

EXHIBIT "B"
SUPPLEMENTAL CONDITIONS TO GENERAL CONDITIONS

PROJECT: _____

A. Introduction. These Supplemental Conditions amend or supplement the General Conditions (GC) of the Agreement and other provisions of the Contract Documents as indicated below. All GC provisions not so amended or supplemented shall remain in full force and effect.

B. Bidder's Qualifications. (These paragraphs supplement paragraph 9.0 of the Instructions to Bidders.)

1. As set forth in the Instructions to Bidders, the apparent low Bidder, and any other Bidders who are requested to do so by the City, shall submit within five days of written request:
 - [check the box] () an audited financial statement () a financial statement
 - a list of major pieces of construction equipment owned by the Bidder
 - documentation that the Bidder has qualifications as follows:
 - a) At least five years' experience in the construction of similar projects of this size and larger.
 - b) Bidder must have successfully constructed, as prime Contractor, at least three projects similar in scope to this project.
 - c) Good recommendations from at least three clients similar to City.
 - d) Bidder's superintendent and assistants in all categories must be qualified and experienced in similar projects.
 - e) Evidence of authority to conduct business in City.

C. Definition of Terms: The following terms shall have these meanings:

1. *City* shall mean the City of Fellsmere, 21 South Cypress Street, Fellsmere, FL 32948.
2. *Designer* shall mean _____.
3. *Bidder* shall mean any person, firm, or corporation submitting a Bid Proposal for the project.

D. Permits. As set forth in GC paragraph 6.08, the City has obtained the following permits:

The Contractor shall obtain and pay for all other required permits and licenses.

E. Tests and Inspections. Under GC paragraph 13.03 notice is hereby given that the City has retained an independent materials testing laboratory to accomplish certain preliminary tests. The tests which will be provided by the City are: _____

_____.

The minimum required tests shall be as follows: _____

_____.

If a first test is failed, subsequent tests required to verify compliance with Contract Documents, shall be paid for by the Contractor.

F. Overtime Work

1. Work shall be performed during regular working hours. *Regular working hours* are Monday through Friday, excluding City Holidays, from 7 AM to 5 PM. No work shall commence before 7 AM or continue after 7 PM except in an emergency with the specific permission of the Designer.
2. City Holidays are: New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve and Christmas Day. Working on these days will not be permitted without prior written approval of the Designer.
3. The Contractor shall receive no additional compensation for overtime work, i.e., work in excess of eight hours in any one calendar day or 40 hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the Designer in writing.
4. All costs of inspection and testing performed during overtime work by the Contractor, which is allowed solely for the convenience of the Contractor, shall be borne by the Contractor, and a credit given to the City to deduct the costs of all such inspection and testing from any partial payments otherwise due to the Contractor.

G. Liquidated Damages

1. Contractor acknowledges that the Agreement requires the Work to commence within _____ days after the date specified in the Notice to Proceed. Contract time allowed for the completion for all of the Work is set forth in Article 3.0 of the Agreement. For purposes of this liquidated damages provision, time shall be counted from the date Contractor begins construction, but not later than the _____ days allowed in the Notice to Proceed. Contractor and City recognize (a) that time is of the essence in the Agreement; (b) that City will suffer damages, including, but not limited to, financial loss, additional administrative time, loss of use, and inconvenience to the public as well as the complications and costs involved in potential legal proceedings, if the Work is not completed within the time specified in the Agreement and (c) that such damages may be difficult to fix and quantify.

2. To reduce uncertainty in their relations and in consideration of their other agreements hereunder, Contractor and City have mutually bargained for and agreed that as a reasonable sum for liquidated damages **for delay only** Contractor shall pay to City the sum of _____ dollars (\$_____) for each calendar day overrun beyond the allowable contract time, plus any authorized extensions, that the Work remains not completed and not ready for final payment as required under the GC. Liquidated damages payable hereunder by Contractor shall not exceed the total amount of the contract. Contractor's requests for time extension shall be submitted monthly to Designer with the monthly application for payment. If requests are not submitted for a given monthly period, it will be accepted that no request was or is needed and that no time extension shall be allowed for such month. At the expiration of the time allowed for completion of the Work hereunder, plus any authorized contract time extensions, liquidated damages shall be deducted from payments due and owing to the Contractor.
3. It is expressly agreed and understood between Contractor and City that this liquidated damages provision is not a penalty. In any proceedings (e.g., mediation, arbitration, or litigation) the parties expressly agree that neither they nor their successors, assigns or sureties may assert that this liquidated damages provision is a penalty. Contractor and its surety(ies) agree without recourse to accept this method of determining liquidated damages and reimbursement to the City for delay. This liquidated damages provision is not intended to preclude, foreclose, or in any way prevent City from seeking remedies, relief or recovery other than damages attributable specifically to delay of the Work in any action or proceedings against Contractor or its sureties.

H. Performance and Payment Bonds (Surety). Within ten (10) days of receipt of the Contract Documents for execution, the successful bidder shall furnish a Performance Bond in an amount equal to 125% of the contract price and a Payment Bond in an amount equal to 100% of the contract price. The Contractor shall provide two separate bonds, a combined Payment and Performance Bond for 125% of the contract price is not an acceptable substitute. The Contractor shall at all times have valid Performance and Payment Bonds in force covering the Work. Failure to do so shall constitute a default on the part of the Contractor. If the surety writing the Performance or Payment Bonds becomes disqualified, this shall automatically constitute a default on the part of the Contractor. In lieu of the Performance and Payment Bonds and subject to approval of City, Contractor may furnish alternative security in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit or a security as listed in Part II of Chapter 625, Florida Statutes. Alternative security shall be for the same purpose, for the same amount and subject to the same conditions as those applicable to the bond. The City shall in its sole discretion determine the acceptability and value of an alternative form of security. Such Bonds shall continue in effect for one (1) year after completion and acceptance of the work.

I. Contractors and Subcontractors Insurance. The limit of liability for the insurance required by GC Paragraph 5.04 shall provide coverage for not less than the following amounts or greater where required by laws and regulations:

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

- a) State: Statutory
- b) Applicable Federal (e.g. Longshoremen's): Statutory
- c) Employer's Liability: \$500,000

2. Commercial General Liability (under GC Paragraphs 5.04.A.3.-6.), including Contractual Liability specifically confirming the indemnification of City (with Designer listed as additional insured as required in Paragraph 6.11 and indicating that no act or default shall affect the City's right to recover under such policies in case of loss, Products and Completed Operations Liability, Explosion, Collapse and Underground Property Damage Coverage, and Personal Injury) against all claims and liability for bodily injury, death or property damage arising out of the performance of work under this Agreement.

3. Comprehensive General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):

- a) Bodily Injury:
 - \$1,000,000 each occurrence
 - \$1,000,000 annual aggregate
- b) Property Damage:
 - \$ 500,000 each occurrence
 - \$ 500,000 annual aggregate
- c) Products and Completed Operations shall be maintained for one (1) year after final payment.
- d) Property Damage Liability Insurance will provide C or U coverage as applicable.

4. Contractual Liability

- a) Bodily Injury:
 - \$1,000,000 each occurrence
- b) Property Damage:
 - \$ 500,000 each occurrence
 - \$ 500,000 annual aggregate

5. Personal Injury, with Employment Exclusion deleted:
\$1,000,000 annual aggregate

6. Comprehensive Automobile Liability

- a) Bodily Injury:

\$1,000,000	each person
\$1,000,000	each occurrence

J. Dispute Resolution. Any Claim arising out of or related to the Agreement, except Claims waived as provided for in GC paragraphs 5.07, 16.02.A. and 14.09, shall, after decision by the Designer, or, if Designer has failed to render a timely decision on the Claim, within the term set forth in paragraph 10.05.C., be subject to mediation as a condition precedent to arbitration or legal or equitable proceedings.

1. Demand.

- a) When a written decision of Designer which is subject to dispute resolution under GC paragraphs 10.05 and 16.01 is final, a written demand for mediation and arbitration of a Claim covered by such decision shall be made as provided herein within 30 days after the demanding party receives notice of such written decision. If no decision has been rendered upon a Claim, a written demand for mediation and arbitration of such Claim shall be made as provided herein within 30 days after the Claim is deemed to be denied in its entirety as set forth in GC paragraph 10.05.C.
- b) If demand is not timely made, Designer's decision or the deemed decision under GC paragraph 10.05.C. shall be final and binding upon City and Contractor.
- c) If Designer renders a decision after dispute resolution proceedings have been demanded or initiated, such decision may be entered as evidence, but it shall not supersede mediation or arbitration proceedings, except by agreement of the parties.

2. Mediation.

- a) The parties shall first endeavor to resolve Claims by mediation conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time of the demand.
- b) A demand for mediation shall be filed in writing with the other party to the Agreement, the Designer and the American Arbitration Association.
- c) The demand may be made concurrently with an arbitration demand, but, in such event, mediation shall precede arbitration or legal or equitable proceedings, which shall be stayed for 60 days from the date of filing, unless stayed longer by agreement or court order.
- d) The parties shall share the mediator's fee and any filing fees equally. Mediation shall be held in the locale of the project, unless otherwise agreed.
- e) Agreements reached in mediation shall be enforceable as binding settlement agreements in any court with jurisdiction.

3. Arbitration.

- a) Any Claim arising out of or related to the Agreement, except Claims waived as provided for in GC paragraphs 5.07, 16.02.A. and 14.09, shall be subject to arbitration as provided in this Section J; provided that, prior to arbitration, the parties shall first endeavor to resolve disputes by mediation.

- b) Unless otherwise agreed, arbitration shall be conducted in accordance with Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of demand.
- c) The demand for arbitration shall be filed in writing with the other party to the Agreement, the American Arbitration Association and the Designer.
- d) An arbitration demand shall be made within the time specified in section J.1. hereof, and in other cases within a reasonable time after the Claim arises. In no event may a demand be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- e) A party's arbitration demand shall include and assert all Claims which that party is then known to have against the other party or be forever foreclosed from such unasserted claims.
- f) The award rendered by the arbitrator or arbitrators shall be final.
- g) Judgment may be entered upon the award in accordance with applicable law in any court with jurisdiction.

K. Indemnification. Contractor (Indemnitor) will indemnify and hold harmless City (Indemnitee), its officers and employees, from liability, damages, losses and costs, including but not limited to reasonable attorneys' fees, resulting from any and all claims, actions or suits to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Contractor and other persons or firms employed or utilized by the Contractor in the performance of services under the Agreement in an amount of \$1,000,000 per occurrence as provided for by Sections 725.06 and 725.08 Florida Statutes, as amended. The parties agree that the indemnification amount bears a reasonable commercial relationship to the Agreement because it represents the minimum indemnification amount provided in Section 725.06, Florida Statutes, as amended. The specific considerations given for the promises of Contractor set forth in this paragraph are the employment of Contractor pursuant to the Agreement, other good and valuable considerations and Ten Dollars (\$10.00) in hand paid by the City to Contractor, receipt whereof is hereby acknowledged and the adequacy of which the Contractor accepts as completely fulfilling the obligations of the City. Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes, as amended. Notwithstanding the provisions of this section, nothing contained herein shall be construed as a waiver of any immunity from, or limitation of liability the City has under the Doctrine of Sovereign Immunity in general or under Section 768.28, Florida Statutes, as amended.

In no event will the City, its officers and employees, be liable to pay a claim or judgment which exceeds the sum of One Hundred Thousand Dollars (\$100,000), or any claim or judgment, or portion thereof, which when totaled with all other claims or judgments paid and that arose out of the same incidence or occurrence, exceeds the sum of Two Hundred Thousand Dollars (\$200,000). The parties intend for these dollar amounts to be a contractual limitation on the City's liability.

L. Indemnification Procedure.

Promptly after receipt of notice of the making or commencement by any third party of any claim, action, lawsuit, or proceeding as to which indemnification may be sought (a "Third Party Claim"), Indemnitee shall notify Indemnitor. Failure to do so shall not relieve Indemnitor

from any liability that it may have under this section unless Indemnitor is prejudiced by the lack of such notice; provided that, in such case Indemnitor shall not be responsible for that portion of the liability caused by the prejudice resulting from the lack of notice.

If any such Third Party Claim is brought against Indemnitee, Indemnitor shall be entitled to participate and, to the extent it may elect by written notice delivered promptly to Indemnitee after receiving notice from Indemnitee, to assume the defense with counsel reasonably satisfactory to Indemnitee. The parties agree to cooperate fully in connection with the defense, negotiation, or settlement of any such legal proceeding, claim, or demand. Indemnitee shall have the right to employ its own counsel in any such case, but the fees and expenses of this counsel shall be at the expense of Indemnitee unless

- (i) the employment of counsel has been authorized in writing by Indemnitor in connection with the defense of the action; or
- (ii) Indemnitor has not employed counsel to have charge of the defense of the action within a reasonable period of time after commencement of the action; or
- (iii) Indemnitee has reasonably concluded that there may be defenses available to it that are different from or additional to those available to Indemnitor,

in which case the Indemnitor shall not have the right to direct defense of this action on behalf of Indemnitee. In any of these events, fees and expenses of Indemnitee's counsel shall be borne by Indemnitor.

Neither Indemnitee nor Indemnitor may settle any Third Party Claim without the consent of the other. After any final judgment or award has been rendered by a court, arbitration board, or administrative agency of competent jurisdiction and the time in which to appeal from it has expired, a settlement has been consummated, or Indemnitor and Indemnitee arrive at a mutually binding agreement with respect to each separate matter alleged to be indemnified by Indemnitor, Indemnitee shall forward to Indemnitor notice of any sums due and owing by it with respect to the matter, and Indemnitor immediately shall pay all of the sums owing, by wire transfer or certified or bank cashier's check, to Indemnitee.

M. Termination by City.

The City may cancel the Agreement for refusal by Contractor to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor.

N. Public Entity Crime Statement.

A person or affiliate who has been placed in the convicted vendor list following a conviction of public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, oproposal, or reply on a contract with a public entity for construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, as amended, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

O. Notice to Contractor.

The City shall consider the employment by Contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of the Agreement.