

**GENERAL CONDITIONS TO AGREEMENT (CONTRACT) BETWEEN TINDALL
HAMMOCK IRRIGATION AND SOIL CONSERVATION DISTRICT AND _____**

1. DEFINITIONS

- A. DISTRICT/OWNER: The Tindall Hammock Irrigation and Soil Conservation District, a political subdivision of the State of Florida, 888 South Andrews Avenue, Suite 302, Fort Lauderdale, Florida 33316.
- B. OPERATOR: _____

- C. SUBCONTRACTOR: Any individual, firm, partnership, joint venture, or corporation furnishing labor, services, or material required under the Contract to the Operator.
- D. CONTRACT: The documents containing and describing the mutual understanding between the District and the Operator.
- E. SPECIFICATIONS: The directions, provisions, and requirements contained herein, together with all stipulations contained in the Contract setting out or relating to the method and manner of performing the work and labor to be furnished under the Contract.
- F. DAY: A calendar day. Unless otherwise stated, all days are consecutive calendar days.
- G. EXCUSABLE DELAY: Any delay beyond the control and without the fault or negligence of the Operator, the Owner, or any other contractor, caused by events or circumstances such as, but not limited to, acts of God or of the public enemy, acts of interveners, acts of the government, fires, floods, epidemics, quarantine restrictions, freight embargoes, and hurricanes, tornadoes, or new sink holes.

2. CONDITIONS AFFECTING WORK

- A. The Operator acknowledges that Operator has investigated and correlated its observations with the requirements of the Contract and satisfied itself as to the conditions affecting the work. These conditions include, but are not restricted to, those bearing upon physical conditions at the site, and the character of equipment and facilities needed preliminary to and during prosecution of the work. Any failure by the Operator to acquaint itself with available information will not relieve Operator from responsibility for estimating properly the difficulty or cost of successfully performing the work. The District assumes no responsibility for any conclusions or interpretations made by the Operator on

the basis of the information made available by the District, its officers, or employees prior to the execution of the Contract, unless such information has been stated expressly in the Contract Documents.

3. SUPERINTENDENCE BY OPERATOR

- A. The Operator, at all times during performance and until the work is completed and accepted, shall give its personal superintendence to the work or have a competent, qualified employee at the utility plant, satisfactory to the District and with authority to act for the Operator.

4. PERFORMANCE OF WORK BY THE OPERATOR

- A. The Operator shall, with its own organization, perform the work under the Contract.

5. INSURANCE REQUIREMENTS

- A. The Operator shall maintain, or cause to be maintained, the following specified insurance coverages in the amount set forth hereafter and in Exhibit 2 to the Contract:
 - i. **WORKERS' COMPENSATION:** Coverage to apply for operators employees for Statutory Limits in compliance with the applicable state and federal laws. The policy shall include Employers' Liability, notwithstanding the number of employees of the Operator and the Subcontractors.
 - ii. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits as specified in the Supplemental Conditions per Occurrence, Combined Single Limit for Bodily Injury Liability, and Property Damage Liability. This shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Broad Form Property/Personal Injury, XCU Coverage, and a Contractual Liability Endorsement.
 - iii. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage as specified in the Supplemental Conditions per Occurrence, Combined Single Limit for Bodily Injury, and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
- B. The Tindall Hammock Irrigation and Soil Conservation District shall be included as an additional named Insured under the General Liability and Automobile Liability policies.

- C. Current valid insurance policies meeting the requirements herein identified shall be maintained throughout the duration of the named project. There shall be a thirty (30) day notification to Tindall Hammock Irrigation and Soil Conservation District in the event of cancellation or modification of any insurance policy. It shall be the responsibility of the Operator to ensure that all Subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the District and approved by the District prior to the commencement of any work activities. Such approval does not waive the Operator's responsibility to comply with the requirements of this section or modifications of this section. The District may, at its discretion, require the Operator to provide a complete certified copy of its insurance policy(s).

6. INDEMNIFICATION

- A. For \$100.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as part of the first payment for services, the Operator shall indemnify and save harmless the District, its agents, guests, invitees, and employees from all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs, and judgments of every kind and description to which the District, its agents, guests, invitees, or employees may be subjected by reason of personal injury, bodily injury, including death or property damage, resulting from or growing out of any intentional, negligent, careless act, omission, or consequential damage connected with the Operator, its Subcontractors, its agents, or employees, and omitted in connection with this Contract, Operator's performance hereof, or any work performed hereunder.
- B. The Operator shall indemnify and save harmless the District, its agents, or employees from and against all claims, demands, actions, suits, damages, losses, expenses, costs, including attorney's fees, and judgments of every kind and description arising from, based upon, or growing out of the violation of any Federal, State, County, or City law, by-law, ordinance, or regulation by the Operator, its agents, trainees, invitees, servants, or employees. The Operator further acknowledges that it is solely responsible for ensuring the safety of the premises to protect District employees, Operator's employees, subcontractors, invitees, licensees, and all other persons during the course of the work, and agrees to hold and save the District harmless against all claims involving alleged negligence by the District in failing to adequately ensure the safety of the premises or otherwise ensure compliance with the Contract.

7. SUBCONTRACTORS

- A. The Operator is fully responsible to the District for all acts, coordination, and omissions of its Subcontractors and of persons either directly or indirectly employed by said Subcontractor, as he is for the acts and omissions of persons

directly employed by him. The Operator shall submit the names of the Subcontractors proposed for the work for District acceptance at the pre-construction conference. The Operator shall not substitute any Subcontractor without the prior consent of the District. Nothing contained in the Contract shall create any contractual relationship between any Subcontractor and the District.

8. SAFETY – LOSS CONTROL PROVISIONS

- A. The Operator shall be responsible for providing safe and healthful working conditions for employees of the Operator, subcontractors, the District, or its invitees. The Operator shall initiate and maintain an accident prevention program, which should include, but is not limited to, the following: Establish and supervise programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.
- B. The Operator shall be responsible for providing first-aid services and medical care to all of their employees. The Operator shall be responsible for development and maintenance of an effective fire protection and prevention program at the Utility Plant. The Operator shall establish and maintain good housekeeping practices throughout the Contract term. The Operator shall be responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions, including safety belts, lifelines, and lanyards.
- C. Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damages sustained as a result of a violation of this section from the Operator to the District and the Operator shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the utility plant. Employees required to handle or use toxins, caustics, and other harmful substances shall be instructed regarding the safe handling and use thereof, and be made aware of the potential hazards, personal hygiene, and personal protective measures required. All work shall meet and be in compliance with standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), Florida Department of Labor and Employment Security, and any and all other appropriate federal, state, local, or District safety and health standards.

9. EMERGENCIES

- A. In emergencies affecting the safety or protection of persons or property at the utility plant or adjacent thereto, the Operator, without special instruction or authorization from the District, is obligated to act to prevent threatened damage, injury, or loss.

10. STORM PROCEDURES

- A. The Operator shall be required to secure or remove from the work area, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the utility plant, the District's installations, and public or private property. Site excavations shall be required to be secured and backfilled. The Operator is responsible for preparing for all storm events. The Operator shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.

11. CHANGES

- A. The District may, without invalidation of the Contract, at any time, by written change order, make any change in the work within the general scope of the Contract, including, but not limited to, changes:
 - i. In the method or manner of performance of the work.
- B. Any other written order from the District which causes any such change, shall be treated as a change order under this clause. No additional compensation or change in Contract time will be allowed in the absence of a change order signed by an authorized District representative. If any change under this clause causes an increase or decrease in the Operator's cost of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- C. If the Operator intends to assert a claim for an equitable adjustment under this clause, Operator shall, within ten (10) days after receipt of a written change order or the furnishing of a written notice, submit to the District a written statement setting forth the general nature and monetary extent of such claim. No claim by the Operator for an equitable adjustment hereunder shall be allowed or asserted after final payment under this Contract.
- D. All adjustments to the Contract price resulting from a change in work shall be determined by the measure of actual, or estimated, out-of-pocket costs and direct expenses incurred or saved by the Operator for labor, plus overhead and profit for performing or deleting the changed work. The maximum percentages and other consideration relative to change orders shall be as follows:
 - i. For all change order work done by the Operator's own organization, the Operator may add an amount not to exceed fifteen percent (15%) of his actual costs for combined overhead and profit.
 - ii. For all change order work done by a Subcontractor, the respective Subcontractor may add an amount not to exceed fifteen percent (15%) of the actual costs for combined overhead and profit.

- iii. The Operator may add an amount not to exceed seven and one-half percent (7.5%) of the above Subcontractor's cost for their overhead and profit.
- E. The Operator, in connection with any proposal Operator makes for a Contract modification, shall furnish a price breakdown, itemized as required by the District. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all labor, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added, or changed. Any amount claimed for subcontractors shall be supported by a similar price breakdown. The proposal, together with the price breakdown, shall be furnished by the date specified by the District.

12. CLAIMS

- A. The Operator shall give written notice to the District of any claim for an increase in the Contract price or Contract performance period arising under or relating to the Contract within ten (10) calendar days after the occurrence of the event giving rise to such claim.
- B. The Operator shall provide the District justification of all claims with complete and accurate supporting data. The claim shall accurately reflect the Contract adjustment for which the Operator believes that District is liable. The District shall review all such material within ten (10) calendar days and make such determinations which it considers fair and reasonable. If the documents are insufficient to make a determination, the District may request additional documentation from the Operator and the ten (10) calendar days will begin from receipt of additional documents. The Operator shall proceed diligently with performance of the Contract pending resolution of any claim or dispute. Upon agreement between the District and the Operator, all equitable adjustments shall be set forth in a change order. No claim by the Operator for an equitable adjustment herein shall be allowed if asserted after final payment under this Contract.

13. TERMINATION FOR DEFAULT

- A. The District may terminate the Contract if the Operator:
 - i. Persistently or repeatedly refuses or fails to supply enough qualified skilled employees;
 - ii. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Operator and the Subcontractors;

- iii. Disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
 - iv. Is adjudicated bankrupt, or if they make a general assignment for the benefit of their creditors, or if a receiver is appointed on account of their insolvency;
 - v. Otherwise is determined to be in substantial breach of a provision of the Contract.
- B. When any of the reasons above exist, the District may, without prejudice to any other rights or remedies of the District, and after giving the Operator seven (7) days' written notice, terminate employment of the Operator and may:
 - i. Take possession of the utility plant;
 - ii. Accept assignment of subcontracts; and
 - iii. Take over the utility plant by whatever reasonable method the District may deem expedient.
- C. If the District terminates the Contract for one of the reasons stated above, the Operator shall not be entitled to receive further payment until the work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the work as determined by the District, such excess shall be paid to the Operator. If such costs exceed the unpaid balance, the Operator shall pay the difference to the District. This obligation for payment shall survive termination of the Contract. Upon completion of the work by a second operator, if the Operator's claim that the contract has been wrongfully terminated, the Operator's remedy for a wrongful termination will be limited to recovery of profit for the completed work and reasonable termination costs.

14. SUSPENSION OF WORK

- A. The District may, with or without cause, order the Operator in writing to suspend, delay, or interrupt the Work, in whole or in part, for any period of time as the District may determine in the District's sole discretion, which will not be unreasonably imposed.
- B. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:
 - i. That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Operator is responsible; or

- ii. That an equitable adjustment is made or denied under another provision of this Contract.
- C. Adjustments made in the cost of performance may have a mutually agreed, fixed, or percentage fee.

15. INSPECTION

- A. All work shall be subject to inspection by the District at all reasonable times and at all places. Any such inspection is for the sole benefit of the District and shall not relieve the Operator of the responsibility of providing quality control measures to assure that the work strictly complies with the Contract requirements. No inspection by the District shall be construed as constituting or implying acceptance. Inspection shall not relieve the Operator of responsibility for damage to or loss to the District and shall not in any way affect the continuing rights of the District.
- B. The Operator shall, without charge, replace any employee found by the District not to conform to the Contract requirements, unless the District consents to accept such employee with an appropriate adjustment in Contract Price. If the Operator does not promptly replace the employee with a qualified new employee, the District:
 - i. May, by Contract or otherwise, replace such employee and charge the cost thereof to the Operator, or
 - ii. May terminate the Operator's right to proceed in accordance with the section of the Contract entitled "Termination for Default". The Operator shall furnish promptly, without additional charge, all labor reasonably needed for performing such work as may be required by the District. All inspection by the District shall be performed in such manner as not to unnecessarily delay the work. The District reserves the right to charge to the Operator any additional cost of inspection, or when reinspection is necessitated by work not complying with the Contract and any applicable federal, state, or municipal laws, codes, and regulations in connection with the prosecution of the work.

16. PAYMENT TO OPERATOR

- A. The Operator shall submit to the District for review a realistic Schedule of Contract Values which reflect the estimated cost of work for each direct employee and the amount of the Operator's overhead and profit. The sum of all such scheduled values shall equal the Contract sum as evidenced by the Contract. The Schedule of Values, when approved by the District, will accompany and support the Operator's periodic applications for payment and

shall indicate the value of labor performed during the period for which the application is prepared.

- B. The Operator shall submit original applications for payment (invoices) to the District. The acceptance of the invoice by the District's Manager shall constitute the start of the payment process whereby the District shall pay the full amount of the invoice, within thirty (30) days, provided the Operator performed the work according to the terms and conditions of the Contract. In the event that the District disputes any part of the Operator's invoice, then it shall be returned to the Operator within ten (10) days for the Operator to revise and resubmit the invoice to the District and the thirty (30) days begins from receipt of the revised invoice.
- C. The Operator warrants that upon submittal of an application for payment, all work for which certificates for payment have been previously issued and payments received from the District shall be free and clear of liens, claims, security interests, or encumbrances in favor of the Operator, subcontractors, and other persons or entities making a claim by reason of having provided labor, material, and equipment relating to the work. The Operator shall provide to the District such releases as may be required by the District and in accordance with Fla. Stat. § 713.20.
- D. The Operator shall furnish to the District an affidavit stating the Operator's outstanding obligations to any subcontractors.
- E. Payment schedule shall be stated in the Proposal.

17. OTHER CONTRACTS

- A. The District may undertake or award other contracts for additional work, and the Operator shall fully cooperate with such other operators and District, employees and carefully coordinate Operator's own work to such additional work as may be directed by the District. The Operator shall not commit or permit any act which will interfere with the performance of work by any other operator or by District employees.

18. WARRANTY

- A. The Operator warrants to the District that all work will be of good quality and is in conformance with the Contract. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the District, the Operator shall furnish satisfactory evidence as to the kind and quality of the work. Any work which is not in conformance with the Contract or is otherwise found to be defective, must be corrected or replaced, at Operator's expense.

END OF GENERAL CONDITIONS