

RESOLUTION NO. 2002-11

A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES FLORIDA, APPROVING A CONTRACT WITH GIANNETTI CONTRACTING TO PROVIDE CULVERT CROSSING SERVICES AT THE 20 ACRE SUNSHINE RANCHES EQUESTRIAN PARK PROJECT; AND AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 27, 2001, the Town advertised in a local newspaper an invitation to bid for culvert crossing for the 20 acre Sunshine Ranches Equestrian Park Project; and

WHEREAS, the Town Administrator conducted pre-bid meeting and walkthrough on December 3, 2001; and

WHEREAS, the Town Administrator prepared to bid documents and received proposals on December 10, 2001; and

WHEREAS, the Town Administrator has analyzed the qualified proposed bids and recommends that Giannetti Contracting be awarded the contract to provide culvert crossing at the 20 acre equestrian park, in a form of Contract substantially similar to that attached as Exhibit A, with such changes, insertions and omissions as may be approved by the Mayor, Town Administrator and Town Attorney, the execution thereof being conclusive evidence of such approval.

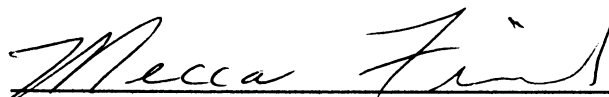
NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1: The above referenced recitals are true and correct and are incorporated herein by reference.

Section 2: The Mayor, Town Administrator and Town Attorney are hereby authorized to enter into a contract, in substantially the same form as attached Exhibit "A" to this Resolution with such changes as may be deemed necessary and proper by the Town Attorney and/or Town Administrator to effectuate the will of the Town Council, with Giannetti Contracting to provide culvert crossing at the 20-acre equestrian park.

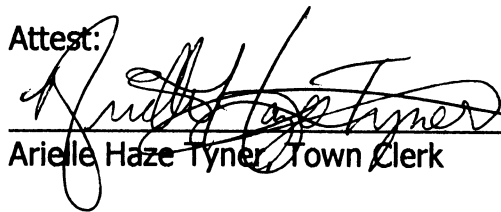
Section 3: This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches,
Florida, this 13th day of December, 2001.



Mecca Fink, Mayor

Attest:



Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:



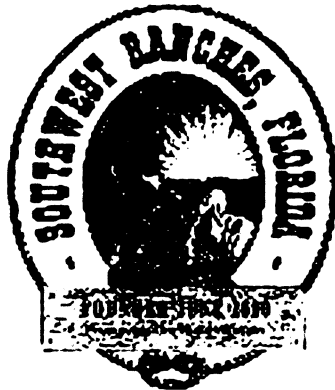
Gary A. Poliakoff, J.D., Town Attorney

STANDARD FORM
CONSTRUCTION CONTRACT DOCUMENTS

PROJECT MANUAL

Sunshine Ranches 20-Acre Equestrian Park –
Culvert Crossing

Town of Southwest Ranches



NOTICE TO BE DISPLAYED IN OFFICES OF PURCHASING DIVISION

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EXHIBIT A-1
CONTRACT

THIS IS A CONTRACT, by and between TOWN OF SOUTHWEST RANCHES, a political subdivision of the State of Florida, (hereinafter referred to as 'TOWN') and GIANNETTI CONTRACTING OF FLORIDA, INC. (hereinafter referred to as "CONTRACTOR")

W I T N E S S E T H, that CONTRACTOR and TOWN, for the consideration hereinafter named, agree as follows:

ARTICLE 1

SCOPE OF WORK

- 1.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all of the Work as described in the Contract Documents included in the Project Manual entitled "Southwest Ranches 20 Acre Equestrian Park - Culvert Crossing" labeled and attached to this Contract, as Composite Exhibit "A" along with all Addenda for the Project which are incorporated by reference into this Contract. All definitions utilized in this Contract shall be interpreted in accordance with the terms as defined in Composite Exhibit "A". The Work shall only be altered or modified from the Contract Documents upon receipt of a written change directive or Change Order properly executed by the TOWN and CONTRACTOR. CONTRACTOR agrees to perform the Work in the most expeditious and economical manner consistent with the interests of the TOWN, and warrants that upon completion, the Work shall comply with any and all applicable national, state, county, municipal codes, ordinances and regulations including but not limited to the South Florida Building Code, Broward County Edition and standards governing performance of similar Work performed in Broward County, Florida and in accordance with the Contract Documents.

ARTICLE 2

CONTRACT TIME

- 2.1 CONTRACTOR shall be instructed to commence the Work by written instructions by Contract Administrator through a Notice to Proceed. The Work to be performed under this Contract shall be commenced within fifteen (15) days after the Project Initiation Date specified in the Notice to Proceed. The Notice to Proceed will not be issued until CONTRACTOR'S submission to the Contract Administrator of all required documents and after execution of the Contract by both parties. The receipt of all necessary permits by CONTRACTOR is a condition

precedent to the issuance of a Notice to Proceed. CONTRACTOR warrants to the TOWN that it shall expeditiously apply for all building permits and shall thereafter, diligently and continuously perform such Work to achieve substantial and final completion. "Substantial Completion" of the Project shall be defined as the date upon which all necessary approvals have been issued with respect to the Work by the appropriate governmental authorities.

- 2.2 Time is of the essence throughout this Contract. The work shall be substantially completed within thirty (30) days from the Project Initiation Date specified in the Notice to Proceed, and completed and ready for final payment in accordance with Article 5 within thirty (30) days from the date of Substantial Completion.
- 2.3 CONTRACTOR shall furnish sufficient forces and equipment and shall Work such hours, including overtime operations, as may be necessary to ensure prosecution of the Work in accordance with the schedules submitted by CONTRACTOR to the TOWN. If CONTRACTOR falls behind the progress schedule, it shall take such steps as may be necessary to improve its progress by increasing the number of shifts, overtime operations, and days of work within the project limits as may be required, at no additional cost to the TOWN.
- 2.4 In the event CONTRACTOR does not achieve Substantial Completion of the Work as set forth above, the parties hereto acknowledge that any delay beyond the scheduled completion date may cause grave injury and damage to TOWN by virtue of loss of use, additional consultant and administrative expenses, extension of overhead costs and otherwise. Accordingly, the calculation of the actual damages to TOWN would be uncertain and difficult if not impossible to determine. Consequently, if the Work is not substantially complete on or before the 30th day after the Commencement Date as established by the Notice to Proceed as referenced above, time being of the essence, then the parties hereto agree that as liquidated damages and not as a penalty, the CONTRACTOR shall pay to the TOWN an amount equal to \$100.00 for each day or portion thereof, that the actual date of Substantial Completion is later than the date for Substantial Completion as set forth above. The TOWN and CONTRACTOR agree that the amount of liquidated damages represent a fair estimate of the TOWN'S damages since it is difficult to calculate the precise amount of damages. The TOWN shall have the right to deduct any and all such liquidated damage amounts from the next sequential progress payment and/or Final Payment due CONTRACTOR, as described below in Articles 4 and 5 respectively. CONTRACTOR shall not be entitled to receive a bonus should Substantial Completion be achieved before the 30th day after the Commencement Date. CONTRACTOR shall also be obligated to reimburse the TOWN for all consultant and administrative expenses incurred as a result of CONTRACTOR'S failure to timely achieve Final Completion within thirty (30) days from the date of Substantial Completion.

2.5 The CONTRACTOR shall periodically schedule and conduct meetings, attended by the TOWN, appropriate subcontractors and consultants to discuss the status of the Work. These meetings shall be scheduled throughout the course of the Work at the request of the TOWN. CONTRACTOR shall prepare and properly distribute meeting minutes to all attendees within forty-eight (48) hours from the conclusion of each meeting.

2.6 The CONTRACTOR shall provide written reports, at the meetings scheduled per Section 2.5 above, to the Contract Administrator as to the progress of all Work. The CONTRACTOR shall maintain a daily log containing a record of weather, subcontractors working on the site, the number of workers, equipment on site, Work accomplished, problems encountered and similar relevant data as the TOWN may reasonably require. The Contract Administrator shall have access to the log and copies shall be promptly provided to the Contract Administrator upon written request to the CONTRACTOR or as otherwise provided in this Contract.

ARTICLE 3

THE CONTRACT SUM

3.1 TOWN shall pay to CONTRACTOR for the performance of the Contract, the total price stated as awarded and CONTRACTOR assumes all risks and responsibilities for performing all Work for this amount. The TOWN shall not be liable for any cost increases associated with labor or material that may arise during the performance of Work. In the event the cost of the Work exceeds the Contract Sum, CONTRACTOR shall pay such excess from its own funds and the TOWN shall not be required to pay any part of such excess. The only exception shall be any adjustments to the Contract Sum by written Change Order issued in accordance with the terms and conditions of this Contract. The amount specified in "The Schedule Of Prices Bid Sunshine Ranches 20 Acres Equestrian Park Project" shall not be exceeded and/or performed without first acquiring a written Change Order executed by TOWN and CONTRACTOR. To the extent that CONTRACTOR proceeds to perform work in excess of the "The Schedule Of Prices Bid Sunshine Ranches Equestrian Park Project" without an executed written Change Order, such Work shall be at CONTRACTOR'S own risk at no charge to TOWN.

3.2 TOWN shall pay to CONTRACTOR for the performance of the Work, the total Contract Sum as awarded by the TOWN in the completed "Schedule Of Prices Bid Sunshine Ranches Equestrian Park Project" labeled and attached to this executed Contract as Exhibit "A-5" and CONTRACTOR assumes all risks and responsibilities

for performing all Work for this amount. The TOWN shall not be liable for any cost increases associated with labor or material that may arise during the performance of Work. In the event the cost of the Work exceeds the Contract Sum, CONTRACTOR shall pay such excess from its own funds and the TOWN shall not be required to pay any part of such excess. The only exception shall be any adjustments to the Contract Sum by written Change Order issued in accordance with the terms and conditions of this Contract. The quantities of Work materials and amounts specified in Exhibit "A-5" shall not be exceeded and/or performed without first acquiring a written Change Order executed by TOWN and CONTRACTOR. To the extent that CONTRACTOR proceeds to perform Work in excess of the Contract Sum as awarded on Exhibit "A-5", without an executed written Change Order, such Work shall be at CONTRACTOR'S own risk at no charge to TOWN.

- 3.3 Payment shall be at the lump sum price and/ or be based upon the unit prices set forth in the Contract. The Contract Sum shall constitute full compensation for all costs, including overhead and profit, supervision, equipment, expenses and costs, permit fees, inspection fees and bond premiums, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Project Manual. Likewise, unit prices specified in Exhibit "A-5" shall include all the aforementioned components of overhead, profit, supervision etc...

ARTICLE 4

PROGRESS PAYMENTS

- 4.1 CONTRACTOR may make Application for Payment for lump sum Work completed during the Project at intervals of not more than once a month. CONTRACTOR'S application shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with such supporting evidence as may be required by Contract Administrator. CONTRACTOR shall submit with each application for Payment, an updated progress schedule and a release of liens relative to the Work that is the subject of the Application. TOWN shall make payment to CONTRACTOR within thirty (30) days after approval of an acceptable updated progress schedule.
- 4.2 The TOWN shall be entitled to withhold from each payment to CONTRACTOR ten (10%) percent of the amount earned including the CONTRACTOR'S fee as of that pay period, as retainage for completion of all Work pursuant to this Contract. Retainage shall also be applicable to Change Order Work. Retainage shall be paid by TOWN to CONTRACTOR in accordance with Article 5, Acceptance And Final Payment.

4.3 CONTRACTOR may be paid at intervals of not more than once a every thirty (30) days..

4.4 TOWN may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on amount of:

4.4.1 Defective work not remedied.

4.4.2 Claims filed or reasonable evidence indicating probable filing of claims by TOWN and other parties against CONTRACTOR.

4.4.3 Failure of CONTRACTOR to make payments properly to subcontractors or for material or labor.

4.4.4 Damage to another contractor not remedied.

4.4.5 Liquidated damages and. costs incurred by TOWN for extended construction administration.

When the above grounds are removed or resolved or CONTRACTOR provides a surety bond or consent of surety, satisfactory to TOWN which will protect TOWN in the amount withheld, payment may be made in whole or in part.

ARTICLE 5

ACCEPTANCE AND FINAL PAYMENT

5.1 Upon receipt of written notice from CONTRACTOR that the Work is ready for final inspection and acceptance, Contract Administrator shall, within ten (10) days, make an inspection thereof. If Contract Administrator finds the Work acceptable, the requisite documents have been submitted and the requirements of the contract Documents fully satisfied, and all conditions of the permits. and regulatory agencies have been met, a Final Certificate of Payment shall be issued by Contract Administrator, over its signature, stating that the requirements of the contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

5.2 Before issuance of the Final Certificate of Payment, CONTRACTOR shall deliver to Contract Administrator a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof; an Affidavit certifying that all suppliers and subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, a Consent Of Surety to Final Payment; the final corrected as-built drawings; and if required, the final bill and invoices for

materials. Contract Administrator may withhold Final Payment for any of the conditions described in Section 4.4 above.

5.3 Upon completion of all Work under this Contract and before Final Payment will be issued, the CONTRACTOR shall perform the following:

- (a) Delivery to the Contract Administrator all warranties, final certifications, and similar documents.
- (b) Completion of all punch list Work.
- (c) Complete final clean-up including adjustment areas leading to and from the areas where the Work has been performed are clean and have been accepted by the TOWN.
- (d) Delivery to the TOWN a Consent of Surety and Final Releases and Waivers of Lien from all CONTRACTOR'S and subcontractors, laborers and materialmen.

5.4 Before issuance of the Final Certificate of Payment, CONTRACTOR shall deliver to Contract Administrator a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof; an Affidavit certifying that all suppliers and subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, a Consent Of Surety to Final Payment; the final corrected as-built drawings; and if required, the final bill and invoices for materials. Contract Administrator may withhold Final Payment for any of the conditions described in Section 4.4 above.

5.5 If, after the Work has been Substantially Complete, and Final Completion is materially delayed through no fault of CONTRACTOR, the TOWN shall have the option and without terminating the Contract to make payment to CONTRACTOR of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

ARTICLE 6

CONTRACT DOCUMENTS

6.1 This Contract, Exhibit "A-1", is part of, and incorporated into, the Contract Documents as defined herein. The Contract Documents include the provisions and forms described in the Project Manual (Composite Exhibit "A") which forms and provisions are hereby incorporated by reference into this Contract. The language in this Contract shall be controlling over any conflicting language in the General Conditions, Technical Specifications or elsewhere in the Project Manual.

Upon execution of this Contract by CONTRACTOR, the following documents included in the Project Manual (Composite Exhibit "A") shall be fully executed by CONTRACTOR and delivered to the TOWN:

Exhibit "A-4": Schedule of Prices Bid Sunshine Ranches Equestrian Park.

Exhibit "A-5": Performance Bond.

Exhibit "A-6": Payment Bond.

- 6.2 Where there is a conflict between any provision set forth within the Contract Documents and a more stringent state or federal provision which is applicable to this Project, the more stringent state or federal provision shall prevail.
- 6.3 This Contract incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

ARTICLE 7

APPLICABLE LAW AND VENUE

- 7.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction and venue of an appropriate Court of competent jurisdiction of the Seventeenth Judicial Circuit of Broward County, Florida. **BY ENTERING INTO THIS CONTRACT, CONTRACTOR AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF OR RELATING TO THIS PROJECT.** CONTRACTOR, pursuant to Section 25 of the General Conditions, shall specifically bind all subcontractors to the provisions of this Contract.

ARTICLE 8

NOTICES

- 8.1 Any notice required or given pursuant to or in relation to the Contract Documents shall be certified or registered mail, postage prepaid, return receipt requested, hand delivery, facsimile transmission prior to 5:00 p.m. on the date of transmission (e.d.t. or e.f.t. as applicable), or via overnight express courier service, as follows:

As to the TOWN: John Canada, Contract Administrator
Town of Southwest Ranches
3111 Stirling Road
Fort Lauderdale, Florida 33312

and

Steven B. Lesser, Esq.
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, Florida 33312

As to the CONTRACTOR: Giannnetti Contracting Of Florida, Inc
1132 NE 48th Street
Pompano Beach, Florida 33064

ARTICLE 9

MISCELLANEOUS

- 9.1 Where necessary to effectuate the intent of the parties, the agreements herein shall survive closing. This CONTRACT is personal to the TOWN and cannot be assigned by the CONTRACTOR without written approval of the TOWN. This Contract replaces any and all prior agreements or understandings between the parties hereto (whether written or oral) and cannot be modified except as a written document signed by the TOWN and the CONTRACTOR. The CONTRACTOR has the sole responsibility of proper construction of the project and is solely responsible for the safety or adequacy of any equipment, building components, scaffolding, sheathing, bracing, form or other Work as well as supervision. Design review or inspection conducted by the TOWN shall be for the benefit of the TOWN only and shall not relieve the CONTRACTOR of its responsibilities and/or undertaking with respect to this Contract.

ARTICLE 10

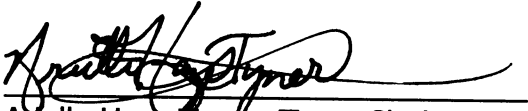
MEDIATION

- 10.1 The parties shall endeavor to resolve any and all claims arising from this Contract by mediation which, unless the parties mutually agree otherwise, shall be conducted pursuant to the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. A request for mediation shall be filed, in writing, with the other party to the Contract and with the American Arbitration Association. To the extent litigation is permitted under this Contract (relative to Section 11 "Resolution Of Disputes" of the General Conditions), the request may be made concurrently with the filing of a legal or equitable proceedings, which shall be stayed pending the outcome of a mediation which will be completed within sixty (60) days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) days, from the date a request for mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with construction experience to serve as mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The parties shall each be responsible to pay the mediator's fee and any filing fees on an equal, fifty-fifty (50/50) basis. The mediation shall be conducted at a mutually agreed upon location in Broward County, Florida.

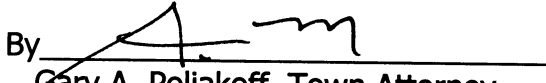
IN WITNESS THEREOF, THE PARTIES HERETO HAVE MADE AND EXECUTED THIS agreement on the respective dates under each signature: TOWN OF SOUTHWEST RANCHES through its TOWN COUNCIL, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Council action on the 2 day of February 2002 and Town of Southwest Ranches signing by and through its Mayor, duly authorized to execute same.

TOWN

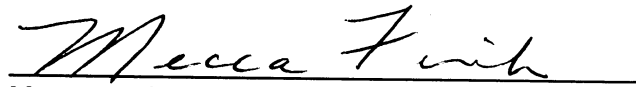
ATTEST:

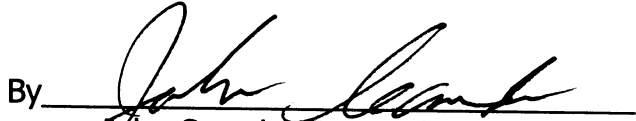

Arielle Haze Tyner, Town Clerk

APPROVED AS TO FORM AND
CORRECTNESS:

By 
Gary A. Poliakoff, Town Attorney


TOWN OF SOUTHWEST RANCHES


Mecca Fink, Mayor

By 
John Canada, Town Administrator

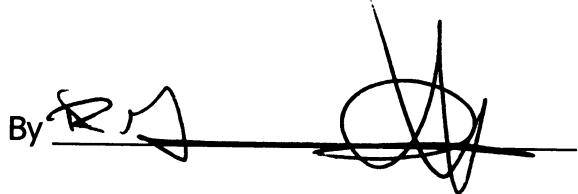
CONTRACTOR

ATTEST:


Secretary

(Corporate Seal)

GIANNETTI CONTRACTING OF
FLORIDA, INC.

By 

Rick Giannetti, President
(Type or Print Name/Title Signed Above)

19 day of February, 2002

RG

COMPOSITE EXHIBIT "A"

EXHIBIT A-2
NOTICE FOR BIDS

Town of Southwest Ranches requests, sealed bids for selling and delivering all necessary labor, materials, equipment, and services for the completion of the work, including installation of materials, supplies and equipment sold and delivered to Town of Southwest Ranches for the construction of the 20-Acre Sunshine Ranches Equestrian Park- Culvert Crossing located at Sunshine Ranches, S.W. 148 Avenue, 330 feet North of Stirling Road. This project is to be bid to include all components necessary for a complete project, including, but not limited to, payment for all permits, fees, etc. Any aspect of this project, which may be implied or referred to, is included within project scope as included as an integral aspect of the project and included within the bid price. Bids will be received by the Town of Southwest Ranches until 2:00 p.m. on December 10, 2001 at which time bids will be publicly opened and read in the offices of the Town of Southwest Ranches, 3111 Stirling Road, Fort Lauderdale, Florida 33312.

There shall be a Mandatory Prebid Meeting and Site Walkthrough on December 3, 2001 at 9:00 A.M. at Sunshine Ranches Equestrian Park Site, S.W. 148 Avenue 330 feet north of Stirling Road.

The Project Manual is open to public inspection at the offices of the Town of Southwest Ranches, 3111 Stirling Road, Fort Lauderdale, Florida 33312

A copy of the Project Manual may be obtained by contacting the Town at 954-434-0008 and requesting an e-mail or from the TOWN website: www.southwestranches.org.

A full Project Manual and a set of plans may be obtained at the Town of Southwest Ranches office located at 3111 Stirling Road, Fort Lauderdale, Fl. 33312. There will be a charge of Thirty dollars (\$30.00) per manual with plans, payable by cash or check. Make check payable to: Town of Southwest Ranches.

Each bid shall be accompanied, a Performance Bond and a Payment Bond, each in an amount equal to one hundred percent (100%) of the Contract amount or an alternative form of security permitted by the Town must be submitted by the successful Bidder within fifteen (15) days after notification of award.

The Board of the Town of Southwest Ranches reserves the right to waive technicalities or irregularities in bids at its discretion or to reject any or all bids. No Bidder may withdraw its bid within ninety (90) days after the actual date of opening thereof.

RC

MEDIA ADVERTISEMENT

INVITATION TO BID

Competitive sealed bids for selling and delivering all necessary labor, materials, equipment, and services for the completion of the work, including installation of materials, supplies and equipment sold and delivered to Town of Southwest Ranches for the construction of the 20-Acre Sunshine Ranches Equestrian Park – Culvert Crossing located at Sunshine Ranches, S.W. 148 Avenue, 330 feet North of Stirling Road. This project is to be bid to include all components necessary for a complete project, including, but not limited to, payment for all permits, fees, etc. Any aspect of this project, which may be implied or referred to, is included within project scope as included as an integral aspect of the project and included within the bid price. Bids will be received by the Town of Southwest Ranches until 2:00 p.m. on December 10, 2001, at which time bids will be publicly opened and read in the offices of the Contract Administrator, 3111 Stirling Road, Fort Lauderdale, Florida 33312.

There shall be a Mandatory Pre-bid Meeting and Site Walkthrough on December 2, 2001 at 9:00 A.M. at Sunshine Ranches Equestrian Park Site, S. W. 148 Avenue 330 feet north of Stirling Road.

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A copy of the Project Manual may be obtained by contacting the Town at 954-434-0008 and requesting an e-mail or from the TOWN website: www.southwestranches.org.

The TOWN reserves the right to waive technicalities or irregularities in bids at its discretion or to reject any or all bids.

RG

General Instructions to Bidders

1. General: The following instructions and those set forth herein are given for the purpose of guiding Bidders in properly preparing their bids. Such instructions have equal force and weight with other portions of the Contract Documents and strict compliance is required with all the provisions contained in the instructions.
2. Scope of Work: The Work set forth within these bid documents includes the furnishing of all labor, materials, equipment services and incidentals for the Culvert Crossing
3. Location of Work: Sunshine Ranches, S.W. 148th Avenue, 330 feet North of Stirling Road in Southwest Ranches, Florida.
4. Definitions, Abbreviations and Symbols: The definitions, abbreviations and symbols utilized throughout the Contract Documents are defined hereinafter in the Sections entitled "Definitions" and "Technical Specifications".

RG

DEFINITIONS

1. Definitions

Whenever the following terms or pronouns in place of them appear in the Project Manual, the intent and meaning shall be interpreted as follows:

- 1.1. Bidder: Any individual, firm, or corporation submitting a bid for this Project, acting directly or through a duly authorized representative.
- 1.2. Council: The Council of the Town of Southwest Ranches, Florida, its successors and assigns.
- 1.3. Change Order: A written document ordering a change in the Contract Sum or Contract Time or a material change in the Work as determined by the Town Administrator .
- 1.4. Consultant: Winnigham & Fradely, Inc.
- 1.5. Contract: The part or section of the Contract Documents addressing some of the rights and duties of the parties hereto, including but not limited to i contract time and liquidated damages.
- 1.6. Contract Administrator: The Town Administrator or designee of TOWN government which requested the Project.
- 1.7. Contract Documents: The Project Manual including drawings (plans) and specifications, the Notice for Bids, the Addenda to the Project Manual, the Bid, Tender Form; the record of the Contract award by Council, the Contract, the Performance Bond and Payment Bond, any additional documents the submission of which is required by this Project Manual, the Notice of Award, the Notice(s) to Proceed, and the Purchase Order are the documents which are collectively referred to as the Contract Documents.
- 1.8. Contract Sum: The amount established in Article 3 of the Contract, as may be amended by Change Order.

RG

- 1.9. Contract Time: The time between commencement and completion, including any milestone dates thereof, established in Article 2 of the Contract, as may be amended by Change Order.
- 1.10. CONTRACTOR: The person, firm, or corporation with whom TOWN has contracted and who is primarily liable for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of CONTRACTOR shall be deemed to be a reference to CONTRACTOR.
- 1.11. Days: Consecutive calendar days unless otherwise specified.
- 1.12. TOWN or Owner: Town of Southwest Ranches, Florida, the public body, agency or instrumentality which is a party hereto and for which this Contract is to be performed. In all respects hereunder, TOWN'S performance is pursuant to TOWN'S position as the owner of a construction project. In the event TOWN exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to TOWN'S authority as a governmental body and shall not be attributable in any manner to TOWN as a party to this Contract.
- 1.13. Field Order: A written order which orders minor changes in the Work in accordance with of the General Conditions but which does not involve a change in the Contract Sum or Contract Time.
- 1.14. Final Completion: The date certified by CONTRACTOR in the Final Certificate of Payment upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; and to the best of CONTRACTOR'S knowledge, information and belief the Work defined herein has been fully completed in accordance with the terms and conditions of the Contract Documents.
- 1.15. Inspector: An authorized representative of TOWN assigned to make necessary inspections of the work performed by CONTRACTOR.
- 1.16. Material: Materials incorporated in this project, or used or consumed in the performance of the work.
- 1.17. Notice to Proceed: A written notice to CONTRACTOR authorizing the commencement of work.

- 1.18. Plans and/or Drawings: The official graphic representations of this construction project which are a part of the Project Manual.
- 1.19. Project: The construction project described in the Contract Documents, including the Work described therein.
- 1.20. Project Initiation Date: The date upon which the contract time commences.
- 1.21. Project Manual: The official documents setting forth bidding information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the Contract Documents; the specifications; and the plans and drawings of a construction project.
- 1.22. Subcontractor: A person, firm or corporation having a direct contract with CONTRACTOR including one who furnishes material worked to a special design according to the Project Manual for this Work, but does not include one who merely furnishes material not so worked.
- 1.23. Substantial Completion: The date certified by CONSULTANT when all conditions and requirements of permits and regulatory agencies have been satisfied and the Work is sufficiently complete in accordance with the Contract Documents so the Project is available for beneficial occupancy by TOWN.
- 1.24. Surety: The surety company or individual which is bound by the performance bond and payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR'S acceptable performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.
- 1.25. Work: The construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CONTRACTOR to fulfill CONTRACTOR'S obligations. The Work may constitute the whole or a part of the Project.

INSTRUCTIONS TO BIDDERS

1. Examination of Contract Documents and Site: It is the responsibility of each Bidder before submitting a Bid, to:
 - 1.1. Examine the Contract Documents thoroughly,
 - 1.2. Visit the site to become familiar with local conditions that may affect costs, progress, performance or furnishing of the Work,
 - 1.3. Take into account federal, state and local laws and regulations that may affect costs, progress, performance or furnishing of the Work,
 - 1.4. Study and carefully correlate Bidder's observations with the Contract Documents, and
 - 1.5. Notify of all conflicts, errors or discrepancies in the Contract Documents that the Bidder knows or reasonably should have known.

The submission of a Bid shall constitute an incontrovertible representation by Bidder that Bidder has complied with the above requirements and that without exception , the Bid is premised upon performing and furnishing the Work required by the Contract Documents and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

2. Interpretations: Only questions answered by written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. All questions about the meaning or intent of the Contract Documents are to be directed to in writing. Interpretations or clarifications considered necessary by in response to such questions will be issued by TOWN by means of Addenda mailed or, delivered to all parties recorded by as having received the Bidding Documents. Written questions should be received no less than five (5) days prior to the date of the opening of Bids. However, there is no obligation on the part of TOWN or to respond to questions received less than five (5) days prior to bid opening.
3. Submitting Bids: All bids must be received at the office of the Town of Southwest Ranches, 3111 Stirling Road, Fort Lauderdale, Florida 33312, before the time and date specified for bid opening, enclosed in a sealed envelope, legibly marked on the outside:

BID FOR: Sunshine Ranches Equestrian Park – Culvert Crossing

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4. Printed Form of Bid: All bids must be made upon the blank bid tender form attached hereto and should give the price in strict accordance with the instructions thereon; The bid must be signed and acknowledged by the Bidder in accordance with the directions on the bid form.
5. Bid Guaranty: All bids shall be accompanied by either a bid bond executed by surety company meeting the qualifications for surety companies as specified in Section 5 of the General Conditions or by cash, money order, certified check, cashier's check, unconditional letter of credit, treasurer's check or bank draft of any national or state bank (United States), in an amount equal to five percent (5%) of the total bid price, payable to the Town of Southwest Ranches and conditioned upon the successful Bidder executing the Contract and providing the required Performance Bond and Payment Bond and evidence of required insurance within fifteen (15) days after notification of award of the Contract. A PERSONAL CHECK OR A COMPANY CHECK OF A BIDDER SHALL NOT BE DEEMED A VALID BID SECURITY. Security of the successful Bidder shall be forfeited to the Town of Southwest Ranches as liquidated damages, not as a penalty, for the cost and expense incurred should said Bidder fail to execute the Contract, provide the required Performance Bond, Payment Bond and Certificate(s) of Insurance within fifteen (15) days after notification of the award of the Contract, or failure to comply with any other requirements set forth herein. The time for execution of the Contract and the submission of a provision of the Performance Bond, Payment Bond and Certificate(s) of Insurance may be extended by Contract Administrator for good cause shown. Bid Securities submitted by the unsuccessful Bidders will be returned after award of Contract.
6. Acceptance or Rejection of Bids: Town reserves the right to reject any or all bids prior to award. Reasonable efforts will be made to either award the Contract or reject all bids within ninety (90) days after bid opening date. A Bidder may not withdraw its bid before the expiration of ninety (90) days from the date of bid opening. A Bidder may withdraw its bid after the expiration of ninety (90) days from the date of bid opening by delivering written notice of withdrawal to the Contract Administrator prior to award of the Contract by the Council.
7. Determination of Award: Except where TOWN exercises the right reserved herein to reject any or all bids and subject to the restrictions stated hereinabove, the Contract shall be awarded by TOWN to the responsible Bidder who has submitted either the lowest responsive bid, or the lowest responsive bid on the base bid including such alternates as TOWN determines to be in its own best interests depending upon whichever is applicable to the particular bid. These Contract Documents may include additional terms and conditions required by federal or state grantor agencies. In the event of any discrepancy between the grantor agency's regulations and TOWN'S regulations, the more stringent regulations concerning the determination for award shall apply.

8. Bidder/CONTRACTOR: An interim performance evaluation of the successful Bidder/CONTRACTOR may be submitted by the Contract Administrator or Designer during construction of the Project. A final performance evaluation shall be submitted when the Request for Final Payment to the construction contractor is forwarded for approval. In either situation, the completed evaluation(s) shall be forwarded to the Contract Administrator who shall provide a copy to the successful Bidder/CONTRACTOR. Said evaluation(s) may be used by the TOWN as a factor in considering the responsibility of the successful Bidder/CONTRACTOR for future bids with the TOWN.
9. Contract Sum: The Contract Sum is to include the furnishing of all labor, materials, equipment including tools, services, permit fees, applicable taxes, overhead and profit for the completion of the Work except as may be otherwise expressly provided in the Contract Documents. The cost of any item(s) of Work not covered by a definite Contract unit price or lump sum price shall be included in the Contract unit price or lump sum price to which the item(s) is most applicable.
10. Postponement of Date for Presenting and Opening of Bids: TOWN reserves the right to postpone the date for receipt and opening of bids and will make a reasonable effort to give at least seven (7) days written notice of any such postponement to each prospective Bidder.
11. Qualifications of Bidders: Bids shall be considered only from firms normally engaged in performing the type of work specified within the Contract Documents. Bidder must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to TOWN. Bidders shall have Certificate of Competency or be able to demonstrate appropriate experience on similar full range of projects with successful results. Certificate and/or summary of similar successful projects must be submitted with bid. In determining a Bidder's responsibility and ability to perform the Contract, TOWN has the right to investigate the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Bidder and the Bidder's record with environmental regulations.
12. Addenda and Modifications: TOWN shall make reasonable efforts to issue addenda within five (5) days prior to bid opening. All addenda and other modifications to the construction documents made prior to the time and date of bid opening shall be issued as separate documents identified as changes to the Project Manual. All addenda information will be signed or initialed in lower right hand corner and shall be submitted with bid to assure complete understanding of bidder. All addenda information that is not distributed at the Mandatory Pre-Bid and Walk through meeting will be mailed to qualified bidders via certified mail.

13. Environmental Regulations: TOWN reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination in the opinion of TOWN. Bidder shall submit with its Bid, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidder shall notify TOWN immediately of notice of any citation or violation which Bidder may receive after the Bid or Proposal opening.

COUNTY LICENSES, PERMITS AND FEES

Pursuant to the Public Bid Disclosure Act, EACH LICENSE, PERMIT OR FEE A CONTRACTOR WILL HAVE TO PAY THE COUNTY BEFORE OR DURING CONSTRUCTION OR THE PERCENTAGE METHOD OR UNIT METHOD OF ALL LICENSES, PERMITS AND FEES REQUIRED BY THE COUNTY AND PAYABLE TO THE TOWN BY VIRTUE OF THIS CONSTRUCTION AS PART OF THE CONTRACT IS AS FOLLOWS:

Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local Governmental entities are not included.

1. Occupational licenses from Broward firms will be required to be submitted within 15 days of notification of intent to award.
2. Occupational licenses will be required Pursuant to Chapter 205,065 Florida Statutes.

SCHEDULE OF PRICES BID
SUNSHINE RANCHES EQUESTRIAN PARK PROJECT

BASE BID As per technical specifications and drawings, prices bid should provide for all labor, services, equipment, supplies, and materials to construct the itemized improvements.

<u>Item</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Total</u>
1.	Culvert Crossing	Lump Sum	\$ <u>37,000</u> [—]

Option Bid:

1.	Additional Culvert Crossing	Lump Sum	\$ <u>N/A</u>
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Name of Bidder GIANNETTI CONTRACTING OF FLORIDA, INC

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EXHIBIT A-5
FORM OF PERFORMANCE BOND

Know All By These Presents:

That we _____, as Principal, hereinafter called CONTRACTOR, and _____, as Surety, are bound to the Town of Southwest Ranches, as Obligee, hereinafter called TOWN, in the amount of _____ Dollars (\$ _____) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement entered into a Contract, Bid/ Contract No.: _____, awarded the _____ day of _____, 20____, with TOWN for _____ in accordance with the Contract Documents prepared by _____ which Contract Documents are by reference made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if CONTRACTOR:

1. Performs the Contract between CONTRACTOR and TOWN for construction of Sunshine Ranches Equestrian Park Project – Culvert Crossing, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays TOWN all losses, damages, expenses, costs liquidated damages and attorneys fees including those incurred at all trial, appellate, bankruptcy proceedings, and indemnifies the TOWN for all such losses, damages and

expenses that TOWN sustains as a result of default by CONTRACTOR under the Contract; and

3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever CONTRACTOR shall be, and declared by TOWN to be, in default under the Contract, TOWN having performed TOWN's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 3.1. Complete the Contract in accordance with its terms and conditions; or
- 3.2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible Bidder, or, if TOWN elects, upon determination by TOWN and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and TOWN and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by TOWN to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by TOWN to CONTRACTOR.
- 3.3 The remedies available against the Surety shall include but not be limited to, the recovery of consequential damages for the cost of the completion of the Contract and correction of defective Work before or after completion of the Contract; liquidated damages relative to delayed Substantial Completion; additional legal, design professional and delay costs resulting from the CONTRACTOR'S default, and resulting from the actions or inactions or failure to act of the Surety; actual damages caused by delayed performance or non-performance of the CONTRACTOR and all costs incident to ascertaining the nature and extent of the CONTRACTOR'S default, including but not limited to engineering, consulting, accounting, legal and paralegal fees.
- 3.4 The Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder or the

specifications accompanying same shall in any way affect its obligation on this Bond, and it does; hereby waive notice of any such change, extensions of the time, alteration or addition to the terms of the Contract or to the Work or to the specifications.

3.5 This Performance Bond shall be construed and interpreted in accordance with Florida law. Jurisdiction and venue relative to enforcement of this Bond shall be in a Court of competent jurisdiction in Broward County, Florida.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than TOWN named herein.

The Surety hereby waives notice of and agrees that; any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this _____ day of _____, 20 _____.

WITNESSES:

_____	_____
(Secretary)	(Name of Corporation)
	By _____
	(Signature and Title)

	(Type Name and Title Signed Above)

IN THE PRESENCE OF:

INSURANCE COMPANY:

_____	By _____
	(Agent and Attorney-in-Fact)
_____	Address: _____
	(street)

	(City / State / Zip Code)
	Telephone No.: _____

FORM OF PERFORMANCE BOND

BOND #35BCSAP4305

Know All By These Presents:

That we Giannetti Contracting of Florida Inc, as Principal, hereinafter called CONTRACTOR, and Hartford Accident & Indemnity Company, as Surety, are bound to the Town of Southwest Ranches, as Obligee, hereinafter called TOWN, in the amount of Thirty Seven Thousand Dollars (\$ 37,000.00) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement entered into a Contract, Bid/ Contract No.: SUNSHINE RANCHES CULVERT CROSSING, awarded the 13th day of December, 2001 with TOWN for Sunshine ranches Culvert Crossing in accordance with the Contract Documents prepared by Town of Southwestern Ranches which Contract Documents are by reference made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if CONTRACTOR:

1. Performs the Contract between CONTRACTOR and TOWN for construction of Sunshine Ranches Equestrian Park Project – Culvert Crossing, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays TOWN all losses, damages, expenses, costs liquidated damages and attorneys fees including those incurred at all trial, appellate, bankruptcy proceedings, and indemnifies the TOWN for all such losses, damages and expenses that TOWN sustains as a result of default by CONTRACTOR under the Contract; and

3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever CONTRACTOR shall be, and declared by TOWN to be, in default under the Contract, TOWN having performed TOWN's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 3.1. Complete the Contract in accordance with its terms and conditions; or
- 3.2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible Bidder, or, if TOWN elects, upon determination by TOWN and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and TOWN and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by TOWN to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by TOWN to CONTRACTOR.
- 3.3. The remedies available against the Surety shall include but not be limited to, the recovery of consequential damages for the cost of the completion of the Contract and correction of defective Work before or after completion of the Contract; additional legal, design professional and delay costs resulting from the CONTRACTOR'S default, and resulting from the actions or inactions or failure to act of the Surety; actual damages caused by delayed performance or non-performance of the CONTRACTOR and all costs incident to ascertaining the nature and extent of the CONTRACTOR'S default, including engineering, accounting and legal fees.
- 3.4. The Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying same shall in any way affect its obligation on this Bond, and it does; hereby waive notice of any such change, extensions of the time, alteration or addition to the terms of the Contract or to the Work or to the specifications.

EXHIBIT A-8

GENERAL CONDITIONS

1. Project Manual

- 1.1. The Project Manual includes any general or special Contract conditions or specifications attached hereto.
- 1.2. The Project Manual, along with all documents that make up and constitute the Contract Documents, shall be followed in strict accordance as to work, performance, material, and dimensions except when Contract Administrator may authorize, in writing, an exception.
- 1.3. Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be resolved by Contract Administrator. CONTRACTOR shall not proceed when in doubt as to any dimension or measurement, but shall seek clarification from Contract Administrator.
- 1.4. CONTRACTOR shall be furnished Four (4) copies, free of charge, of the Project Manual.

2. Intention of TOWN

It is the intent of TOWN to describe in the Contract Documents a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by CONTRACTOR whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids. TOWN shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

3. Progress Schedule

3.1. Schedule

3.1.1. A progress schedule in the indicated form:

- ☒ Bar Chart
- ☐ Modified CPM
- ☐ CPM
- ☐ Computerized CPM

(CPM shall be interpreted to be generally as outlined in the Association of General Contractors (AGC) publication, "The Use of CPM in Construction.")

The progress schedule shall indicate the start and completion dates of the various stages of the Work and shall show an activity network for the planning and execution of the Work. Included with the progress schedule shall be a narrative description of the progress schedule. The progress schedule must be updated monthly by CONTRACTOR, submitted as part of each Application for Payment and shall be acceptable to Contract Administrator.

3.1.2. To the extent applicable, a preliminary schedule of Shop Drawing submissions; and

3.1.3. In a lump sum contract or in a contract which includes lump sum bid items of Work, a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Sum and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of work that will be confirmed in writing by CONTRACTOR at the time of submission.

3.2. At a time specified by Contract Administrator but before CONTRACTOR starts the work at the Project site, a conference attended by CONTRACTOR will be held to discuss the schedules referred to in Section 3.1, to discuss procedures for handling Shop Drawings (if applicable) and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

4. Performance Bond and Payment Bond:

Within fifteen (15) days of being notified of the award, CONTRACTOR shall furnish a fully executed Performance Bond and a Payment Bond in the forms labeled and attached to the Contract Documents as Exhibits "A-6" and "A-7" respectively.

- 4.1. Each Bond shall be in the amount of one hundred percent (100%) of the Contract Sum guaranteeing to TOWN the completion and performance of the Work covered in such Contract as well as full payment of all suppliers, materials, men, laborers, or subcontractors employed pursuant to this project. The Contract terms shall be incorporated into the Bond including the CONTRACTOR'S obligation to pay liquidated damages to the TOWN. Each Bond shall be with a surety company that satisfies the requirements of Section 5 "Qualification of Surety" of the General Conditions.
- 4.2. Each Bond shall continue in effect for one year after final completion and acceptance of the work with liability equal to one hundred percent (100%) of the Contract Sum, or an additional bond shall be conditioned that CONTRACTOR will, upon notification by TOWN, correct any defective or faulty work or materials which appear within one year after Final Completion of the Contract.
- 4.3. Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, CONTRACTOR shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and CONTRACTOR shall provide TOWN with evidence of such recording.

4.4. Alternate Form of Security:

In lieu of a Performance Bond and a Payment Bond, CONTRACTOR may furnish alternate forms of security that may be in the form of cash, money order, certified check, cashier's check or unconditional letter of credit. Such alternate forms of security shall be subject to the approval of TOWN and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by TOWN for one year after completion and acceptance of the Work.

5. Qualification of Surety:

- 5.1. For projects of \$500,000.00 or less, TOWN may accept a, Performance Bond and Payment Bond from a surety company which has twice the minimum surplus and capital required by the Florida Insurance Code at

the time the invitation to bid is issued, if the surety company is otherwise in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. The Certificate and Affidavit so certifying should be submitted with the Performance Bond and Payment Bond.

6. Indemnification:

- 6.1 The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees performing the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. CONTRACTOR shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify and hold harmless the TOWN, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees incurred in defending the TOWN as to any such claim alleged that arises out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) 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 therefrom, and (2) is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against the TOWN, or any of their agents or employees by any employee of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under workers' or workmen's compensation acts,

disability benefit acts or other employee benefit acts. The foregoing indemnity from CONTRACTOR shall be applicable to all losses, damages, expenses or claims, liabilities for damage or injury to any person or property, including but not limited to reasonable attorney's fees resulting from their negligence, recklessness or intentional wrongful misconduct of CONTRACTOR, and persons employed or utilized by CONTRACTOR relating to the performance of Work as described in this Contract. This indemnification provision is incorporated by reference into the Contract Documents. The indemnification as provided in this paragraph shall be subject to a monetary limitation of One Million (\$1,000,000.00) Dollars that the TOWN and CONTRACTOR both acknowledge that this amount bears a reasonable commercial relationship to this Contract. The CONTRACTOR shall promptly remedy all damage or loss to any property caused in whole or in part by the CONTRACTOR, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of the CONTRACTOR are in addition to all other obligations under this Contract. This provision shall survive the termination or expiration of this Contract.

In the event that any action or proceeding is brought against TOWN by reason of any such claim or demand, CONTRACTOR shall, upon receipt of written notice from TOWN, promptly defend such action or proceeding by counsel that has been approved the TOWN. In that event, CONTRACTOR shall be required to periodically provide the TOWN with status reports relating to litigation defended by the CONTRACTOR for the benefit of the TOWN in accordance with this provision.

- 6.2. The indemnification provided above shall obligate CONTRACTOR to defend the TOWN at its own expense to and through all trial, appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at TOWN's option, for any and all claims of liability and all suits and actions of every name and description covered by Section 6.1 above that may be brought against TOWN whether performed by CONTRACTOR or persons employed or utilized by CONTRACTOR.

7. Insurance Requirements:

- 7.1. Without limiting any of the other obligations or liabilities of CONTRACTOR, CONTRACTOR shall provide, pay for, and maintain in force until all of its work to be performed under this Contract has been completed and accepted by TOWN (or for such duration as is otherwise specified hereinafter) the insurance coverages set forth herein.

7.1.1. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy must include:

7.1.1.1. Employers' Liability with a limit of Five Thousand (\$5,000.00) Dollars each accident

7.1.2. Comprehensive General Liability with minimum limits of Two Million (\$ 2,000,000.00) Dollars per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

[x] 7.1.2.1. Premises and/ or Operations.

[x] 7.1.2.2. Independent Contractors.

7.1.5. Installation and transit for one hundred (100 %) percent of the "installed replacement cost value" covering TOWN as a named insured, with a deductible of not more than Five Thousand (\$5,000.00) Dollars each claim.

7.1.5.1. Cessation of Insurance--Coverage is not to cease and is to remain / in force (subject to cancellation notice) until the TOWN issues its Final Acceptance of the Project.

7.1.5.2. Flood Insurance--When the machinery or equipment is located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structure, or, the maximum amount of flood insurance Coverage available under the National Flood " Program.

7.2. If the initial insurance expires prior to the completion of the work, renewal copies of Policies shall be furnished at least thirty (30) days prior to the date of their expiration.

7.3. Notice of Cancellation and/or Restriction--The Policies must be endorsed to provide TOWN with at least thirty (30) days notice prior to cancellation and/or imposition of any restriction.

7.4. CONTRACTOR shall furnish to the TOWN, Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract. At the option of the TOWN, CONTRACTOR shall provide the TOWN with proof of insurance (binders) at or prior to the execution of this Contract. Approval of the insurance for the coverage amounts set forth herein shall relieve or decrease the liability of the CONTRACTOR in any way. Certificates of Insurance shall contain transcripts of the policies authenticated by the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location of the office where communications and notices to and from the insurer shall be issued. CONTRACTOR shall provide a per project endorsement acceptable to the TOWN.

7.5. The official title of the owner is TOWN of Southwest Ranches. This official title shall be used in all insurance documentation.

8. Labor and Materials:

8.1. Unless otherwise provided herein, CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

8.2. CONTRACTOR shall at all times enforce strict discipline and good order among its employees and subcontractors at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the work to which they are assigned.

9. Weather:

Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to Section 35 of the General Conditions. These time extensions are justified only when rain or other inclement weather conditions or related adverse soil conditions prevent CONTRACTOR from productively performing controlling items of work as identified on the accepted schedule or updates resulting in:

- (1) CONTRACTOR being unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions; or
- (2) Time extensions for inclement weather shall not be approved unless formally submitted in writing for approval with appropriate supporting documentation, including but not limited to the CONTRACTOR'S daily log applicable for the period relative to the delay. Additionally, CONTRACTOR shall also furnish with its time extension request any and all documentation including but not limited to data substantiating that the weather conditions were abnormal for the period of time which could not be anticipated and had an adverse effect on the scheduled construction. CONTRACTOR'S failure to provide such notice to the TOWN shall deprive the CONTRACTOR of its right to claim an extension of time for inclement or abnormal weather. CONTRACTOR acknowledges that by specifying the date of Substantial Completion in the Contract and in formulating its schedule, that it has taken into account anticipated rain days based upon actual weather data.
- (3) CONTRACTOR must repair Work damaged by weather. Providing the damage was not attributable to a failure to perform or neglect by CONTRACTOR as part of the Contract Sum, and providing that CONTRACTOR was unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates.

10. Permits. Licenses and Impact Fees:

- 10.1. All permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by CONTRACTOR pursuant to this Contract shall be secured and paid for by CONTRACTOR. It is CONTRACTOR'S responsibility to have and maintain appropriate certificate(s) of Competency, valid for the Work to be performed.

11. Resolution of Disputes:

- 11.1 To prevent litigation, it is agreed by the parties hereto that the Contract Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality, amount and value of any work done and materials furnished, or proposed, to be done or furnished under or, by reason of, the Contract Documents including all disputes as to claims for additional

time and/or money. The Contract Administrator 's decision shall be reduced to writing and a copy furnished to the CONTRACTOR within a reasonable time following submission to the TOWN of the question, claim, difficulty or dispute as referenced above. The Contract Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

12. Inspection of Work:

12.1. Contract Administrator and/ or its Consultants and designee(s) shall at all times have access to the Work, and CONTRACTOR shall provide proper facilities for such access and for inspecting, measuring and testing.

12.1.1. Should the Contract Documents, instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, CONTRACTOR shall provide the Contract Administrator with timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than TOWN ,timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and, where practicable, at the source of supply.

12.1.2. Reexamination of any of the Work may be ordered by the Contract Administrator and if so ordered, the Work must be uncovered by CONTRACTOR. If such Work is found to be in accordance with the Contract Documents, TOWN shall pay the cost of reexamination and replacement by means of a change order. If such Work is not in accordance with the Contract Documents, CONTRACTOR shall pay all such costs.

13. TOWN's Right to Terminate Contract:

13.1. If CONTRACTOR fails to begin the Work within fifteen (15) days after the Project Initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if CONTRACTOR shall fail to perform any material term set forth in the Contract Documents or if CONTRACTOR shall become insolvent or be

declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, TOWN may give notice in writing to CONTRACTOR and its Surety of such delay, neglect or default, specifying the same. If CONTRACTOR, within a period of ten (10) days after such notice, shall not proceed in accordance therewith, then TOWN may upon written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site and take the prosecution of the Work out of the hands of CONTRACTOR, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Project is completed. In addition TOWN may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in TOWN'S sole opinion shall be required for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in TOWN's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by TOWN together with the costs of completing the Project, shall be deducted from any monies due or which may become due to CONTRACTOR. In case the damages and expenses so incurred by TOWN shall exceed the unpaid balance, then CONTRACTOR shall be liable and shall pay to TOWN the amount of said excess.

- 13.2. If after notice of termination of CONTRACTOR'S right to proceed, it is determined for any reason that CONTRACTOR was not in default, the rights and obligations of TOWN and CONTRACTOR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 13.3 below.
- 13.3. This Contract may be terminated for convenience by the TOWN upon providing ten (10) days written notice to CONTRACTOR of its intent to terminate and the notices shall set forth the date that such termination shall become effective. In such case, CONTRACTOR shall be paid for all Work executed and actual expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by CONTRACTOR relating to commitments which had become firm prior to the termination. However, CONTRACTOR shall exercise all efforts to mitigate such expenses and costs for the benefit of the TOWN. All requests for compensation under this paragraph shall be supported by written documentation as the TOWN may reasonably require. The parties acknowledge and agree that payment to Contractor shall be limited to reasonable profit for Work/services performed as of the effective date of

termination, expenses and costs described above and no other compensation.

- 13.4. Upon receipt of Notice of Termination, CONTRACTOR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to TOWN all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

14. CONTRACTOR'S Right to Stop Work or Terminate Contract:

If TOWN fails either to pay CONTRACTOR within thirty (30) days after presentation of any sum certified, or to notify CONTRACTOR in writing of any objection to the Application for Payment, then CONTRACTOR may, give written notice to TOWN of such delay, neglect or default, specifying the same. If TOWN, within a period of ten (10) days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then CONTRACTOR may stop work or terminate this Contract and recover from TOWN payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by TOWN to an Application for Payment shall be submitted to TOWN.

15. Assignment:

Neither party hereto shall assign the Contract or any subcontract in whole or in part without the written consent of the other, nor shall CONTRACTOR assign any monies due or to become due to it hereunder, without the previous written consent of the Contract Administrator.

16. Rights of Various Interests:

Whenever work being done by other contractors is contiguous to or within the limits of work covered by this Contract, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the work in general harmony.

17. Differing Site Conditions:

In the event that during the course of the Work CONTRACTOR encounters an underground utility facility that was not shown on the Contract Documents; or subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project

site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, CONTRACTOR, without disturbing the conditions and before performing any work affected by such conditions, shall, within forty-eight (48) hours of their discovery, notify TOWN in writing of the existence of the aforesaid conditions. TOWN shall, within five (5) days after receipt of CONTRACTOR'S written notice, investigate the site conditions identified by CONTRACTOR. If, in the sole opinion of TOWN, the conditions do materially so differ and cause an increase or decrease in CONTRACTOR'S cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, CONTRACTOR shall recommend an equitable adjustment to the Contract Sum, or the Contract Time, or both.

No request by CONTRACTOR for an equitable adjustment to the Contract under this provision shall be allowed unless CONTRACTOR has provided written notice in strict accordance with the provisions of this Section coupled with documentation supporting actual costs claimed by CONTRACTOR. Written notice shall be a condition precedent to any claim asserted by CONTRACTOR for an equitable adjustment to the Contract.

No request for an equitable adjustment or change to the Contract Sum or Contract Time for differing site conditions shall be allowed if made after the date certified by Contract Administrator as the date of Substantial Completion.

18. Plans and Working Drawings:

TOWN shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Project Manual. In case of disagreement between the written and graphic portions of the Project Manual, the written portion shall govern.

19. CONTRACTOR to Check Plans. Specifications and Data:

CONTRACTOR shall verify all dimensions, quantities and details shown on the plans, specifications or other data, and shall notify TOWN of all errors, omissions and discrepancies found therein within three (3) days of discovery. CONTRACTOR will not be allowed to take advantage of any error, omission or discrepancy. CONTRACTOR shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless CONTRACTOR recognized such error, omission or discrepancy and knowingly failed to report it.

20. CONTRACTOR'S Responsibility for Damages and Accidents:

20.1. CONTRACTOR shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by TOWN, and shall promptly repair any damage done from any cause whatsoever.

20.2. CONTRACTOR shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by TOWN, CONTRACTOR shall replace same without cost to TOWN.

21. Warranty:

CONTRACTOR warrants to TOWN that all materials and equipment furnished under this Contract will be of good quality, free from faults and defects and in conformance with the Contract Documents for the period of time described in Paragraph 23.3 below. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

22. Supplementary Drawings:

22.1. When, in the opinion of TOWN, it becomes necessary to explain the Work to be done more fully, or to illustrate the Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by CONTRACTOR.

22.2. The supplementary drawings shall be binding upon CONTRACTOR with the same force as the Project Manual. Where such supplementary drawings require it either less or more than the original quantities of work, appropriate adjustments shall be made by Change Order.

23. Defective Work:

23.1. TOWN shall have the authority to reject or disapprove Work that the TOWN finds to be defective. If required by TOWN, CONTRACTOR shall promptly either correct all defective work or remove such defective work and replace it with non-defective work. CONTRACTOR shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

23.2. Should CONTRACTOR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by TOWN, TOWN shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at CONTRACTOR'S expense. Any expense incurred by TOWN in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to CONTRACTOR, or may be charged against the Performance Bond. In the event of failure of CONTRACTOR to make all necessary repairs promptly and fully, TOWN may declare CONTRACTOR in default.

23.3. If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR, after receipt of written notice from TOWN, shall promptly correct such defective or nonconforming Work within the time specified by TOWN without cost to TOWN. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR may have under the Contract Documents including but not limited to the TOWN'S ability to assert a claim to recover damages from CONTRACTOR and Surety for latent defects.

23.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate TOWN to final acceptance.

24. Taxes:

CONTRACTOR shall pay all applicable sales, consumer, use and other taxes required by law. CONTRACTOR is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

25. Subcontracts:

25.1. CONTRACTOR shall, within forty-five (45) days after notification of award of the Contract, notify TOWN in writing of the names of subcontractors proposed for the Work. Each subcontractor must possess certificates of competency and licenses required by law.

- 25.2 CONTRACTOR shall be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by its subcontractors and of persons for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subcontractor and TOWN or any obligation on the part of TOWN to pay or to see the payment of any monies due any subcontractor. TOWN may furnish to any subcontractor evidence of amounts paid to CONTRACTOR on account of specific work performed.
- 25.3 CONTRACTOR agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of TOWN.
- 25.4 The provisions of this Section shall apply to substitute subcontractors hired during the course of construction to replace existing subcontractors.
26. Separate Contracts:
- 26.1 TOWN reserves the right to let other contracts in connection with this Project. CONTRACTOR shall afford other persons reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this Work with theirs.
- 26.2 If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any other persons, CONTRACTOR shall inspect and promptly report to TOWN any defects in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of CONTRACTOR'S Work, except as to defects which may develop in the work of other contractors after the execution of CONTRACTOR'S Work.
- 26.3 CONTRACTOR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, CONTRACTOR shall be liable to the affected contractor for the cost of such interference or impact.
- 26.4 To insure the proper execution of subsequent work, CONTRACTOR shall inspect the work already in place and shall at once report to TOWN any

discrepancy between the executed work and the requirements of the Contract Documents.

- 26.5 The TOWN shall not be involved in litigation and/or resolving any dispute by and between CONTRACTOR and any subcontractor, supplier and materialmen hired by CONTRACTOR to perform any of the Work pursuant to this Contract. All such disputes shall be resolved by CONTRACTOR without participation of the TOWN. To the extent a subcontractor, supplier or materialmen files litigation or other legal proceeding, including arbitration, involving a dispute on this Project, CONTRACTOR agrees not to join the TOWN as a party to any such legal proceeding absent the express written consent of the TOWN.

27. Use of Completed Portions:

- 27.1 TOWN shall have the right at its sole option to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, CONTRACTOR shall be entitled to reasonable extra compensation, or reasonable extension of time or both, as recommended and approved by TOWN.

- 27.2 In the event TOWN takes possession of any completed or partially completed portions of the Project, the following shall occur:

- 27.2.1. TOWN shall give notice to CONTRACTOR in writing at least thirty (30) days prior to TOWN's intended occupancy of a designated area.
- 27.2.2. CONTRACTOR shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion.
- 27.2.3. Upon issuance of a Certificate of Substantial Completion, TOWN will assume full responsibility for maintenance, utilities, subsequent damages of TOWN and public, adjustment of insurance coverages and start of warranty for the occupied area.
- 27.2.4. CONTRACTOR shall complete all items noted on the Certificate of Substantial Completion within thirty (30) days.

Upon completion of final inspection, receipt of an application for Final Payment by CONTRACTOR, TOWN shall execute a certification of Final Completion once all conditions of the Contract Documents have been fully satisfied.

- 27.2.5. If TOWN finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by TOWN and CONTRACTOR and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of CONTRACTOR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

28. Lands for Work:

- 28.1. TOWN shall provide, as may be indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by TOWN for the use of CONTRACTOR.
- 28.2. CONTRACTOR shall provide, at it's own expense and without liability to TOWN, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials.

29. Continuing the Work:

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with TOWN, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Price or Contract Time. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.

30. Changes in the Work or Terms of Contract Documents:

- 30.1. Without invalidating the Contract and without notice to any surety TOWN reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the

Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this Project must be accomplished by means of appropriate written Field Orders and Supplemental Instructions or Change Orders.

- 30.2. Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of Change Orders or Construction Change Authorizations executed only by the Contract Administrator as hereinafter provided.

31. Field Orders and Supplemental Instructions:

- 31.1. The Contract Administrator, shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Field Order involves no change in the Contract Sum or the Contract Time.
- 31.2. TOWN shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning the Contract or its performance, provided such Supplemental Instructions involve no change in the Contract Sum or the Contract Time.

32. Change Orders:

- 32.1. Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Sum, or the Contract Time, shall be authorized only by Change Orders approved and issued by the Contract Administrator.
- 32.2. All changes to construction contracts must be approved in advance in accordance with the value of the Change Order or the calculated value of the time extension. All Change orders with a value of \$25,000 or more shall be approved in advance by the Town. All Change Orders with a value of less than \$25,000 shall be approved in advance by The Contract Administrator.
- 32.3. CONTRACTOR shall not start Work on any alteration requiring an increase in the Contract Sum or the Contract Time until a written Change Order setting forth the adjustments is approved and executed by the TOWN and

CONTRACTOR. Upon receipt of a Change Order CONTRACTOR shall promptly proceed with the work set forth within the document.

- 32.4. In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Sum or Contract Time, and a Change Order has not been issued, TOWN reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to. During the pendency of the dispute, and upon receipt of a written Change Order, CONTRACTOR shall promptly proceed with the change in the Work involved and advise the Contract Administrator in writing within seven (7) days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Sum or Contract Time.
- 32.5. On approval of any change increasing the Contract Sum, CONTRACTOR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total revised Contract Sum.
- 32.6. Change Orders may be issued unilaterally by the Contract Administrator.
- 32.7. Any effort to reserve claims for additional time and money in a Change Order is expressly prohibited and shall be deemed void and invalid. The Change Order shall include all changes, if any, to the Contract Sum and Contract Time. No order, statement or conduct of the TOWN or its representatives shall be treated as a Change Order or a construction change directive nor entitle CONTRACTOR to an equitable adjustment of the Contract Sum or extension of the Contract Time, unless preapproved in writing by the parties. No Change Order shall be binding on the TOWN unless properly executed by the appropriate representative of the TOWN. If CONTRACTOR requests a Change Order, any items included in, or reserved by the request will not be a basis for and not be recouped by subsequent Change Order. Change Orders are intended to be all inclusive, exhaustive as the primary or foreseeable collateral conditions, situations and affect. Unless documented by a proper Change Order, any claims for additional Work performed by CONTRACTOR shall be deemed waived. CONTRACTOR shall have no claim for the cost of additional Work or for an extension of time (including, without limitation, claims for impact damages or costs due to delay) unless such Work and the cost expenses thereof or time is stated on the face of a written Change Order and approved and accepted by the TOWN.

33. Value of Change Order Work:

33.1. The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Sum shall be determined by:

- By mutual acceptance of the lump sum which CONTRACTOR and TOWN acknowledge contains a component for overhead and profit.

33.2. Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit an initial cost estimate acceptable to Contract Administrator.

33.2.1. Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

33.2.2. Whenever a change involves CONTRACTOR and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for CONTRACTOR and each Subcontractor shall be itemized separately.

34. Notification of Change of Contract Time or Contract Sum:

34.1. Any claim for a change in the Contract Time or Contract Sum shall be made by written notice delivered by CONTRACTOR to the Contract Administrator within seven (7) days of the commencement of the event giving rise to the claim and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within twenty (20) days after the date of such written notice. Thereafter, within twenty (20) days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim and shall be accompanied by CONTRACTOR'S written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time or Contract Sum shall be determined by Contract Administrator in accordance with Section 11 hereof, if TOWN and CONTRACTOR cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT SUM WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

34.2. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of CONTRACTOR but only if a claim is made therefor as provided in Section 35 below. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by TOWN, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

35. No Damages for Delay:

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against TOWN by reason of any delays. CONTRACTOR shall not be entitled to an increase in the Contract Sum or payment or compensation of any kind from TOWN for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances, or delays due solely to fraud, bad faith or active interference on the part of TOWN or its agents. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above. The CONTRACTOR shall not be entitled to any claim for damages on account of hindrance or delays from any cause whatsoever, but if occasioned by any act of god, or by act or omission on the part of the TOWN and/or the Consultant, such act, hindrance, or delay may only entitle the CONTRACTOR to receive an extension of time as to the date for Substantial Completion as referenced in Article 2 of the Contract, as its sole and exclusive remedy. The TOWN shall act reasonably in granting the CONTRACTOR extensions of time for delays resulting from acts or omissions by the TOWN that cause the CONTRACTOR to be delayed in completing the Project and has not been caused by CONTRACTOR. The parties agree that time extensions shall be granted only where the delay affects the critical path of the Work for the Project. An extension of time to complete the Work shall be determined by the TOWN provided that the CONTRACTOR provides the TOWN with notice in writing of the cause of said act, hindrance, or delay within two (2) days after commencement of the delay. All extensions of time shall be authorized only by a written change order executed by the TOWN and CONTRACTOR. Time extensions shall not be approved unless formally submitted in writing for approval with appropriate supporting documentation, including but not limited to CONTRACTOR'S Daily Log applicable for the period of time relevant to the delay. The CONTRACTOR shall also furnish with its time extension request any and all documentation including but not limited to data substantiating that weather conditions were abnormal for the period of time which could not be anticipated and had an adverse effect on the scheduled

construction. CONTRACTOR'S failure to provide such written notice to TOWN shall deprive the CONTRACTOR of his right to claim an extension of time or additional costs incurred by CONTRACTOR resulting from such delay. The providing of notice shall not of itself establish the validity of the cause of delay or of the extension of time for completion. The CONTRACTOR acknowledges that in specifying the date of Substantial Completion in the Contract that it has taken into account rain days based on national weather data in preparing the schedule. Inclement weather which exceeds the average rainfall for the geographic location of the Project may serve as a basis for the CONTRACTOR'S request for an extension of time to Substantial Completion. This "no damage for delay" clause will encompass any damages for delay or disruption even if the delay. The CONTRACTOR shall also furnish with its time extension request any and all documentation including but not limited to data substantiating that weather conditions were abnormal for the period of time which could not be anticipated and had an adverse effect on the scheduled construction. CONTRACTOR'S failure to provide such written notice to TOWN shall deprive the CONTRACTOR of his right to claim an extension of time or additional costs incurred by CONTRACTOR resulting from such delay. The providing of notice shall not of itself establish the validity of the cause of delay or of the extension of time for completion. The CONTRACTOR acknowledges that in specifying the date of Substantial Completion in the Contract that it has taken into account rain days based on national weather data in preparing the schedule. Inclement weather that exceeds the average rainfall for the geographic location of the Project may serve as a basis for the CONTRACTOR'S request for an extension of time to Substantial Completion. This "no damage for delay" clause will encompass any damages for delay or disruption even if the CONTRACTOR completes the Work in a timely fashion in accordance with Article 2 of this Contract. Damages as referenced in this "no damage for delay clause" shall include any type of damages that are or could be awarded by any court or arbitration panel, such as, by way of general example but not limitation, tort, contract, strict liability, liquidated and/or punitive damages, damages for additional general conditions. By way of specific example but not limitation, damages as referenced within this clause includes loss of use, loss of profits, direct delay costs, overhead and repair costs, cost of capital, replacement, loss of wages, pain and suffering, loss of production costs to replace the facilities, loss of productivity, equipment and/or product loss, financing charges, increased or extended home office overhead, supervisory costs, loss of interest on retainage, loss of interest on anticipated income, increased general conditions, loss of bonding capacity, loss of use, decrease in value, interest on debt financing, idled equipment, mobilization expenses, demobilization expenses, direct, indirect costs, administrative costs and/or any other item of damage or loss. The CONTRACTOR recognizes and specifically acknowledges the terms and conditions of the "no damage for delay" clause upon execution of this Contract.

36. Substantial Completion:

When CONTRACTOR considers that the Work, or a portion thereof designated by TOWN pursuant to Article 2.1 of the Contract, has reached Substantial Completion, CONTRACTOR shall so notify TOWN in writing. TOWN shall then promptly inspect the Work. When TOWN, on the basis of such an inspection, determines that the Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion; shall state the responsibilities of TOWN and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, and insurance; and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective work on such list does not alter the responsibility of CONTRACTOR to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the TOWN through the Contract Administrator and to CONTRACTOR for their written acceptance of the responsibilities assigned to them in such Certificate.

37. Field Layout of the Work and Record Drawings:

- 37.1. The entire responsibility for establishing and maintaining the line and grade in the field lies with CONTRACTOR. CONTRACTOR shall maintain an accurate and precise record of the location and elevations and the like and shall prepare record or "as-built" drawings of the same which are sealed by a Professional Surveyor. CONTRACTOR shall deliver these records in good order to the Contract Administrator as the Work is completed. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper.
- 37.2. CONTRACTOR shall maintain in a safe place at the Project site one record copy of all Drawings, Plans, Specifications, Addenda, written amendments, Change Orders, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made. These record documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available at all times for reference. Upon final completion of the project and prior to Final Payment, these record documents, samples and Shop Drawings shall be delivered to the Contract Administrator.

37.3. Prior to, and as a condition precedent to Final Payment, CONTRACTOR shall submit to TOWN, CONTRACTOR'S record drawings or as-built drawings acceptable to the TOWN.

38. Safety and Protection:

38.1. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

38.1.1. All employees on the work site and other persons who may be affected thereby;

38.1.2. All the work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

38.1.3. Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

38.2. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them 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 utilities when prosecution of the work may affect them. All damage, injury or loss to any property referred to in the above Sections 38.1 through 38.3 below inclusive, caused directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed.

38.3. CONTRACTOR shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to TOWN.

39. Final Bill of Materials:

CONTRACTOR shall be required to submit to TOWN a final bill of materials with unit costs for each bid item for supply of materials in place. This shall be an itemized list of all materials with a unit cost for each material and the total shall agree with unit costs established for each Contract item. A Final Certificate for payment cannot be issued, until CONTRACTOR submits the final bill of materials and Contract Administrator verifies the accuracy of the units of Work.

40. Project Sign:

Any requirements for a project sign shall be as set forth within the Technical Specifications section.

41. Cleaning Up TOWN's Right to Clean Up:

CONTRACTOR shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project CONTRACTOR shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If CONTRACTOR fails to clean up during the prosecution of the Work or at the completion of the Work, TOWN may do so and the cost thereof shall be charged to CONTRACTOR. If a dispute arises between CONTRACTOR and separate contractors as to their responsibility for cleaning up, TOWN may clean up and charge the cost thereof to the contractors responsible therefor.

42. Removal of Equipment:

In case of termination of this Contract before completion for any cause whatever CONTRACTOR, if notified to do so by TOWN, shall promptly remove any part or all of CONTRACTOR's equipment and supplies from the property of TOWN, failing which TOWN shall have the right to remove such equipment and supplies at the expense of CONTRACTOR.

43. Equal Employment Opportunity:

43.1. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or National origin, or physical or mental handicap if qualified. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or National origin, or physical or mental handicap. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment

advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

43.2. CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

43.3 CONTRACTOR further agrees that he/she will ensure that Subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

44. Project Records:

TOWN shall be afforded access to all CONTRACTOR'S records related to the Project including but not limited to, books, correspondence, instructions, drawings, receipts, vouchers, computer generated data, schedules, notes, subcontractor agreements, memorandum and similar data as well as accounting records which relate in any way to the Project. CONTRACTOR shall retain and make available to the TOWN all such documents, including, books, records, accounts, financial or otherwise as stated above which relates to the Project for a period of four (4) years following Final Payment. During the Project and for the four (4) year period following Final Payment, CONTRACTOR shall provide the TOWN with access to its records within seventy-two (72) hours from the date of the TOWN'S request directed to the CONTRACTOR. The TOWN'S right to audit and review project records shall apply notwithstanding the existence of any claim for additional compensation filed by the CONTRACTOR and submitted to the TOWN. CONTRACTOR agrees not to destroy or disregard any of its records relating to this Project for the time period relative to this provision. CONTRACTOR shall produce its records at a mutually convenient location having reasonable facilities for inspection and copying by the TOWN.

EXHIBIT A-9
TECHNICAL SPECIFICATIONS

I. Culvert Crossing

1. Scope:

Work under this section shall include furnishing all labor, equipment, materials, and performing all operations in connection with the earthwork required to construct the access road over the canal in accordance with the plans, specifications, and subject to the terms and conditions of the contract.

2. General Requirements

The Work covered by this section includes all work required to bring the site to the lines and grades as shown on the construction drawings.

3. Demucking and/or Stripping:

The CONTRACTOR shall perform all necessary excavation to remove all muck, yielding material, light brush, and grass, which will not compact readily, from the proposed street right of ways and other areas where structures are to be constructed. Materials shall be removed to rock or clean granular material in areas where structures are to be constructed. CONTRACTOR shall displace all the removed material to a specific area, to be selected by the Contract Administrator, for storage until it is used as top soil for proposed green areas.

4. Cutting:

The CONTRACTOR shall perform all necessary cutting of whatever material is encountered to obtain the grades and cross-sections required from the construction drawings. Clean material obtained from this operation shall be transported and deposited on areas within the site where fill is required or stockpiling is required. The cut areas shall be left with a minimum density of 98% maximum density as determined by A.A.S.H.T.O. T- 180.

5. Filling:

The CONTRACTOR shall perform all necessary operations required to obtain the grades and cross-sections required from the construction drawings with the fill material furnished by CONTRACTOR.

Where more than one foot of material is required to obtain the desired grades, the material shall be compacted in 12-inch lifts. Each individual layer of fill shall have a minimum density of 98% maximum density as determined by A.A.S.H.T.O.T - 180.

The maximum sizes of rock which will be permitted in the completed fill area are as follows:

In top 12 inches	3 ½ inches
1 foot to 2 feet	6 inches
2 feet to 4 feet	12 inches
4 feet to 8 feet	24 inches

Below eight feet, a maximum dimension of 36 inches will be allowed except that, in wet areas, rock or boulders exceeding 36 inches in size will be permitted if placed as directed by the CONSULTANT and placed so as to be appropriately isolated.

II. Pipe Culvert Specifications

The main entrance to the park requires construction of an access road over a canal and installing forty-eight inch diameter reinforced concrete pipe in accordance with the drawings and Section 430 of the FOOT Standard Specifications. The pipe materials used shall be as specified in Section 941 of the FOOT Standard Specifications.

Culvert as-built drawing must show length, diameter, pipe material, North and South invert elevations, and canal bottom elevation profile for 50' North and South of culvert.

Limits of Clearing and Grubbing are to include the right of way for the entrance.

Alternate Sand-Cement Rip-Rap endwall, the swale, guardrail, roadway shoulder, and entrance road shall conform to page 7 of the drawings, detail 48" R.C.P. CULVERT SECTION.