary.*

CERTIFICATE OF LICENSE

This is to certify that _____
Has complied with the requirements of Section 40-11-10 et seq, of the South Carolina Code of Laws, 1976 (as amended) and Section 10-1-10 et seq, of the Code of the Town of Hilton Head Island, South Carolina, 1983 (as amended).

State of S.C. Contractor's License No. (if applicable) _____

State of S.C. Bidder's License No. (if applicable) _____

Town of Hilton Head Island Business License No. _____

By: _____ Date: _____

Title: _____

Note: Contact the Business Office of the Town of Hilton Head Island, South Carolina to obtain a Town Business License.

CERTIFICATE OF INSURANCE

SPECIMEN

ENDORSEMENT - CASUALTY

Attached to and forming part of the Policy Number _____ of the

_____

(Name of Insurance Company)

Insurance Company, issues at its _____

(City)

_____, Agency.

(State)

Date of Endorsement _____

In consideration of the premium for which the policy is written and proper rate adjustment when applicable, the Insurance Company agrees as follows:

Item (1) This policy shall not be cancelled, changed (which includes renewal), allow to lapse, or allowed to expire until thirty days after the Town of Hilton Head Island, SC, Town Manager, One Town Center Court Hilton Head Island, SC 29928 has received written notice thereof as evidenced by return receipt of registered letter or until such time as other valid and effective insurance coverage acceptable in every respect to the Town of Hilton Head Island, SC, and providing equal protection called for in the policy shown below shall have received, accepted, and acknowledged by the Town of Hilton Head Island, SC. It is also agreed that the said notice shall be valid only as to such improvements or projects as shall have been designated by number is said notice, and that as to any improvement or project not designated by number in said notice, coverage shall be continued in full force and effect.

The foregoing insurance provisions have been incorporated into by the reference and are hereby made a part of insurance policy number _____, this _____ day of _____, 2014.

_____

(Name of Company)

_____

(Signature of Authorized Representative)

COLLUSION STATEMENT
AND
PROFESSIONAL LIABILITY/PERFORMANCE STATEMENT

This bid is submitted for use in connection with and in response to _____.
This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current and accurate as of _____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder.

I certify that our company has/has not been involved in any litigation within the past five (5) years regarding professional liability or performance. (If there has been litigation, attach an explanation).

Has a federal agency or a federally certified state or local agency performed any review of your accounts, records, or contracts in connection with any grant or contract within any grant or contract within the past twelve months? ☐ Yes ☐ No
If "yes," give name, address, and telephone number of reviewing office on an attached statement.

_____
Date of Execution

_____
Signature of Proposer

_____
Title of Proposer

_____
Company Name

_____
Address

_____
City/State/Zip Code

_____
Telephone Number

BID SURETY

_____ (Company Name) agrees to execute a contract and provide performance surety within ten (10) calendar days of receipt of a Notice of Award from the Town of Hilton Head Island, South Carolina.

To secure the obligations of this agreement, the attached Bid Surety in the amount of five (5) percent of the total bid price, $_____, is provided.

If the undersigned fails to execute a contract as required herein, he shall forfeit the Bid Surety amount to the Town of Hilton Head Island, South Carolina, as liquidated damages for such failure.

The attached Bid Surety is in the form of:

☐ Letter of Credit

☐ Certified Check

☐ Bid Bond

BY: _____ DATE: _____

TITLE: _____

WITNESS: _____

(CORPORATE SEAL)

BID BOND

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

BIDDER *(Name and Address)*:

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

OWNER *(Name and Address)*:

BID
Bid Due Date:
Description *(Project Name and Include Location)*:

BOND
Bond Number:
Date *(Not earlier than Bid due date)*:
Penal sum _____ $ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER	**SURETY**
_____ (Seal)	_____ (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	By: _____
Signature	Signature (Attach Power of Attorney)
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	Attest: _____
Signature	Signature
_____	_____
Title	Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2 All Bids are rejected by Owner, or

3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONTRACT
Effective Date of Agreement:
Amount:
Description *(Name and Location)*:

BOND
Bond Number:
Date (*Not earlier than Effective Date of Agreement*):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ (Seal)
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ (Seal)
Surety's Name and Corporate Seal

By: _____
Signature (Attach Power of Attorney)

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

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

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

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.

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

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

4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with Contractor:

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

5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.

6. Reserved.

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

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

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

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

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

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

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

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

15. Definitions

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

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

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

FOR INFORMATION ONLY – (*Name, Address, and Telephone*)
Surety Agency or Broker:
Owner's Representative (*Engineer or other*):

Hargray to Shelter Cove Town Centre Pathway Project

SAMPLE AGREEMENT

STATE OF SOUTH CAROLINA)
) AGREEMENT
COUNTY OF BEAUFORT)

THIS AGREEMENT is made this <<Date>> between <<Company Name>> (hereinafter called “Contractor") and the Town of Hilton Head Island (hereinafter called "Town"), a municipal corporation organized and existing under the laws of the State of South Carolina.

WHEREAS, the Town has a desire to construct a multi-use pathway along William Hilton Parkway from Hargray to Shelter Cove Town Center;

WHEREAS, the Town and the Contractor desire to enter into an Agreement wherein the Contractor shall provide such services as set forth herein below.

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants set forth herein, the receipt and sufficiency of which is acknowledged and affirmed by the Town and the Contractor, the parties hereto agree as follows:

1. The Contractor shall perform those tasks outlined in Exhibit A, "Plans prepared by Town of Hilton Head Island”, and Exhibit B, “Contract Documents and Technical Specifications prepared by the Town of Hilton Head Island” at the unit costs as set forth in Exhibit C.

2. The total amount of this unit cost contract as outlined in Exhibit C shall not exceed $_____.

3. The term of this Agreement shall be from date of execution to June 1, 2015.
The Parties agree that time is of the essence for the work to be completed pursuant to this agreement. Contractor performance shall be 90 calendar days from the written notice to proceed. In the event work is not substantially completed within 90 calendar days after receipt of the notice to proceed, failure to will result in a material breach of this contract. A penalty of Five Hundred Dollars ($500.00) per day will be assessed for each day work continues past this deadline.

4. The contractor is required to maintain appropriate levels of insurance for general liability, workers compensation coverage, and for auto liability in accordance with the provisions set forth in Exhibit B. The Contractor must provide the Town with a Certificate of general liability and workers compensation coverage that names the Town as an additional insured. The contractor is required to immediately contact the Town should any change to these policies occur during the course of the performance of this contract. Failure to maintain these policies is grounds for termination.

5. The Town Manager may terminate this contract in whole or in part at any time for the convenience of the Town. If the contract is terminated for the convenience, the Town will pay the contractor for costs incurred to that date of termination.

6. Should any part of this Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other part of this Agreement.

7. This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.

8. This Agreement may not be modified unless such modification is in writing and signed by both parties.

9. The Contractor may not assign this contract without the prior written approval of the Town.

10. The Contractor shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or on appeal arising out of or resulting from the conduct of any activity hereby authorized or the performance of any requirement imposed pursuant by this Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

11. The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Agreement. Nothing contained herein creates any relationship between the Town and the Contractor other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Agreement, and the conduct and control of the agents and employees of the Contractor and the methods utilized by the Contractor in fulfilling its obligations hereunder shall lie solely and exclusively with the Contractor and its agents and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Contractor shall have any benefits, status, or right of employment with the Town.

12. The Contractor, by signing this Contract, hereby certifies that Contractor shall comply with all applicable requirements of the South Carolina Illegal Immigration Reform Act, S.C. Code Ann. §41-8-10 (2007) et seq., (the "Act"), and that Contractor covenants and agrees as follows:

12.1. Contractor shall not knowingly or intentionally employ any unauthorized alien and, unless excluded from coverage of the "Act", shall verify the work authorization of newly hired employees performing work under the contract by either:

(a) registering and participating in the Federal Work Authorization Program (E-verify) and verifying the work authorization of every new hired employee within five (5) business days after employing employee; or

(b) employing only workers who, at the time of said employment:

1. possess a valid South Carolina driver's license or identification card; or

2. are eligible to obtain a South Carolina driver's license or identification card by providing proof of name, social security number and date and place of birth; or

3. possess a valid driver's license or identification card from another state deemed by the Executive Director Department of Motor Vehicles to have requirements at least as strict as those in South Carolina.

Contractor may choose either option 1 (a) or option 1(b) but acknowledges that Contractor cannot use both.

12.2. Contractor agrees to provide to the Town all documentation requested by it to establish either:

(a) the applicability of the South Carolina Illegal Immigration Reform Act to Contractor; or

(b) compliance with the South Carolina Illegal Immigration Reform Act by Contractor.

12.3. Contractor agrees to include in any contracts with its sub-contractors language requiring its sub-contractors to:

(a) comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws; 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 of the South Carolina Code of Laws.

12.4. Contractor acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof, and shall complete all required I-9 documentation for all workers employed by it.

12.5. Contractor certifies it shall comply with all state, federal, and local laws, rules, regulations and orders applicable to it in performance of work under the contract.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto the date first written hereinabove.

WITNESSES:	**<<CONTRACTOR'S FULL NAME>>**
_____	**By:** _____
_____	**Its:**_____
WITNESSES:	**TOWN OF HILTON HEAD ISLAND**
_____	**By:**_____ **Stephen G. Riley, ICMA-CM**
_____	**Its: Town Manager**

Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement

Instructions

Before you use any EJCDC document:

1. Read the License Agreement. You agree to it and are bound by its terms when you use the EJCDC document.

2. Make sure that you have the correct version for your word processing software.

How to Use:

1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.

2. Similarly, your software may change the font specification if the font is not available in your system. It will choose a font that is close in appearance. In this event, the pagination may not match the control set.

3. If you modify the document, you must follow the instructions in the License Agreement about notification.

4. Also note the instruction in the License Agreement about the EJCDC copyright.

License Agreement

You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

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2. Use **EJCDC Design and Construction Related Documents** in printed form for bona fide contract documents.

3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

You agree that you will:

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.

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You may not use, copy, modify, or transfer EJCDC Design and Construction Related Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of EJCDC Design and Construction Related Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited.

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Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:
EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:
EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or

2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:
You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

Notice to Proceed

Date: _____

Project: **Hargray to Shelter Cove Town Centre Pathway Project**	
Owner: Town of Hilton Head Island	Owner's Contract No.:
Contract:	Engineer's Project No.:
Contractor:	
Contractor's Address: *[send Certified Mail, Return Receipt Requested]*	

You are notified that the Contract Times under the above Contract will commence to run on_____. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is_____, and the date of readiness for final payment is _____ [(or) the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

_____ *[add other requirements]*.

	Owner
	Given by:
	Authorized Signature
	Title
	Date

Copy to Engineer

Hargray to Shelter Cove Town Centre Pathway Project

GENERAL CONDITIONS

EXHIBIT A

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
and
Amended by the Town of Hilton Head Island
February, 2013

Endorsed by

CONSTRUCTION SPECIFICATIONS INSTITUTE

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2013 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2013 Edition).

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www.nspe.org

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(202) 347-7474
www.acec.org

American Society of Civil Engineers
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(800) 548-2723
www.asce.org

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(703) 548-3118
www.agc.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Proposal Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Proposal which clarify, correct, or change the Propsal Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Proposal*—The offer or proposal of a Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Proposer*—The individual or entity who submits a Proposal directly to Owner.

7. *Proposal Documents*—The Proposal Requirements and the proposed Contract Documents (including all Addenda).

8. *Proposal Requirements*—The advertisement or invitation to Proposal, Instructions to Proposers, Proposal security of acceptable form, if any, and the Proposal Form with any supplements.

9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with

respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Proposer stating that upon timely compliance by the Successful Proposer with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for Propsal and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms

"substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Proposer*—The Proposer submitting a responsive Proposal to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Propsal Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

   a. does not conform to the Contract Documents; or

   b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

   c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Proposal opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress

Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

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

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Proposal (or on the Effective Date of the Agreement if there were no Proposal), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or

authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation , (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

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

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party

receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and

drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

   b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Proposal or becoming bound under a negotiated contract; or

   b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Propsal Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

   c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or

Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

    a. reviewing and checking all such information and data;

    b. locating all Underground Facilities shown or indicated in the Contract Documents;

    c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

    d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefore as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous

Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. ***THIS SECTION OMITTED BY THE TOWN OF HILTON HEAD ISLAND***

~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate~~

~~Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide

another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance (DELETED)*

This section has been deleted – refer to the Special Conditions for Contractor's Insurance requirements.

5.05 *Owner's Liability Insurance (DELETED)*

This section has been deleted – refer to the Special Conditions for Contractor's Insurance requirements.

5.06 *Property Insurance (DELETED)*

This section has been deleted – refer to the Special Conditions for Contractor's Insurance requirements.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does

not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular

working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or

equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

    a. in the exercise of reasonable judgment Engineer determines that:

        1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

        2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

        3) it has a proven record of performance and availability of responsive service.

    b. Contractor certifies that, if approved and incorporated into the Work:

        1) there will be no increase in cost to the Owner or increase in Contract Times; and

        2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

    a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

    b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Proposal Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the

applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from

the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

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

6.09 *Laws and Regulations*

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

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Proposal (or, on the Effective Date of the Agreement if there were no Proposal) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and

annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or

omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria,

materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

   a. Submit number of Samples specified in the Specifications.

   b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

   1. Before submitting each Shop Drawing or Sample, Contractor shall have:

      a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

      b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

      c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

      d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

   2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

   3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the

requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Re-submittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner

THIS SECTION OMITTED BY THE TOWN OF HILTON HEAD ISLAND

~~6.20 *Indemnification*~~

~~A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages~~

~~(including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .~~

~~B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~

~~C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:~~

~~1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or~~

~~2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.~~

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such

services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

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

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise

altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform

generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in

connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

A. *Engineer's Decision Required*: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive Proposal from subcontractors acceptable to Owner and Contractor and shall deliver such Proposal to Owner, who will then determine, with the advice of Engineer, which Proposal, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

    c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

    d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

    e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

    f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance

established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately

identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Proposal and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include

an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

   c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

   f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or

approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

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

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

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

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

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

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

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications:*

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

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole

prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work, or

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

   c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

   d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

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

D. *Reduction in Payment:*

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

   a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling Owner to a set-off against the amount recommended; or

   d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due

as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefore. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of

Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which

this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

   b. consent of the surety, if any, to final payment;

   c. a list of all Claims against Owner that Contractor believes are unsettled; and

   d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for

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

C. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of 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 to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION (DELETED)

This section has been deleted – refer to the Contract for termination conditions.

ARTICLE 16 – DISPUTE RESOLUTION (DELETED)

This section has been deleted – refer to the Contract for dispute resolution conditions.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

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

Hargray to Shelter Cove Town Centre Pathway Project

SPECIAL CONDITIONS

EXHIBIT B

SPECIAL CONDITIONS

If there are any conflicts between these Special Conditions and the project Special Provisions, the project Special Provisions shall prevail.

SC-1. DESCRIPTION OF THE WORK: The work to be done consists of clearing and grubbing, tree removal, grading, asphalt paving, timber retaining wall construction, drainage improvements, curb and gutter and pathway construction, minor utility relocations, and pavement marking and signing. Some work activities shall be conducted under traffic.

SC-2. GENERAL PROVISIONS: The work on this project is to be performed under the South Carolina Department of Transportation (SCDOT) Standard Specifications for Highway Construction, Current Edition; current SCDOT supplemental Specifications released by SCDOT at the time the bids for this project were opened; the Federal Highway Administration Manual on Uniform Traffic Control Devises for Streets and Highway (MUTCD), Current Edition; the Plans, Project Specifications, and these Special Conditions.

The Offeror shall show satisfactory evidence of experience and qualifications, if requested by the Town.

SC-3 DEFINITIONS: A substantial amount of specification language constitutes definitions for terms found in other Contract Documents, including Plans (also may be referred to as drawings) which must be recognized as diagrammatic in nature and not completely descriptive of requirements indicated thereon. Certain terms used in Contract Documents are defined generally in this section. Definitions in this section are general for the work to the extent not stated more explicitly in another section of Contract Documents.

Whenever the word, "Engineer" appears in these specifications and in the Plans, add the words "or Owner's Representative."

Where not otherwise explained, terms such as: "directed", "requested", "authorized", "selected", "approved", "required", "accepted", and "permitted" shall mean "directed by Engineer/Owner, etc." However, no such implied meaning will be interpreted to extend Engineer's/Owner's responsibility into Contractor's area of construction supervision.

Where used in conjunction with Engineer's/Owner's response to submittals, requests, applications, inquiries, reports, and claims by Contractor, the meaning of term "approved" will be held to limitations of Engineer's/Owner's responsibilities and duties as specified in General and Supplementary Conditions. In no case will

"approval" by Engineer/Owner be interpreted as a release of Contractor from responsibilities to fulfill requirements of Contract Documents.

The term "install" is used to describe operations at project site, including unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations, as applicable in each instance.

The term "provide" means furnish and install, complete and ready for intended use, as applicable in each instance.

The term "installer" is used to describe the entity (person or firm) engaged by Contractor or its subcontractor for performance of a particular unit of work at the project site, including installation, erection, application, and similar required operations. It is a general requirement that such Installers be experienced in operations they are engaged to perform.

SC-4. INDUSTRY STANDARDS

General Applicability of Standards: Applicable standards of construction industry have the same force and effect (and are made a part of Contract Documents by reference) as if copied directly into Contract Documents, or as if published copies were bound herewith.

Reference Standards (referenced directly in Contract Documents or by governing regulations) have precedence over non-referenced standards which are recognized in industry for applicability to work.

Non-referenced Standards recognized in the construction industry are hereby defined, except as otherwise limited in Contract Documents, to have direct applicability to the work, and will be so enforced for performance of the work.

The following abbreviations may be used throughout these specifications.

AASHTO	American Association of State Highway and Transportation Officials.
ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
FS	Federal Specification (General Service Administration)
SCDOT	South Carolina Department of Transportation

SC-5. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE: The Contractor shall not commence work under this agreement until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Town, nor shall the Contract allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and accepted.

a) Employer's Liability Insurance: The Contractor shall take out and maintain during the life of the contract the South Carolina statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under the contract and, in case any such work is sublet, the Contractor should require the Subcontractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all the latter's employees to be engaged in such work.

b) General Liability, Bodily Injury and Property Damage Liability Insurance: The Contractor shall take out and maintain during the life of the contract a General Liability Insurance policy for an amount not less than One Million dollars ($1,000,000.00.) The policy shall include the Bodily Injury Liability and Property Damage Liability Insurance to protect him and any Subcontractor performing work covered by the contract from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under the contract, whether such operations be by himself or by a Subcontractor or by anyone directly or indirectly employed by either of them and the amount of such insurance should be not less than:

Bodily Injury Liability Insurance, in an amount not less than $1,000,000.00 for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than $500,000.00 on account of one accident.

Property Damage Insurance in an amount not less than $350,000.00 for damages on account of any one accident, and in an amount not less than $1,000,000.00 for damages on account of al accidents.

c) Proof of Carriage of Insurance: Prior to commencing work hereunder, Contractor, at his expense, shall furnish a current insurance certificate showing the certificate holder as Town of Hilton Head Island, One Town Center Court, Hilton Head Island, SC 29928, Attention: Galen Knighten, and with a special notation naming The Town of Hilton Head Island as an additional insured on the liability coverage. The Contractor shall furnish the Town with certificates showing the type, amount, class of operations, effective dates and date of expiration of policies. Such certificates shall contain a clause to the effect that the policy shall not be canceled or reduced, restricted, or limited until thirty (30) days after the Town has received written notice, as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcript from the proper office of the insurer, the location, and the operations to which the

insurance applies, the expiration date, and the above mentioned notice of cancellation clause.

Contractor shall either:

(a) require each of his subcontractors to procure and maintain during the life of his subcontract, Subcontractor Comprehensive General Liability, Automobile Liability and Property Damage Liability Insurance of the type and in the same amounts as specified in this contract; or

(b) insure the activities of his subcontractors in his own policy.

Certificates of Insurance must be filed at time of proposal opening through the Owner on form provided in specifications or on AIA Document G705, November, 1978 Edition by an insurer authorized to do business in the State of South Carolina by the South Carolina Insurance Commission. All blanks and questions on Certification must be filled out completely. Incomplete or inadequate Certificate will be returned to Contractor as unsatisfactory and commencement of his work will be delayed until satisfactory Certificate is submitted. Such delay will not warrant extension of contract time.

The above section supersedes Article 5.04 in the General Conditions.

SC-6 COMMENCEMENT AND COMPLETION OF WORK: The Contractor shall commence work within 10 days after Notice to Proceed is issued. He shall complete the work within **90 consecutive calendar days** from the Notice to Proceed. Any and all extensions of time shall be in accordance with the General Conditions of the Contract except as otherwise hereinafter provided. The Contractor agrees that time is of the essence in this Agreement; therefore, the Contractor shall not cease work for a period of more than three (3) consecutive work days due to causes not otherwise allowed for in this Agreement.

If the Contractor fails to prosecute the work with such diligence as will insure the completion of each portion of the work within the time shown on the above schedule, plus any extensions made in accordance with Article 12 of the General Conditions; and, if the Owner does not exercise his reservations as set forth in Article 13, the Contractor shall continue the work in which event the actual damages for the delay will be impossible to determine. In lieu thereof, liquidated damages in the amount of **$500.00** per each day of delay of the work until the work is completed.

The Contractor shall not be liable for any excess costs, if the failure to perform the contract arises out of causes beyond the control and without the fault of negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes,

freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule. Unless weather delays are specifically allowed in this Agreement, they are not cause for excusable delays.

SC-7. DRAWINGS: The work shall conform to the plans, *HARGRAY TO SHELTER COVE TOWN CENTRE PATHWAY PROJECT* dated 10/14/2014, all of which form a part of, and are included in, these specifications and are available at the Town of Hilton Head Island-Engineering Division, 1 Town Center Court, Hilton Head Island, SC 29928.

SC-8. OBSERVATIONS AND TESTS: Before acceptance of the whole or any part of the work, it shall be subjected to observation and tests to determine that it is in accordance with the plans and specifications. The Contractor will be required to maintain all work in a first class condition for a 30-day operating period after the same has been completed as a whole and the Owner has notified the Contractor in writing that the work has been finished to his satisfaction. The Contractor shall pay for all testing. He shall engage a mutually acceptable laboratory or qualified individual to conduct the tests in accordance with these specifications. No portion of the work will be accepted until tests prove it has been satisfactorily completed. The Contractor shall give the Project Engineer or Project Representative a minimum of 48 hours notice for all required observations or tests.

SC-9. BONDS: **If the original contract amount exceeds $100,000.00**, then a Performance Bond in the amount of 100% of the contract amount and Payment Bond in the amount of 100% of the contract amount shall be furnished to the Town. This paragraph shall supersede Article 5, Paragraph 5.01.A of the General Conditions.

SC-10. SAFETY AND HEALTH REGULATIONS: 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 and Safety Standards Act (PL 91-54). The regulations are administered by the Department of Labor and the Contractor shall allow access to project to personnel from that Department.

SC-11. HOLD HARMLESS CLAUSE: The Contractor agrees to hold harmless, indemnify and defend the Town and his agents, architects, engineers and employees from and against any and all claims, losses, damages, demands, causes of action and any and all related costs and expenses, of every kind and character,

growing out of, incidental to, or resulting directly or indirectly from the Contractor's performance of the work described herein, whether such loss, damage, injury, or liability is contributed to by the negligence of the Town, its agents, architects, engineers, or employees, except that the Contractor shall have no liability for damages or the costs incidental thereto caused by the sole negligence of the Town, its agents, architects, engineers, or employees.

The Contractor will require any and all subcontractors to conform with the provisions of this clause prior to commencing any work and agrees to ensure that this clause is in conformity with the insurance provisions of the contract.

SC-12. CONTRACTOR'S STATUS: It is agreed that the Contractor shall occupy the status of an Independent Contractor and the Contractor's employees are not employees of the Town.

The Contractor will be required to assume sole responsibility for the complete effort, as required by this Agreement. The Town will consider the Contractor to be the sole point of contact with regard to contractual matters.

SC-13. SUBCONTRACTING: If any part of the work covered by this Agreement is to be subcontracted, the Contractor shall identify the subcontracting organization and the contractual arrangements made with same. All subcontractors must be approved, in writing by the Town. The Contractor will also furnish the corporate or company name and the names of the officers of any subcontractors.

SC-14. SUB-CONTRACTOR REFERENCES: The Contractor shall provide the Owner with three (3) references of companies or agencies that have contracted with the sub-Contractor within the past three (3) years for similar type construction work (use formats similar to Page 43). The Owner shall approve each sub-Contractor prior to his engagement by the Contractor.

SC-15. CONTRACTOR'S AFFIDAVIT: Upon completion of the work and prior to final payment and settlement of all sums due hereunder, Contractor will furnish to Town, a Contractor's Affidavit in the usual form submitted by Contractor under the laws of the State of South Carolina to the effect that all bills for labor, materials and services in connection with said contract have been paid in full, acknowledging receipt of the contract price and averring that there are no outstanding claims under said contract which could become a lien on the real estate arising our of said contract.

STATUTORY AFFIDAVIT

COUNTY OF _____

STATE OF _____

FROM _____
(Contractor)

TO _____

RE:
Contract entered into the _____ day of 2014, between the above-mentioned parties for the construction of the ***Hargray to Shelter Cove Town Centre Pathway Project*** in the Town of Hilton Head Island.

KNOWN ALL MEN BY THESE PRESENTS:

1. The Undersigned hereby certifies that all work required under the above Contract has been performed in all accordance with the terms thereof, that all material men, subcontractors, mechanics and laborers have been paid and satisfied in full, and that there are not outstanding claims of any character, (including disputed claims or any claim to which the Contractor has or will assert any defense) arising out of the performance of the Contract which have not been paid and satisfied in full except as listed herein below: (Instruction - Enter the "none" or list the names of claimants and the amount claimed by each.)

2. The Undersigned further certified that to the best of his knowledge and belief there are not unsatisfied claims for damages resulting from injury or death to any employees, subcontractors, or the public at large arising out of the performance of the Contract, or any suits or claims for any other damage of any kind, nature, or description which might constitute a lien upon the property of the Owner

3. The Undersigned makes this affidavit as provided by law and for the purpose of receiving final payment in full settlement of all claims against the Owner arising under or by virtue of the Contract, and acceptance of such payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the Contract.

This ___ day of _____, 2014.

_____
Signature

_____
Title

_____
Firm

COUNTY OF

STATE OF

Personally before me, the Undersigned authority, appeared

_____

Who is known to me to be an official of the firm of

_____

Who, after being duly sworn, stated on his oath that he had read the above statement and that the same is true and correct.

_____
Notary Public
My Commission Expires:

This ___ day of _____, 2014

SC-16. RESIDENT PROJECT ENGINEER: The Town reserves the right to furnish a Resident Project Engineer as deemed necessary to insure the Project quality control and conform to Plans and Specifications, who will act as the Owner's Representative on the Project and will have the authority of the Engineer as set forth in the Contract Documents.

SC-17. BARRICADES, DANGER AND WARNING SIGNS: All traffic control devices shall be in accordance with the "Manual on Uniform Traffic Control Devices" latest edition. The Contractor shall install and maintain barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices and shall take all necessary precautions for the protection of the work and safety of the public. Lanes closed to traffic shall be protected by effective barricades, lighted during hours of darkness. Suitable warning signs shall be provided to control, direct traffic and warn pedestrians. Upon completion, all barricades, signs and the like shall be removed.

SC-18. TOOLS, PLANT AND EQUIPMENT: If at any time before the commencement or during the progress of the work, tools, plant or equipment appear to the Engineer to be insufficient, inefficient or inappropriate to secure the quality of the work required or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, to improve their character, to augment their number, or to substitute new tools, plant, or equipment, as the case may be, and the Contractor must conform to such order; but a failure of the Engineer to demand such increase of efficiency, number, or improvement shall not relieve the Contractor of his obligation to secure the quality of work and the rate of progress necessary to complete the work within the time required by his contract to the satisfaction of the Town.

SC-19. ACCIDENTS: The Contractor shall provide, at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the work. The Contractor must report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, which causes death, personal injury or property damages, giving full details and statement of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Contractor and any subcontractor on account of any accident, the Contractor shall promptly report the facts to the Engineer, giving full details in writing of the claim. The Contractor shall advise his superintendent and foreman, who are on the site of the work, the name of hospital and phone number and the name and phone number of the doctor he proposes to use in case of an accident.

SC-20. SANITARY PROVISIONS: The Contractor shall provide temporary sanitary facilities for the use of the workmen during the progress of the work. The sanitary facilities shall conform to the requirements of the South Carolina Department of Health & Environmental Control. All facilities shall be removed at the completion of the contract.

SC-21. MODIFICATION AND DELETION OF WORK: The itemized quantities shall be considered by the Contractor as the quantities required to complete the work for the purpose of bidding. Should actual quantities required in the construction of the work be greater or less than the quantities shown on the items, an amount equal to the difference in quantities at the unit prices for the item will be added to or deducted from the contract price.

When itemized quantities are not given in the Bid, the work shown on the plans or specified shall be considered by the Contractor to be included in his contract for the lump sum prices bid.

The Town reserves the right to delete quantities and portions of the work shown on the plans due to access issues and land rights.

SC-22. RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES: The Contractor shall contact "Palmetto Utility Protection Service at 1-888-721-7877, at least 72 hours prior to beginning excavation. The existence and location of underground utilities will be investigated and verified in the field by the Contractor before starting work. The location of all known interferences based on the best information available has been shown on the drawings, but this information may not be complete. Excavation in the vicinity of existing structures and utilities shall be carefully done by hand. The Contractor shall be held responsible for any damage to and for maintenance and protection of existing utilities and structures. The Contractor is responsible for coordinating with the utility companies for locations, any relocation, adjustment or replacement of utility facilities.

SC-23. INTERRUPTION OF UTILITY SERVICE: The Contractor's operations shall be so conducted as to interfere as little as possible with utility services. Any proposed interruption by the Contractor must be accepted in advance by the Engineer.

SC-24. OMISSION: The drawings and specifications shall both be considered as a part of the contract. Any work and material shown in the one and omitted in the other, or described in the one and not shown in the other, or which may fairly be implied by both or either, shall be furnished and performed as though shown in both, in order to give a complete and first class job.

SC-25. MEASUREMENT AND PAYMENT: Measurement and payment shall be made for the units and at the lump sum contract prices shown in Exhibit C. Direct payment shall only be made for those items or work specifically listed in the Proposal and the cost of any other work must be included in the contract price for the applicable items to which it relates.

Schedule "A" Terms & Conditions - The Town will pay the Contractor within thirty (30) working days upon receipt and authorization to pay from the Town's contract representative of Contractor's invoice for work completed and accepted by the Town. The Town does not pay any late charges.

Progress Payments - Progress payments will be made on monthly estimates, based on the amount of work done or completed. The monthly payments will be approximate, and all payments will be subject to correction in the subsequent estimates and the final payment.

The Town has the right to withhold payment for an invoice or any portion of an invoice where payment is in question. Contractor is still required to complete the remaining portions of the Agreement.

The amount of payments shall be the total value of the work done to the date of the estimate on the basis of the lump sum price.

Partial payments will also be made for the delivered cost of materials intended to be incorporated in the Work, provided the materials meet the requirements of the Contract Documents when delivered to Project Site and stored in acceptable manner. Payments will be made only if a copy of the invoice from the materials supplier listing the cost of the materials accompanies the payment request.

The **retainage of 10%** shall apply to all payment requests.

The Contractor will be funded at 90% of actual cost until Substantial Completion has been fulfilled whereby the retainage of 10% of the cost, less change orders, may be released, at the Town’s sole discretion.

It is the intent of the Owner to occupy the site on the date specified for completion. If, however, the Work has not been completed on the date specified, the Owner reserves the right to occupy and use those portions completed or not completed until the Work is completed.

Payment Application Times - The date for each progress payment is the 25th day of each month. The period of construction work covered by each payment request

is the period ending 10 days prior to date for each progress payment, and starting day following end of preceding period.

Submit to the Owner an itemized application for payment at least 10 days before the date of each progress payment.

Payment Application Forms – EJCDC Document C620 Contractor's Application for Payment.

Application Transmittal - Submit 2 executed copies of each payment application. Transmit each copy with a transmittal form listing attachments, and recording appropriate information related to application in a manner acceptable to the Owner.

Comply with procedures for submittals specified in SC-36 - SUBMITTALS.

Application Preparation - Except as otherwise indicated, complete every entry provided for on the form, including notarization and execution by authorized persons. Incomplete applications will be returned without action. Listing must include amounts of executed change orders issued prior to last day of the "period of construction" covered by application.

Meeting To Coordinate Pay Requests - Contractor should plan to meet with Owner's Representative the same time every month to coordinate quantities and amounts for that month's pay request.

Final Payment Application - The administrative actions and submittals which must precede or coincide with submittal of final payment application are summarized but not limited to the following:

Completion of final punch list items.

Assurance, satisfactory to Owner, that unsettled claims will be settled and that work not actually completed and accepted will be completed without undue delay.

Submit Contractor's Statutory Affidavit of Payment of Debts and Claims furnished in this Section.

Submit waivers of lien from every entity (including Contractor) who could lawfully and possibly file a lien in excess of $100 arising out of Contract and related to work covered by payment. Submit Contractor's Statutory Affidavit provided in this section.

Transmittal of required project construction records to Owner.

Proof, satisfactory to Owner, that taxes, fees and similar obligations of Contractor have been paid.

Removal of temporary facilities, services, surplus materials, rubbish and similar elements.

SC-26. "OR EQUIVALENT," CLAUSE: Although the plans and specifications make reference to particular manufacturers and model numbers for various products, such reference is made only to establish function and quality of such products. If it is desired to use materials or equipment of trade names or of manufacturer's names which are different from those mentioned in the contract documents, information pertaining to such items must reach the hands of the Engineer at least 10 days prior to the date set for the opening of Proposals. The burden of proving equality of a proposed substitute to an item designated by trade name or by manufacturer's name in the contract document rests on the party submitting the request for acceptance. The written application for review of a proposed substitute must be accompanied by technical data which the party requesting review desires to submit in support of his application. The Engineer will give consideration to reports from reputable independent testing laboratories, verified experience records showing the reputation of the proposed product with previous users or any other written information that is reasonable in the circumstances. The application to the Engineer for review of a proposed substitute must be accompanied by a schedule setting forth in what respects the material or equipment submitted for consideration differs from the materials or equipment designated in the contract documents. The degree of proof required for acceptance of a proposed substitute as equivalent to a named product is the amount of proof necessary to convince the Engineer beyond all doubt. To be acceptable, a proposed substitute must, in addition, meet or exceed all express requirements of the contract documents.

If submittal is accepted by the Engineer, an addendum will be issued to all prospective Offerors at least five (5) days prior to the date set for the opening of Proposals.

The Engineer shall be the final judge on questions of similarity and equality.

SC-27. RECORD DATA AND DRAWINGS: The Contractor shall at all times during construction of the project, keep accurate, legible records of the locations, types, sizes, and elevations of storm drainage pipes, drainage structures, curb lines, lighting conduit, water and sanitary sewer lines, service laterals, manholes, cleanouts, fittings, valves, and other related work performed under this project. The Contractor shall prepare a set of "record" drawings from the data stated above. The horizontal locations of all portions of items installed on this project shall be accurately tied down to features that are physical and visible, such as property corner markers and/or permanent type structures. The actual elevations of the finished grade elevations of installed roadway, concrete curbing, pathways

shall be clearly indicated on the “record” drawings at the intervals specified on the construction drawings. These "record" drawings shall be kept clean and dry and maintained in a current state with the progress of the work. If at any time, a copy of this plan or portion of it is requested by the Owner, such copy shall be made available within 24 hours after the request is made.

SC-28. PROPERTY CORNERS: The Contractor shall be responsible for restoring any and all property corners or monuments disturbed during construction. They shall be restored in accordance with the Town’s Land Management Ordinance, by a Professional Land Surveyor registered in the State of South Carolina before final payment will be made.

SC-29. SITE CLEAN-UP: The Contractor is responsible for daily removal of any waste, spillage or otherwise unused material associated with the work and shall dispose of this material off site at his own expense.

It is the intent of the Town that the work be accomplished with minimum disturbance to the properties adjacent to the work area (specifically, the adjacent lawns, landscaping, trees, and buildings), and that the immediate and general vicinity of the work area remain in its pre-project state subsequent to completion of the work. All materials utilized by the Contractor during construction shall be removed from the site; including survey stakes, debris, flagging and other temporary survey controls.

Should the Contractor during the progress of the work, lose, dump, or misplace any material or equipment which in the opinion of the Town or Engineer may be considered unaesthetic, environmentally deleterious, dangerous to the public, or impact adjacent properties, the Contractor shall recover and remove same within 24 hours of receipt of said notice at no additional cost to the Town.

The Contractor shall inspect the work areas at the end of every workday to ensure that all debris left by the Contractor’s and subcontractor’s workers has been removed from the work areas and properly disposed of. This includes, for example, lunch bags, soda cans, drink cups, etc.

Upon completion of all construction activity, the Contractor shall restore all staging, storage, transport, and work areas, fences, and other facilities to an equivalent pre-project condition or better to the approval of the Town.

SC-30. PLANS AND SPECIFICATIONS: The successful Contractor will be furnished 5 (five) sets of contract documents, free of charge, for use in the execution of the work.

Any corrections of errors or omissions in plans and specifications may be made by the Owner when such correction is necessary for the proper fulfillment of their intention as construed by him. Where said correction of errors or omissions,

except as provided in the next two paragraphs below, adds to the amount of work to be done by the Contractor, compensation for said additional work shall be made under the item for Extra Work except where the additional work may be classed under some item or work for which a unit price is included in the Proposal.

The fact that specific mention of a fixture, or of any part of the work, is omitted in the specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the plans, or is usually and customarily required to complete fully such work as is specified herein, will not entitle the Contractor to consideration in the matter of any claim for extra compensation, but the said fixture or work, must be installed as if called for by on the drawings and specifications.

All work indicated on the plans and not mentioned in the specifications, or vice versa, and all work and material usual and necessary to make the work complete in all parts, whether or not they are indicted on the plans or mentioned in the specifications, shall be furnished and executed the same as if they were called for by both the drawings and specifications.

When a requirement is made by the documents that is not possible to meet, such as the requirement for unavailable materials, prompt notice shall be submitted to the Owner for direction and no further action in the matter shall be taken by the Contractor until an approved modification of the requirements is made.

The Contractor and all subcontractors shall cooperate with one another and with other Contractors doing related work and shall coordinate their work with the work of other trades and other Contractors so as to facilitate the general progress of the work. Each trade shall afford all other trades and all other Contractors every reasonable opportunity for the installation of their work and for the storage of their materials.

The Contractor shall provide a construction schedule which shall be in sufficient detail to accurately show the work to be accomplished.

SC-30. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS: If such separate Contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense.

SC-32. TIME: Construction activity may occur from Monday through Saturday from 7:00 AM to sunset and unless otherwise authorized by the Owner. Lighting of the work site is prohibited except as may be specifically authorized in writing by the Owner.

No Sunday or Holiday work will be permitted, except of great emergency and then only upon written notification to and approval from the Owner.

Work by the Contractor or his Subcontractor will not be permitted on Saturdays, Sundays and Holidays during the time after the specified completion date.

The Owner reserves the right to instruct the Contractor to delay the start of construction activity in certain locations.

SC-33. UNCOVERING AND CORRECTION OF WORK: The subcontractors or sub-subcontractors and the Contractor shall remedy any defect due to faulty materials or workmanship and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of acceptance as defined in the General Conditions, and in accordance with the terms of any special guarantees provided in the contract.

SC-34. MISCELLANEOUS PROVISIONS: Equal Opportunity - In the hiring of employees for the performance of work under this contract or any subcontract hereunder, no Contractor, subcontractor, not any person acting on behalf of such Contractor or subcontractor, shall by reason or race, creed, or color discriminate against any citizen who is qualified and available to perform the work to which the employment relates.

No Contractor, nor any person on his behalf, shall, in any manner, discriminate against or intimidate any employees hired for the performance of work under this contract on account of race, creed, or color.

SC-35. SUSPENSION OF WORK AND TERMINATION: The Town may without cause terminate this contract in whole or in part at any time for its convenience. In such instance, an adjustment shall be made to the Contractor, for the reasonable costs of the work performed and accepted by the Town through the date of termination. Termination costs do not include lost profits, consequential damages, delay damages, unabsorbed or under absorbed overhead of the Contractor or its subcontractors, and/or failure to include termination for convenience clause into its subcontractors and material purchase orders shall not expose the Town to liability for lost profits in conjunction with a termination for convenience settlement or equitable adjustment. Contractor expressly waives any claims for lost profit or consequential damages, delay damages, or indirect costs which may arise from the Town's election to terminate this contract in whole or in part for its convenience.

The above paragraph supersedes Article 15 in the General Conditions.

SC-36. CONTRACTOR SUPERVISION: The Contractor shall provide a qualified supervisor on the project site at all times during construction.

SC-37. SUBMITTALS: Submittal Requirements - Coordinate preparation and processing of submittals in a manner as to not delay performance of the work.

Unless otherwise specified, make submittals in groups containing associated items to ensure that information is available for checking each items when it is received.

Provide permanent marking on each submittal to identify project, date, Contractor, subcontractor, submittal type and similar information to distinguish it from other submittals. Show Contractor's executed review and approval marking and provide space for Owner's "Action" marking.

Identification - Consecutively number submittals. Accompany each submittal with a letter of transmittal containing pertinent information required for identification and checking of submittals.

When material is resubmitted for any reason, transmit under a new letter of transmittal and with new submittal number, and reference original or previous submittal number.

Timing - Make submittals far enough in advance of scheduled dates for installation to provide time required for reviews, for securing necessary approvals, for possible revisions and resubmittals, and for placing orders and securing delivery.

In scheduling, allow at least 10 calendar days for review by the Owner following receipt of the submittal.

Delays caused by tardiness in receipt of submittals will not be an acceptable basis for extension of the contract completion date.

Distribution - Provide additional distribution of approved submittals to subcontractors, suppliers, fabricators, installers, governing authorities and others as necessary for proper performance of the work. Include such additional copies in initial transmittal where required to receive "Action" marking before final distribution.

Review - Review by the Owner shall not be construed as a complete check, but only that the general method of construction and detailing is satisfactory.

Owners action - Approved: Work may proceed.

Approved as noted: Work may proceed, provided it complies with notations and corrections on submittal.

Disapproved, Resubmit: Do not proceed with work. Revise submittal in accordance with notations thereon, and resubmit without delay to obtain a different action marking.

Submittals Formats – Provide newly-prepared information, on reproducible sheets, with graphic information at accurate scale (except as otherwise indicated), with name of preparer indicated (firm name). Show dimensions and note which are based on field measurement. Identify materials and products in the work shown. Indicate compliance with standards, and special coordination requirements. Do not allow shop drawing copies to be used in the work without approval by the Owner.

Scale and measurement - Make shop drawings accurately to a scale sufficiently large to show pertinent aspects of the item and its relationship to the work.

Submittal - 2 blue prints or xerox copies of prints; one will be returned.

Product Data - Product data shall include standard printed information on materials, products, and systems.

Collect required data into one submittal for each unit of work or system.

Mark each copy to show which choices and options are applicable to project. Include manufacturer's standard printed recommendations for application and use, compliance with standards and application of labels and seals, if any.

Maintain one set of product data (for each submittal) at project site, available for reference by Owner and others.

At Contractor's option, provide a preliminary single-copy of product data for landscape architect's review and approval.

Do not proceed with installation of materials, products, or systems until final copy of applicable product data is in possession of installer.

Samples - Samples include both fabricated and unfabricated physical examples of materials, products and units of work; both as complete units and as smaller portions of units of work; either for limited visual inspection or (where indicated) for more detailed testing and analysis.

Provide units identical with final condition of proposed materials or products for the work. Include "range" samples (not less than 3 units) where unavoidable variations must be expected, and describe or identify variations between units of each set. Provide full set of optional samples where Owner's selection is required.

Include information with each sample to show generic description, source or product name and manufacturer, limitations, and compliance with standards.

Samples are submitted for review and confirmation of color, pattern, texture, and "kind" by Owner. Owner will not "test" samples (except as otherwise indicated) for compliance with other requirements, which are therefore the exclusive responsibility of Contractor.

Comply with requirements for "samples" to greatest extent possible and process transmittal forms to provide a record of activity.

Furnish two copies of inspection and test reports where required.

SC-38. PROJECT COORDINATION: Administration and Supervision - Coordinate various elements of the work and entities engaged to perform work; and coordinate the work with existing facilities/conditions, and with work by separate Contractors and by Owner.

Survey/Recording - Working from established lines and levels at or near project site, establish and maintain dependable markers for lines and levels of the work construction. Calculate dimensions and measure for layout of work; do not scale the drawings. Maintain surveyor's log of layout work. Record deviations (if any) from drawing information on existing conditions, and review with Engineer at time of discovery. Provide copy of survey log and as-built drawings to Owner at contract completion.

Preparation for Installation - Contractor shall perform complete construction staking. Contact all utilities and have all buried cable flagged prior to construction. Notify Owner of any underground obstructions that significantly effect work.

Prior to starting installation of the work, the Contractor shall hold a pre-installation conference, attended by Owner's representative, representatives of Contractors where coordination is required, to approve all aspects of work. Also, review significant aspects of requirements for the work. Record discussion and distribute a plan of action.

Require Installer of each major unit of work to inspect substrate and conditions for installation, and to report (in writing) unsatisfactory conditions. Correct unsatisfactory conditions before proceeding. Inspect each product immediately before installation. Do not install damaged or defective products, materials or equipment.

Installation - Comply with manufacturer's instructions and recommendations to extent printed information if more detailed or stringent than requirements contained directly in contract documents.

Timing - Install work during time and under conditions which will ensure best possible result, coordinated with required inspection and testing.

Anchor work securely in place, properly located by measured line and level, organized for best possible uniformity, visual effect, operational efficiency, durability, and similar benefit to Owner's use.

Mount individual units of work at proper grades, if not otherwise indicated: Refer uncertainties to Owner before proceeding.

Clearing and protection - General - Clean each element of work at time of installation. Provide sufficient maintenance and protection during construction to ensure freedom from damage and deterioration at time of substantial completion.

SC-39. QUALITY CONTROL:

Quality Assurance: Required inspection and testing services are intended to assist in determination of compliance of the work with requirements, but do not relieve Contractor of responsibility for those compliances, or for general fulfillment of requirements of Contract Documents. Specified inspections and tests are not intended to limit Contractor's quality control program.

Qualification of Testing Agencies: The testing laboratory will be qualified to the Owner's approval in accordance with requirements specified in applicable sections.

Contractor's Quality Control: Contractor shall maintain qualified, experienced superintendent on site, who in the Contractor's absence shall be his representative. Directions given to superintendent shall be as given to Contractor. Written verification will follow as necessary. Superintendent shall conduct ongoing inspections to insure contract requirements are being met.

Require installer of each major unit of work to inspect substrate to receive work, and conditions under which work will be performed and to report (in writing to Contractor) unsatisfactory conditions. Do no proceed with the work until unsatisfactory conditions have been corrected in a manner acceptable to installer.

Discrepancies between dimensions on Drawings, the Specifications, and the existing conditions shall be referred to the Owner for adjustment before affected work is started.

Before ordering material or doing work which is dependent for proper size of installation upon coordination with site conditions, the Contractor shall verify dimensions by taking measurements at the site, and shall be responsible for the correctness of the measurements. No consideration will be given to any claim based on differences between the actual dimensions and those indicated on the Drawings.

Where installation includes manufactured products, comply with manufacturer's applicable instructions and recommendations for installation.

The Contractor shall perform the following tasks prior to installation:

Check to ensure that materials and products have been approved.

Check to ensure testing provisions have been made for required control testing.

Physically examine materials to ensure compliance with Drawings and Specifications.

Inspect each item of materials or equipment immediately prior to installation, and reject damaged and defective items.

Contractor shall verify that items fabricated off-site meet with specifications.

Project Conditions: Install work during conditions of temperature, humidity, exposure, forecasted weather, and status of project completion which will ensure best possible results for each unit of work, in coordination with entire work. Isolate each unit of work from non-compatible work, as required to prevent damage or deterioration.

Coordinate enclosure (covering) of work with required inspections and tests, so as to minimize necessity of uncovering work for that purpose.

Installation: Provide attachment and connection devices and methods for securing work properly as it is installed; true to line and level, and within recognized industry tolerances if not otherwise indicated. Allow for expansions and movements. Provide uniform joint widths in exposed work, organized for best possible visual effect. Refer questionable visual-effect choices to Owner for final decision prior to continuing work.

Where mounting heights are not indicated, mount individual units of work at industry-recognized standard mounting heights for applications indicated. Refer questionable mounting height choices to Owner for final decision.

Field Quality Control: Representative of the testing laboratory shall have access to the work at all times. Provide facilities for such access in order that the laboratory may properly perform its function.

Specimens and samples for testing, unless otherwise provided in the Contract Documents, will be taken by the testing personnel. Sampling equipment and personnel will be provided by the testing laboratory. Deliveries of specimens and samples to the testing laboratory will be performed by the testing laboratory.

SC-40. QUALITY ASSURANCE: In addition to the standards described in this Section, comply with pertinent requirements of governmental agencies having jurisdiction.

Complete installation of temporary lighting and electrical work shall be in accordance with National Electrical Code.

ANSI Standards: Comply with applicable provisions of ANSI A10 Series standards on construction safety.

Obtain and pay for required inspections, permits, and fees for temporary utilities. Provide notices required by governmental authorities. File drawings necessary to obtain permits.

SC-41. PROJECT CONDITIONS: Make required connections to existing utility systems with minimum disruption to services in the existing utility systems. When disruption of the existing service is required, do not proceed without the utility company's approval and, when required, provide alternate temporary service.

SC-42. TEMPORARY UTILITIES: Temporary connections to existing permanent service lines shall be made at locations as directed by the Owner and local authorities having jurisdiction.

Install, operate, maintain, and protect temporary facilities in a manner and at locations which will be safe, non-hazardous, sanitary, and protective of persons and property, and free of harmful effects.

If Contractor fails to correctly install temporary services, he shall be held responsible for resultant damages.

Where a service of a type other than those described below is required, the Contractor shall provide the service and necessary equipment at his own expense.

Terminate use and remove facilities at earliest reasonable time, when no longer needed or when permanent facilities have, with authorized use, replaced the need. no temporary systems shall form a part of the permanent systems. Remove temporary facilities, including connections and debris, resulting from temporary installation.

Restore to original condition permanent service lines, grounds, and buildings disturbed or damaged by the installation and removal of temporary service lines.

SC-43. LIGHTING AND ELECTRICAL SERVICE: Provide necessary temporary electrical service as required to meet project electrical requirements at the job site until final acceptance.

Extend temporary service from existing public utility service. Provide meter and extend service with panel (including disconnect) to site location indicated on Drawings.

Provide adequate capacity to power construction tools and equipment required to complete the Project.

Cost of electricity shall be paid by the Contractor.

Provide and pay for portable electric generators to meet temporary electrical needs during construction operations.

Extension of service from temporary panel shall be the responsibility of each trade requiring service.

SC-44. WATER: Water for construction purposes may be obtained from the **BROAD CREEK PUBLIC SERVICE DISTRICT AND THE SOUTH ISLAND PUBLIC SERVICE DISTRICT** present facilities; with their permission. Contractor shall be responsible for extending lines from source, for making connections, and paying tap fees if required.

SC-45. FIRE PROTECTION: Keep flammable material at an absolute minimum and ensure that such material is properly handled and stored.

Open fires shall not be built or open salamanders used unless constantly manned with extinguishing equipment until final extinguishing.

SC-46. PROTECTION OF WORK AND PROPERTY: Maintain adequate protection of work from damage and protect Owner's property from injury or loss arising in connection with this Contract. Contractor shall be responsible for making required repairs.

Locate, protect, and maintain bench marks, monuments, control points and project engineering reference points. Re-establish disturbed or destroyed items at Contractor's expense.

Furnish, erect, and maintain lights, signs, fences, enclosures, barricades, guards, railings, trench covers, and other means required by law or deemed appropriate to protect work and persons.

Roadways, fences, concrete walls, utilities, and other dwelling infrastructure within the work area and access route shall be protected by the Contractor to prevent damage thereto by the Contractor's operations.

SC-47. DISPOSAL OF WASTE MATERIALS: Remove waste materials from Owner's property and dispose of off site. No burning of material shall be allowed on site.

Do not discharge volatile or other harmful or dangerous materials into drainage systems, surface waters or wetlands.

SC-48. DUST CONTROL: Control dust caused by the work. Dampen surfaces as required. Comply with pollution control regulations of governing authorities.

SC-49. EROSION AND SEDIMENTATION CONTROL: Contractor shall be responsible for soil erosion and sedimentation originating from project site and shall take precautions to prevent potential erosion and sedimentation.

Erosion and sedimentation control shall comply with local codes and regulations.

Protective measures shall be in effect until completion of work.

Areas of bare soil left uncovered longer than 2 weeks shall receive temporary seeding, pinestraw, mulch, or other means of erosion control approved by Owner.

Final seeding shall be done as soon as feasibly possible.

Acceptable erosion control measures shall be used where sediment is evidenced leaving the site.

Sedimentation ponds shall be used should excessive sediment be evidenced leaving site or straw bales proven ineffective.

Contractor shall clean streets, pipes, storm sewers, and private property of sediment originating from site daily.

SC-50. SURFACE WATER CONTROL: Excavations shall be kept free of water. Presence of ground water shall not increase contract price.

Adjoining properties shall be kept free of surface water runoff originating from construction site during construction period.

SC-51. PROJECT IDENTIFICATION AND SIGNS: Signs of advertisements shall not be displayed without Owner's approval and approval of local governing agencies.

Project sign design shall be approved by Owner.

SC-52. MATERIALS AND EQUIPMENT:

Submittals: Requests for Substitutions: Submit 3 fully executed copies of the Substitution Request Form located at the end of the Section or an equal document.

Quality Assurance: In procuring items in this work, it is the Contractor's responsibility to verify the detailed requirements of the specifically named codes and standards and to verify that the items procured for use in this Work meet or exceed the specification requirements.

The Owner reserves the right to reject items incorporated into the work which fail to meet the specified minimum requirements. The Owner further reserves the right, and without prejudice to other recourse the Owner may take, to accept non-complying items subject to an adjustment in the Contract Amount as approved by the Owner.

It is also the Contractor's responsibility, when so required by the Contract Documents to deliver to the Owner all required proof that the materials and/or workmanship meet or exceed the requirements of the specifically named code or standard. Such proof shall be in the form requested in writing by the Owner.

Certificates of Compliance: Show on each certification the name and location of the work, name and address of Contractor, quantity and date or dates of shipment or delivery to which the certificate applies, and name of the manufacturing or fabricating company. Certification shall be in the form of letter or company-standard forms containing required data.

In addition to the above information, laboratory test reports submitted with Certificate of Compliance shall show the date or dates of testing, the specified requirements for which testing was performed, and results of the test.

Delivery, Storage and Handling: Deliver, store and handle products in accordance with manufacturer's recommendations and by methods and means which will prevent damage, deterioration, and loss including theft.

Control delivery schedules to minimize long-term storage of products at site and overcrowding of construction spaces. In particular, provide delivery/installation coordination to ensure minimum holding or storage times for products recognized to be flammable, hazardous, easily damages, or sensitive to deterioration, theft, and other sources of loss.

Materials storage area will be designated on drawings or be selected by Owner.

Warranties (Guarantees): Warranties on the work are in several categories, including those of General Conditions, and including (but not necessarily limited

to) the following specific categories related to individual units of work specified in these specifications.

Special Project Warranty: A warranty specifically written and signed by Contractor for a defined portion of the work; and, where required, countersigned by subcontractor, installer, manufacturer, or other entity engaged by Contractor.

Specified Product Warranty: A warranty which is required by Contract Documents, to be provided for a manufactured product incorporated into the work, or has written and executed a special project warranty as a direct result of Contract Document requirements.

Coincidental Product Warranty: A warranty which is not specifically required by Contract Documents, but which is available on a product incorporated into the work, by virtue of the fact that manufacturer of product has published warranty in connection with purchases and uses of product.

General Limitations: This section shall not be misconstrued to require the Contractor to provide warranties beyond the manufacturer's warranty period.

It is recognized that specific warranties are intended primarily to protect Owner against failure of the work to perform as required, and against deficient, defective, and faulty materials and workmanship, regardless of sources. Except as otherwise indicated, specific warranties do not cover failures in the work which result from:

Unusual and abnormal phenomena of nature.

The Owner's misuse, maltreatment, or improper maintenance of the work after Contractor's maintenance period has been completed.

Vandalism after time of substantial completion.

Damages or Losses: In connection with Contractor's correction of warranted work which has failed, remove and replace other work of project which has been damaged as a result of such failure, or must be removed and replaced to provide access for correction of warranted work.

Except as otherwise indicated or required by governing regulations, special project warranties and product warranties are not extended to cover damage to building contents (other than work of Contract) which occurs as a result of failure of warranted work.

Except as otherwise indicated, when work covered by a special project warranty or product warranty has failed and has been corrected by the replacement or restoration, reinstate warranty by written endorsement for a period of time equal to original warranty, starting on date of acceptance of replaced or restored work.

Except as otherwise indicated, costs of replacing or restoring failing warranted units or products is Contractor's obligation, without regard for whether Owner has already benefited from use through a portion of anticipated useful service lives.

Owner reserves the right, at time of substantial completion or thereafter, to reject coincidental product warranties submitted by Contractor, which in opinion of Owner tend to detract from or confuse interpretation or requirements of Contract documents.

Do not purchase, subcontract for, or allow others to purchase or sub-contract for materials or units of work for project where a special project warranty, specified product warranty, certification or similar commitment is required, until it has been determined that entities required to countersign such commitments are willing to do so.

Where a special project warranty (guarantee) or specified product warranty is required, prepared a written document to contact terms and appropriate identification, ready for execution by required parties. Submit draft to Owner with copy to Engineer for approval prior to final executions.

Project Compliances: The compliance requirements, for individual products as indicated in Contract Documents, are multiple in nature and may include generic, descriptive, proprietary, performance, prescriptive, compliance with standards, compliance with codes, conformance with graphic details, and other similar forms and methods of indicating requirements, all of which must be complied with. Also "allowances" and similar provisions of Contract Documents will have a bearing on selection process.

Where more than one choice is available as options for Contractor's selection of a product or material, select an option which is compatible with other products and materials already selected (which may have been from among options for those other products and materials). Total compatibility among options is not ensured by limitations within Contract Documents, but must be provided by Contractor. Compatibility is a basic general requirement of product/material selections.

Provide products which comply with requirements, and which are undamaged and unused at time of installation, and which are complete with accessories, trim, finish, safety guards, and other devices and details needed for complete installation and for intended use and effect.

Standard Products: Where available, provide standard products of types which have been produced and used previously and successfully on other projects and in similar applications.

Continued Availability: Where additional amounts of a product, by nature of its application, are likely to be needed by Owner at a later date for maintenance and

repair or replacement work, provide a standard product which is likely to be available to Owner at such later date.

Except as otherwise indicated for required approval labels, and operating data, do not permanently attach or imprint manufacturer's or producer's nameplates or trademarks on exposed surfaces of products which will be exposed to view either in occupied spaces or on exterior of the work.

Labels: Locate required labels and stamps on a concealed surface or, where required for observation after installation, on an accessible surface which, in occupied spaces, is not conspicuous.

Provide permanent nameplate in each item of service-connected or power operated equipment. Indicate manufacturer, product name, model number, serial number, capacity, speed, ratings, and similar essential operating data. Locate nameplates on an easily accessed surface which, in occupied spaces, is not conspicuous.

Contractor's options for selecting products are limited by Contract Documents, tradition or procedures experienced by Contractor on previous construction projects. Required procedures include, but are not necessarily limited to, the following for various indicated methods of specifying.

Provide product indicated, except advise Owner before proceeding, where known that named product is not a reasonable or acceptable selection.

Provide one of the named projects, at Contractor's option; but excluding products which do not comply with requirements. Do not provide or offer to provide an unnamed product, except where none of named products comply with requirements or are a feasible selection; advise Owner before proceeding.

Where named products in specifications text are accompanied by the term "or equal", or other language of similar effect, comply with "substitutions" procedures below for obtaining approval (by Change Order) to provide an unnamed product.

Except as otherwise indicated, is defined to mean manufacturer's name for product, as recorded in published product literature, of latest issue as of date of Contract Documents. Refer request to use products of later (or earlier) model to Owner for acceptance before proceeding.

Where only compliance with an imposed standard, code, or regulation is required, selection from among products which comply with requirements including those standards, codes, and regulations, is Contractor's option.

Provide products which comply with specific performances indicated, and which are recommended by manufacturer (in published product literature or by

individual certification) for application indicated. Overall performance of a product is implied where product is specified with only certain performance requirements.

Provide products which have been produced in accordance with prescriptive requirements, using specified ingredients and components, and complying with specified requirements for mixing, fabricating, curing, finishing, testing, and similar operations in manufacturing process.

Where matching with an approved sample is required, final judgment of whether a product proposed by Contractor matches approved samples satisfactorily is Owner's judgment. Where no product within specified cost category is available, which matches sample satisfactorily and complies with requirements, comply with "substitutions" procedures below for selection of a matching product outside established cost category or, of a product not complying with requirements.

Except as otherwise indicated, where specified product requirements include "...as selected from Manufacturer's standard colors, patterns, textures..." or words of similar effect, the selection of manufacturer and basic product (complying with requirements) is Contractor's option, and subsequent selection of color, pattern, and texture is Owner's selection. Where specified produce requirements include "...as selected from standard colors, patterns, textures available within the industry...", or words to that effect, selection of product (complying with requirements, and within established cost category) is Owner's selection, including designation of manufacturer where necessary to obtain desired color, pattern, or texture.

Substitutions After Contract Award:

Procedures: Drawings, specifications, samples, manufacturer's literature, performance data, etc. shall accompany requests for substitutions. Burden of proof shall be on Contractor.

Permission to effect change shall be by Change Order. Permission shall not relieve Contractor, sub-Contractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist in substituted product, or for any departures or deviations from requirements of Contract Documents as modified by such Change Order.

Unless specifically qualified, Contractor shall warrant by his request that proposed substitute product will satisfy standards and requirements satisfied by originally specified project. Change Order shall not be deemed to modify Contract Documents with respect, thereto.

If substitution affects a correlated function, adjacent construction, or work of other trades or Contractors, the necessary changes and modifications to affected

work shall be considered essential work and included as part of proposed substitution, without additional expense.

Conditions: Contractor's request for substitution will be received and considered when extensive revisions to Contract Documents are not required and changes are in keeping with general intent of Contract Documents; when timely, fully documented and properly submitted; and when one or more of following conditions is satisfied, all as judged by Owner.

Where request is directly related to an "or equal" clause or other language of same effect in Contract Documents.

Where required product, material, or method cannot be provided within Contract time, but not as a result of Contractor's failure to pursue the work promptly or to coordinate various activities properly. When a specified product is not available, proof must be submitted that firm orders were placed within 14 days following contract awards, or if unavailability is due to a strike, lockout, bankruptcy, discontinuance by manufacturer of product or natural disaster.

Where required product, material, or method cannot be provided in a manner which is compatible with other materials of the work, or cannot be properly coordinated therewith, or cannot be warranted as required, or cannot be used without adversely affecting Owner's insurance coverage on completed work, or will encounter other substantial non-compliance which are not possible to otherwise overcome except by making requested substitution, which Contractor thereby certifies to overcome such non-compatibility, non-coordination, non-warranty, non-insurability, or other non-compliance as claimed.

Where required product, material, or method cannot receive required approval by a governing authority, and the requested substitution can be so approved.

Where substantial advantage is offered Owner, in terms of cost, time, energy conservation, or other valuable considerations, after deducting offsetting responsibilities Owner may be required to bear, including additional compensation to Engineer for redesign and evaluation services, increased cost of other work by Owner or separate Contractors, and similar considerations.

SC-52. PROJECT MEETINGS:

Description: To enable orderly review during progress of the work, and to provide for systematic discussion of problems, the Owner may conduct project meetings throughout the construction period.

The Contractor's relations with his subcontractors and materials suppliers, and discussions relative thereto, are the Contractor's responsibility.

Submittals: To the maximum extent practical, advise the Owner at least two (2) days in advance of project meetings regarding all items to be added to the agenda.

Meetings: Except as noted below for Pre-construction Meeting, project meetings will be scheduled at times mutually agreed upon by Owner, and Contractor.

To the maximum extent practicable, meetings will be held at the job site.

Persons designated by the Contractor to attend and participate in the project meetings shall have all required authority to commit the Contractor to solutions agreed upon in the project meetings. The Owner will prepare scheduling and agenda and will oversee the meetings.

Pre-Construction Meeting: Pre-construction meeting will be scheduled within 10 days after the Owner has issued Notice to Proceed. Provide attendance by authorized representatives of the Contractor and all major subcontractors. The Owner shall advise other interested parties and request their attendance.

Meeting Agenda: Distribute data on and discuss the following:

Organization of Contractor's subs and personnel, and those of materials suppliers, and Engineer.

Channels and procedures for communications.

Construction schedule, including sequence of critical work.

Contract Documents, including distribution of required copies of original documents and revisions.

Compliance with plans and specifications.

Any interpretations, conflicts or omissions in plans and specifications requested by Contractor.

Processing of Shop Drawings and other data submitted to the Owner.

Processing of field decisions and Change Orders.

Payment procedures.

Utility Coordination

Construction Limits / Priv. Prop.

Rules and regulations governing performance of the Work.

Procedures for safety and first aid, security, quality control, housekeeping, and other related matters.

Responsibility for locating existing utilities and for damage to existing utilities. Time schedule for relocation of utilities, if required.

Traffic control.

Substitutions of materials or methods.

Progress Meeting: The Owner shall require each entity then involved in planning, coordination or performance work to be properly represented at each meeting. Review each entity's present sequences, deliveries, access, site utilization, temporary facilities and services, hours of work, hazards and risks, housekeeping, and change orders.

Agenda to include, but not limited to:

Review minutes and directives of previous meeting.

Review progress of work since last meeting, including status of submittals for approval.

Identify problems in critical path.

Develop corrective measures and procedures to regain critical path.

Review quantities of work completed and materials stored for payment requests.

Review Traffic Control.

SC-54. FIELD ENGINEERING: Any changes in the work shall be in accordance with Article 10 of the General Conditions.

SC-55. CLAIMS AND DISPUTE RESOLUTION: Contractor shall notify the Owner in writing within five (5) calendar days of the date any dispute or claim occurs or is discovered, that may arise in the course of this Agreement.

Only the Owner has the authority to resolve Agreement disputes or claims.

The Owner will not automatically agree to arbitration or other means to resolve disputes or claims.

The above paragraph supersedes Article 16 in the General Conditions.

SC-56. SOUTH CAROLINA LAW CLAUSE: The person, partnership, association, or corporation with whom this Agreement is made must comply with local and State laws which require such person or entity to be authorized and/or licensed to do business in the Town. Notwithstanding the fact that applicable statutes may exempt or exclude the successful Offeror from requirements that it be authorized and/or licensed to do business in the Town, by submission of this signed Agreement, the Contractor agrees to subject itself to the jurisdiction and process of the Fourteenth Judicial Circuit Court of Beaufort County, as to all matters and disputes arising or to arise under this Agreement and the performance thereof including any questions as to the liability for taxes, licenses or fees levied by State or local government.

SC-57. KICKBACKS: It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under an Agreement with the Town to the prime Contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor order.

SC-58. GRATUITIES: It shall be unethical for any person to offer, or give, or agree to give any Town employee or former Town employee, or for any Town employee or former Town employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement, or an Agreement, or to any solicitation or bid therefore.

SC-59. NONRESIDENT TAXPAYERS: If the Contractor is a South Carolina nonresident taxpayer and the Agreement amount is $10,000 or more, the Contractor acknowledges and understands that in the event he is awarded an Agreement he shall submit a Nonresident Taxpayer Registration Affidavit (State form #1-312-6/94), before a contract can be signed. Affidavit must certify that the nonresident taxpayer is registered with the SC Department of Revenue or the SC Secretary of State's Office, in accordance with Section 12-9-310(A)(2)(3) of the SC Code of Laws (1976) as amended.

SC-60. OFFICIALS NOT TO BENEFIT: No Town Council member or Commissioner of the Town, Town employee, or official shall be admitted to any share or parts of this Agreement or to any benefit that may arise therefrom. All Offerors shall adhere to all provisions of the South Carolina Ethics Act.

SC-61. CONSTRUCTION SCHEDULE AND PROCEDURES: The Contractor shall submit to the Town and Engineer for approval at least ten (10) days prior to the contract execution, a practicable critical path method construction schedule based

on calendar days and the major tasks involved, and a methodology statement for prosecution of the work. No work on site shall begin until the schedule is approved in writing by the Town.

The Contractor shall continually update a construction schedule for the work and a sequence of operations he intends to take in doing the work. Each such schedule shall be subjected to review and change during the progress of the work at the request of the Town and Engineer.

SC-62. ADDITIONAL SERVICES: Any additional services or work to this Agreement will be negotiated by a separate amendment to this Agreement with a specific cost, scope of services/work and completion date.

Hargray to Shelter Cove Town Centre Pathway Project

TECHNICAL SPECIFICATIONS

TOWN OF HILTON HEAD ISLAND
HARGRAY TO SHELTER COVE TOWN CENTRE
PATHWAY PROJECT

TECHNICAL SPECIFICATIONS

PART 1 - GENERAL

1. SCOPE

The project consists of Selective Clearing, Grading, Paving, Drainage, Timber Retaining Wall Construction, Signing, and Marking, and Pathway construction eastbound along William Hilton Parkway (US 278) from Hargray to Shelter Cove Town Centre on Hilton Head Island in accordance with the Plans and these Specifications. The CONTRACTOR shall comply with all Terms and Conditions included in the TOWN, SCDOT, County, and OCRM permits issued for this work.

2. SUBMITTALS

2.1 Construction Schedule. The CONTRACTOR shall submit to the TOWN and ENGINEER for approval at least 10 days prior to the initiation of work, a critical path method construction schedule and methodology statement for the work. No work on site shall begin until the schedule is approved by the TOWN.

2.2 Contact List. The CONTRACTOR shall submit to the TOWN and ENGINEER at least 10 days prior to initiation of work a typed list of pertinent project personnel and their telephone, telefax, and other numbers by which key personnel can be reached for purposes of notification and other matters discussed in these Specifications. Should a subcontractor perform the work, the CONTRACTOR shall provide a contact person or person(s) directly employed by the CONTRACTOR who shall be the TOWN's point of contact and who shall be in responsible charge of the subcontractor during the duration of the work.

2.3 List of Subcontractors. CONTRACTOR shall submit to the TOWN and ENGINEER at least 10 days prior to the initiation of work a list that includes the name and physical address of each subcontractor and vendor and a description of the work or products to be provided by each entity. All subcontractors and vendors shall be acceptable to the TOWN.

2.4 Progress Reports. Between the time the Notice to Proceed is issued and project

mobilization to the project site, the CONTRACTOR shall only submit weekly progress reports. The CONTRACTOR shall notify the ENGINEER and TOWN at least three (3) days in advance of the mobilization of equipment and/or materials to the project site. Once the CONTRACTOR is mobilized to the work site, the CONTRACTOR shall submit weekly reports that summarize the work completed at the end of each work week. Weekly Reports shall be submitted every week during the construction period (even when no work is done) between the time at which the CONTRACTOR is mobilized at the work site and the time of Final Acceptance. Reports shall be submitted by 10:00 a.m. to the ENGINEER every Monday via E-Mail. The CONTRACTOR shall coordinate with the ENGINEER to formulate an acceptable form format for the weekly reports.

3. SURVEY REQUIREMENTS

3.1 Horizontal control data and elevations for the work are included in the Plans. Descriptions of the monument control in the vicinity of the work are also furnished in the Plans.

3.2 The CONTRACTOR shall establish the horizontal and vertical limits of the work and shall only use the tabulated and noted control provided in the Plans. *The CONTRACTOR shall not scale positions, distances, dimensions, elevation, slope, etc. from the Plans for the purposes of work layout.* The CONTRACTOR shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the Plans and in these Specifications. The ENGINEER reserves the right to modify the locations and elevations of the limit marks as may be required to meet changed conditions or as a result of necessary modifications to the work. As required in Section 9 of the Supplemental General Specifications, a surveyor registered in the State of South Carolina shall be responsible for and certify all survey work.

3.3 If the CONTRACTOR elects to establish temporary benchmarks through the work site, they shall be established by a closed loop of levels from a permanent benchmark or a line of levels between two permanent benchmarks. Any such temporary benchmark shall be located upon fixed objects such as utilities, roadways, etc. to assure reliability through the duration of the work.

3.4 **Construction Stakes.** The CONTRACTOR shall furnish, at his own expense, such stakes, templates, platforms, equipment, tools and material, and all labor as may be required in laying out any part of the work from the monuments, control data and elevations. It shall be the responsibility of the CONTRACTOR to maintain and preserve the stakes and other marks established by the ENGINEER

for the purposes of this work until authorized to remove them. If such marks are destroyed by the CONTRACTOR or through his negligence prior to their authorized removal, they may be replaced by the ENGINEER at his discretion, and the expense of replacement will be deducted from any amounts due or to become due. Work may be suspended at any time when location and limit marks established by the CONTRACTOR are not reasonably adequate to permit checking of the work.

4. RECORD DRAWINGS. The CONTRACTOR shall maintain a separate set of full-size contract drawings, marked up in red, to indicate current, as-built conditions. These drawings shall be maintained at or near the site in a current condition at all times until completion of the work. The drawings shall be available for review by the ENGINEER or TOWN, or their respective representatives at all times. Any variations from the contract drawings, for whatever reason, including those occasioned by modifications, optional materials, and the required coordination between trades, shall be indicated. These variations shall be shown in the same general detail utilized in the contract drawings.

5. PROTECTION OF EXISTING STRUCTURES

Roadways, fences, concrete walls, utilities, and other dwelling infrastructure within the work area and access route shall be protected by the CONTRACTOR to prevent damage thereto by the CONTRACTOR'S operations.

6. SITE CLEAN-UP and RESTORATION

6.1 It is the intent of the TOWN that the work be accomplished with minimum disturbance to the properties adjacent to the work area (specifically, the adjacent upland, lawns, landscaping, trees, and nearshore areas), and that the immediate and general vicinity of the work area remain in its pre-project state subsequent to

completion of the work. All materials utilized by the CONTRACTOR during construction shall be removed from the site; including survey stakes, debris, flagging and other temporary survey controls.

6.2 Should the CONTRACTOR during the progress of the work, store, dump, park, or misplace any material or equipment which in the opinion of the TOWN or ENGINEER may be considered unaesthetic, environmentally deleterious, dangerous to the public, or impact adjacent properties the CONTRACTOR shall recover and remove same within 24 hours of receipt of said notice at no additional cost to the TOWN.

6.3 The CONTRACTOR shall inspect the work areas at the end of every workday to

ensure that all trash and debris left by the CONTRACTOR's and subcontractor's workers has been removed from the work areas and properly disposed of. This includes, for example, lunch bags, soda cans, drink cups, etc.

6.4 Upon completion of all construction activity, the CONTRACTOR shall restore all staging, storage, transport, and work areas, fences, and other facilities to an equivalent pre-project condition or better to the approval of the TOWN, ENGINEER.

7. EXAMINATION & FINAL ACCEPTANCE

7.1 The work will be thoroughly examined at the cost and expense of the TOWN upon Substantial Completion. The CONTRACTOR or his authorized representative will be notified when the examination(s) is (are) to be made and will be permitted to accompany the survey party.

7.2 Should deficiencies in the work be determined relative to the Constructions Plans and Contract Documents, the CONTRACTOR will be required to correct same at the discretion and direction of the ENGINEER or TOWN. Corrections to the work involving the placement of additional material of any kind shall be paid for at the contract rate. No direct payment shall be made for corrections to the work involving the removal and replacement of unacceptable materials, escarpment removal, or site clean-up, unless specifically allowed by the ENGINEER or TOWN.

7.3 Final acceptance of the whole or a part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud or obvious error, and the acceptance of a completed section shall not change the time of payment of the retained percentages of the whole or any part of the work.

PART 2 - MATERIALS

8. GENERAL. The majority of quantities listed in the plan set are based on SCDOT 2007 Standard Specifications for Highway Construction and SCDOT's standard drawings. Those quantities that are not part of the SCDOT's 2007 Standard Specifications or standard drawings are specified below.

9. TRAFFIC PATTERNS XD

9.1 The Fee Proposal specifies Stamped / Coated Asphalt (TRAFFIC PATTERNS XD). This is for the pedestrian crossings at select locations on the project.

9.2 TRAFFIC PATTERNS XD. The Contractor is to utilize TRAFFIC PATTERNS XD specifications for the stamped and painted asphalt at each cross-walk locations. Technical specifications for TRAFFIC PATTERNS XD can be found on TRAFFIC PATTERNS XD's website at:

http://www.ennisflint.com/Products/TrafficScapes/TrafficPatternsXD

9.3 COLOR and PATTERN. Unless otherwise specified by the TOWN, the Contractor is to use the ***Sand*** color and Offset Brick pattern of the TRAFFIC PATTERNS XD.

10. PATHWAY STOP / YIELD SIGNS. The detail for the Pathway Stop / Yield signs can be found on "Construction Details" sheets of the construction plans.

11. WHITE WORD MESSAGE "STOP" F.D. PAINT AND THERMO. The details and specifications for the White Word message "STOP" can be found on "Construction Details" sheets of the construction plans.

12. CONCRETE ROOT BRIDGE. The details and specifications for the Concrete Root Bridge can be found on "Construction Details" sheets of the construction plans.

13. TIMBER RETAINING WALL. The details and specifications for the Timber Retaining Wall can be found on "Construction Details" sheets of the construction plans.

14. DETECTABLE WARNING SURFACE. All detectable warning surfaces shall have a concrete apron surrounding the surface.

14.1 The Fee Proposal specifies Detectable Warning Surface (SAFE STEP). This is for use at concrete landing and handicap ramps at crosswalk locations.

14.2 SAFE STEP. The Contractor is to utilize SAFE STEP specifications for the detectable warning surfaces at each cross-walk locations. Technical specifications for SAFE STEP can be found on SAFE STEPS's website at:

http://www.adasafestep.com

14.3 COLOR and PATTERN. The color specification of the detectable warning surface shall be Chocolate Brown unless otherwise specified by the TOWN