

Orlando Utilities Commission General Conditions For Services

GC.1. INDEPENDENT SUPPLIER. The relation of the Supplier to the Owner shall be that of an independent Supplier.

GC.2. PROTECTION OF PROPERTY AND PUBLIC LIABILITY. The Supplier shall be solely accountable for any damages resulting from his operations. He shall be fully responsible for the protection of all persons including members of the public, employees of the Owner, and employees of other Suppliers or subSuppliers, and all public and private property including structures, sewers, and utilities, above and below ground.

GC.3. LAWS AND REGULATIONS. The Supplier shall observe and comply with all ordinances, laws, codes and regulations, and shall protect and indemnify the Owner and the Owner's officers and agents against any claim or liability arising from or based on any violation of the same.

GC.4. TAXES AND PERMITS. The Supplier shall pay all sales, use, and other taxes that are lawfully assessed against the Owner or Supplier in connection with the work included in this contract and shall obtain and pay for all licenses and inspections required for the work.

GC.5. PATENTS. Royalties and fees for patents covering materials, articles, apparatus, devices, or equipment (as distinguished from processes) used in the work, shall be included in the contract amount. The Supplier shall satisfy all demands that may be made any time for such royalties or fees and he shall be liable for any damages or claims for patent infringement. The Supplier shall, at his own expense, defend all suits or proceedings that may be instituted against the Owner for infringement or alleged infringement of any patents involved in the work and, in case of an award of damages, the Supplier shall pay such award. Final payment to the Supplier by the Owner will not be made while any suit or claim remains unsettled. The Supplier, however, will not be held liable for the defense of any suit or other proceeding not for the payment of any damages or other costs for the infringement of any patented process required by the contract documents; except if the Supplier has information that the process so required is an infringement of a patent, the Supplier shall be liable for any damages or claims in connection therewith unless he promptly notifies the Owner of such infringement.

GC.6. **INSURANCE.** The Supplier shall acquire and maintain for the life of this Contract (at the Supplier's expense) a minimum of the following insurance:

<u>Coverage</u>	<u>Limits</u>
➤ Workers' Compensation and	Statutory
➤ Employers' Liability	\$1,000,000
➤ Commercial General Liability (Bodily Injury & Property Damage)	\$2,000,000 combined single limit
➤ Automobile Liability (Bodily Injury & Property Damage)	\$1,000,000 combined single limit

Commercial General Liability Insurance shall include coverage for all the Supplier's contractual liability under this Contract. The Supplier's insurance shall include OUC as an additional insured with respect to the activities of the Supplier arising out of this Contract.

GC.7. **CLAIMS FOR LABOR AND MATERIALS.** The Supplier shall indemnify and save harmless the Owner from all claims for labor and materials furnished under this contract. When requested by the Owner, the Supplier shall submit satisfactory evidence that all persons, firms, or corporations who have done work or furnished materials under this contract, for which the Owner may become liable under the laws of the state, have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, an amount will be retained from money due the Supplier which in addition to any other sums that may be retained will be sufficient, in the opinion of the Owner, to meet all claims of the persons, firms, and corporations as aforesaid. Such sum shall be retained until the liabilities as aforesaid are fully discharged or satisfactorily secured.

Before final acceptance of the work by the Owner, the Supplier shall submit to the Owner in duplicate a notarized affidavit stating that all subSuppliers, vendors, persons or firms who have furnished labor or materials for the work have been fully paid and that all taxes have been paid. A statement from the Surety shall also be submitted consenting to the making of the final payment (when a Performance Bond is provided).

GC.8. **PAYMENT.** The work will be paid for by the Owner as per the requirements of the purchase order.

GC.9. **RELEASE OF LIABILITY.** The acceptance by the Supplier of the last payment shall be a release to the Owner and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or

relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

GC.10 INDEMNIFICATION. For the amount stipulated in the Proposal and other valuable consideration which is included in the bid prices, one percent (1%) which is acknowledged by the Supplier as specific consideration for the indemnification's set forth in this Contract, the Supplier shall defend, indemnify, and hold harmless the Commission, their officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from the performance of the work by the Supplier, any subSupplier, Supplier, and any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

GC.11. ASSIGNMENT AND SUBLETTING OF CONTRACT. The Supplier shall not assign or sublet the work, or any part thereof, without the previous written consent of the Owner, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless by and with the like consent of the Owner to be signified in like manner.

GC.12. GOVERNING LAWS. This contract shall be governed exclusively under the laws of the State of Florida with venue in any court of competent jurisdiction located in Orange County, Florida. The Parties agree that in no event shall the Uniform Law on the Formation of Contracts for the Sale of Goods, based upon the United Nations Convention on Contracts for the International Sale of Goods (CISG) be applicable to this agreement.

GC.13. MINORITY PARTICIPATION. The Orlando Utilities Commission ("the Commission" or "OUC") has adopted a Minority and Women Business Enterprise ("M/WBE") Policy to encourage broad-based participation in all contracts with OUC. Any bidder submitting a bid for a contract with OUC shall comply with this Policy or may be declared a non-responsive bidder. Owner shall require its vendors who wish to bid on work/services for Owner which are placed for bid to adhere to this Policy and the requirements set forth herein. **A copy of this Policy is available upon request.**

GC.14 TERMINATION FOR DEFAULT. If the work to be done under this Contract is abandoned by the Supplier; or if this Contract is assigned by him without the written consent of the Owner; or if the Supplier is adjudged bankrupt; or if a general assignment of his assets is made for the benefit of his creditors; or if a receiver is appointed for the Supplier or any of his property; or if he fails to properly manage the work; or if he persistently refuses or fails to supply enough properly skilled workmen or proper material; or if he fails to make prompt payment to subSuppliers for material or labor; if the performance of the work

under this Contract is being unnecessarily delayed; the Supplier is violating any of the conditions of this Contract; he is executing the same in bad faith or otherwise not in accordance with the terms of said contract; or if the work is not substantially completed within the time named for its completion or within the time to which such completion date may be extended; then the Owner may serve written notice upon the Supplier of said Owner's intention to terminate this Contract. Unless within 5 days after the serving of such notice an arrangement satisfactory to the Owner is made for continuance of this Contract the Owner may, at its option, terminate this Contract. The Owner may further pursue any rights or remedies to which it may be entitled at law or in equity.

If, after termination pursuant to this article, it is determined for any reason that the Supplier was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article GC.15, TERMINATION FOR CONVENIENCE.

GC.15 TERMINATION FOR CONVENIENCE. The Owner may terminate performance of work under this Contract in whole or in part if the Owner determines that a termination is in the Owner's interest. The Owner will deliver to the Supplier a Notice of Termination specifying the extent of termination and the effective date. Except in the case of termination for default, allowance will be made for normal and reasonable expenses incurred by the Supplier prior to receipt of notice of cancellation, but OUC will not be liable for any changes or expenses incurred by the Supplier in advance of the normal or reasonable lead time necessary to meet scheduled delivery dates nor for any expenses, charges or liability incurred subsequent to the giving of notice of cancellation.

GC.16 INSPECTION, ACCEPTANCE OR REJECTION, AND EXPEDITING. All goods and services shall be subject to the Owner's inspection at any time. The Owner may accept or reject any or all goods and services within a reasonable time after receipt by the Owner. The making or failure to make any inspection of, or payment for or acceptance of the goods and services shall in no way impair the Owner's right to reject or revoke its acceptance or nonconforming good and services, or to avail itself of any other remedies to which the Owner may be entitled, notwithstanding the Owner's knowledge of the nonconformity, its substantiality or ease of discovery.

GC.17 WARRANTY. The Supplier warrants that all the goods and services furnished hereunder shall be produced and furnished in compliance with all applicable federal state and local laws, orders and regulations. The Owner shall have the benefit of all warranties implied at law, and all express warranties made by the Supplier. Unless others specified herein, the Supplier shall obtain all permits necessary for performance under this Purchase Order.

GC.18 ENTIRE AGREEMENT. This Purchase Order, including these General Conditions, any Specifications, and any additional terms and conditions incorporated into and attached hereto or reference herein, constitute the sole and entire agreement between the parties. Unless expressly accepted by the Owner in writing, no other terms and conditions in conflict with, or in addition to, those stated herein, shall be binding on the Owner.

GC.19. ACCEPTANCE OF PURCHASE ORDER The Supplier shall manifest acceptance of this Purchase Order by executing the enclosed Acknowledgement and returning it to the Owner by fax within fifteen (15) days of the "Purchase Order Date" noted on the front of the Purchase Order. Start of work within fifteen (15) days of the "Purchase Order Date" shall constitute acceptance of this Purchase Order and satisfy this requirement.

GC.20 HAZARDOUS MATERIALS. Any Hazardous Material associated with this contract shall be used, kept, stored and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to any Hazardous Material.

GC.21 REGULATORY COMPLIANCE. Supplier warrants that it shall comply, when applicable, with all federal, state and local laws and regulations including but not limited to the following:

- (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. §9601, et seq. (hereinafter collectively "CERCLA");
- (b) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976("RCRA") and subsequent Hazardous and Solid Waste Amendments of 1984, also known as the 1984"RCRA" amendments, 42 U. S.C. §6901 et seq.;
- (c) Toxic Substance Control Act, as amended, 15 U.S.C. §2601 et seq.;
- (d) Hazardous Material Transportation Act, 49 U.S.C. §1801, et seq.;
- (e) Any other federal, state or local law, regulation, ordinance or order pertaining to the environment not included above.

GC.22 SEVERABILITY. Should any of the provisions of these General Conditions or the Purchase Order, or parts thereof, be held invalid, such provisions, or parts thereof, shall be considered severable and such invalidity shall not affect the remainder of the Conditions or the Purchase Order.

GC 23.0 **DISPUTE PROCESS:** The procedures specified herein shall be the sole and exclusive procedures for the resolution of general and billing disputes between the parties arising out of or relating to this Agreement. The parties will participate in good faith in the procedures specified herein.

23.1 General:

23.1.1 The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement. The parties will participate in good faith in the procedures specified in this Section.

23.1.2 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The parties will take such action, if any, required to effectuate such tolling.

23.1.3 In the event of any dispute under this Agreement which cannot be readily resolved, it shall be referred to the appropriate executives of the respective parties to this agreement (hereinafter "Party" or "Parties") for negotiation and resolution as described below.

23.1.4 If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days' written notice to the other party; provided, however, that if one party has requested the other to participate in a nonbinding procedure, as provided for under this Section, and the other has failed to participate, the requesting party may initiate litigation before expiration of the above period.

23.2 Disputes:

23.2.1 Disputes, as defined herein and under the Agreement, include disagreements, claims, counterclaims, matters in question, and differences of opinion between OUC and Supplier, regarding the Work and modifications or changes to the Work. Disputes may involve interpretation of Contract Documents, acceptability of the Work, costs and/or time for performance.

23.2.2 Disputes may also involve other subjects mutually agreed by OUC and Supplier to be of concern to the Board.

23.3 Payment Disputes:

23.3.1 If a dispute arises between the Supplier and OUC, the dispute shall be submitted to an appropriate panel

assembled by the Manager of Purchasing no later than forty-five (45) days after receipt of the disputed payment. OUC shall render a final decision on the disputed payment within sixty (60) days after receipt of the invoice.

23.3.2 If the dispute is decided in favor of OUC, interest shall begin to accrue fifteen (15) days after the decision is announced.

23.3.3 If the dispute is decided in favor of Supplier, interest shall accrue as of the original date the payment became due.

23.3.4 The panel's final decision can be taken as a contract dispute through the process outlined below.

23.4 Step Negotiations:

23.4.1 Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one step above the project personnel who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing party's notice, or if the parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided hereinafter.

23.4.2 All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

23.5 Mediation:

23.5.1 If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a mediation proceeding by a request in writing to the other Party, Thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted in accordance with the then current Center for Public

Resources ("CPR") Model Procedure for Mediation of Business Dispute or other mutually agreed upon procedures, with the following exceptions:

23.5.1.1 If the Parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panel of Neutrals as the mediator; and

23.5.1.2 Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: a) a written settlement is reached, or b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.

23.5.2 The Parties regard the aforesaid obligation to mediate as an essential provision of this Agreement and one that is legally binding on them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.

23.6 Litigation:

23.6.1 If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either Party may initiate litigation upon ten (10) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this Section, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.

23.6.1.1 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The Parties will take such action, if any, required to effectuate such tolling.

23.6.1.2 Claims, counterclaim, disputes, and other matters in question between OUC and Supplier that are not resolved will be decided in the Ninth Judicial Circuit, in and for Orange County,

Florida, which shall have exclusive jurisdiction and venue over all matters in question between OUC and Supplier.