

FLUID ENGINEERING, INC.

2460 Ruffner Court
Birmingham, AL 35210

Contractor Contract Terms and Conditions

070102DG-03JT

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1. DEFINITIONS

Where the context permits, the following words shall have the meanings indicated:

- 1.1 “Engineer” means that entity identified as **Fluid Engineering, Inc.**, or the subsidiaries, affiliates, or assigns thereof it may designate from time to time.
- 1.2 “Owner” means that entity identified as the owner or the company’s site where the work is being done, **(OWNER’S COMPANY NAME)**
- 1.3 “Contractor” means the person, partnership, corporation, or firm furnishing labor or materials at Engineer’s direction, **(CONTRACTOR’S COMPANY NAME)**
- 1.4 “Contract” means the terms and conditions of the Engineer’s Purchase Order, these Contract General Conditions (and Addenda, if any), and the Contract Special Conditions (if any), and any specifications, drawings, or other documents referenced by the above.
- 1.5 “Site” means the area designated by Engineer for completion of the work.
- 1.6 “Work” means any engineering, procurement, supervision, labor, or other services provided by Contractor and any materials supplied, structures, equipment, machinery, or other things supplied by Contractor.

2. ACCEPTANCE OF THIS CONTRACT

- 2.1 Acceptance of this contract shall imply acceptance of the Engineer’s Purchase Order, and the terms and conditions of the Owner’s purchase order. No additions to or variations from the terms hereof shall be binding unless incorporated in Engineer’s Purchase Order Change Notification. Where Contractor’s quotation is referred to herein, such quotation is incorporated in this Purchase Order only to the extent of specifying the nature or description of the goods ordered, and then only to the extent such items are consistent with the other terms herein. Acceptance of this contract implies acceptance of Owner’s Terms & Conditions. If there is a conflict between any terms and conditions proposed by Engineer and Contractor’s Terms and Conditions of Purchase, Engineer’s Terms and Conditions shall control. No additional work shall be done or goods supplied unless specifically agreed to by Engineer by written Purchase Order Change Notification.

- 2.2 Modification of Terms – Acknowledgment or acceptance of Purchase Order or shipment or performance of any part thereof by Contractor constitutes Contractor’s acceptance of all of its terms. Acceptance is limited to the terms and conditions of the Purchase Order. Any proposal for additional or different terms or any attempt by Contractor to vary any of these terms in Contractor’s acceptance is hereby objected to and rejected. Such proposals will not operate as a rejection of this offer unless they vary the description, quantity, price, or delivery schedule of the goods and services to be provided, but such proposals will be deemed a material alteration thereof, and this offer will be deemed accepted by the Contractor without such additional or different terms. If the Purchase Order is deemed an acceptance of a prior offer by Contractor, such acceptance is limited to the express terms contained in the Purchase Order.

The failure of either party to insist upon strict adherence to any term hereof on one or more occasions will not be considered a waiver or deprive that party of the right to insist on strict adherence to that term or any other term. If any provision of the Purchase Order is declared invalid or unenforceable by a court of competent jurisdiction, such provision will be ineffective to the extent of such invalidity or unenforceability, but will not affect any other provisions of the Purchase Order, which will otherwise remain in full force and effect.

3. SITE INSPECTION, SPECIFICATIONS, AND DRAWINGS

- 3.1 Contractor represents that it has had an opportunity to examine and has carefully examined, or if it has not examined, waives such examination at its own risk, the Site, its surroundings, the local conditions, and all drawings and specifications for the Work to be done by Contractor, that it has made all investigations essential to a full understanding of the difficulties which may be encountered, that the drawings and specifications are adequate for its performance of the Work under the local conditions and surroundings of the Site and any difficulties said conditions and surroundings may present, and that it has special qualifications for performing the Work in accordance with such drawings and specifications and the terms of this Contract within the time specified. Contractor shall supply at its own cost all facilities, materials, and labor, and all heat, ventilation, and dewatering, for all classes of preliminary, temporary, or false-work necessary to properly perform the Work.
- 3.2 Unless otherwise directed by Engineer, all manufactured material shall be applied, installed, protected, connected, erected, cleaned, conditioned, and maintained in accordance with the manufacturer’s instructions or directions and, unless specified to the contrary by Engineer.
- 3.3 Any quantity, list, division, or classification of work found upon any of the drawings are furnished only to facilitate the Contractors performance of the Work and Engineer does not guarantee their accuracy or correctness. Contractor shall check such information and satisfy itself that it is correct.
- 3.4 Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown and mentioned on both. Anything which is normally supplied or which is required by local custom or which is obviously necessary to complete the Work shall be supplied by Contractor the same as if it were shown on the drawings and included in the specifications.
- 3.5 In any case of discrepancy in the figures, drawings, or specifications, Contractor shall immediately submit the matter to Engineer whose decision will be final.
- 3.6 All drawings, specifications, and copies thereof furnished by Engineer are its property. They are not to be used on other work and are to be returned to Engineer at completion of the Work.

4. FLOW-DOWN PROVISION

- 4.1 The Terms of the Owner-Engineer agreement flow-down” and are binding on the Contractor, its Sub-Contractors, and suppliers. It is the Contractor’s responsibility to request & obtain a copy of the Owner’s Terms & Conditions.

5. CHANGES

- 5.1 At any time, Engineer may, by written order, and without notice to sureties, if any, make changes in the drawings and specifications, change the sequence in which the Work is to be performed, omit certain Work, and/or require additional Work to be performed by Contractor.
- 5.2 Changes in the Work shall be effective only upon receipt of a written order from a duly authorized representative of Engineer as specified in the Purchase Order defining such changes, except that no Work involving an increase in price or a change in the time for completion shall be effective until a written

Change Order to the Purchase Order has been issued by the Engineer or until said duly authorized representative of Engineer has specifically instructed the Contractor in writing to proceed with the change prior to an agreement having been reached on a change in price and/or time for completion. Any changes, including, but not limited to, those affecting price and/or time for completion received from a source other than a duly authorized representative of Engineer shall be referred to said representative of Engineer in order to obtain a written order authorizing such change. Absolutely no claims for additional cost or extension of the time for completion will be allowed if the Contractor fails to strictly comply with the provisions of this Article.

- 5.3 All changes which result in a change in price will be calculated in accordance with one or more of the following methods as selected by Engineer.
- 5.3.1 Lump-Sum. If Engineer requests, Contractor will submit a written proposal covering the change, including any reduction in Work. Engineer shall review such proposal, and, upon mutual agreement, a Change Order to the Purchase Order shall be issued.
- 5.3.2 Unit Prices. If Engineer requests, and unit prices are established in the Purchase Order, then the change in price shall be computed using such prices.

6. OTHER CONTRACTS

- 6.1 Contractor agrees that it will comply with the obligations and provisions of their agreement with Engineer.
- 6.2 Engineer may perform work not covered by this Contract or may award contracts to others for such work, and Contractor shall fully cooperate with Engineer or with such other contractors and schedule its own Work with the work of Engineer and such other contractors as may be directed by Engineer. Contractor shall not commit or permit any act which will delay or interfere with the performance of work by Engineer or any other contractor.
- 6.3 Contractor shall be required to coordinate its Work with other contractors so as to afford others a reasonable opportunity for timely execution of their work. Any loss, cost, damage, or expense caused by defective or improperly timed or coordinated Work, including liquidated damages, if applicable, shall be borne by the Contractor responsible. If any Contractor causes any loss, cost, damage, or expense to any other contractor, the Contractor causing or alleged to have caused such loss, cost, damage or expense shall, upon notice of any claim, settle said claim by agreement or arbitration without reference to, or contribution by Engineer.
- 6.4 Contractor agrees that Engineer shall not be responsible for any loss, cost, damage, or expense incurred by Contractor due to interference by Engineer, Owner or any other contractor during performance of the Work.

7. TIME FOR COMPLETION

- 7.1 Contractor shall commence work under this Contract immediately upon receipt of notice to proceed, prosecute the Work with faithfulness and energy, and complete the Work as directed by Engineer and within the time as set forth in the approved construction schedule. The time stated for completion of this Contract shall include final clean-up of the Site and initial start-up. Time shall be of the essence in performance of the Work.
- 7.2 Engineer, at its sole discretion, may direct Contractor to work overtime, or increase the size of its work force, and Contractor will provide adequate tools, equipment, labor, and supervision to work such overtime or increase the size of its work force as directed. If the overtime work has not been necessitated by a delay of Contractor or other fault of Contractor, Engineer will pay Contractor the actual amount of any wage premium required by applicable labor agreement or law to be paid to workmen for such overtime, plus additional taxes and insurance thereon, but Contractor shall not receive overhead or profit on such additional payments. If, however, it is necessary for Contractor to work overtime due to the fault, negligence, or unexcused delay of Contractor in order to complete its work within the required time, then Contractor shall work such overtime as directed by Engineer without additional cost to Engineer.
- 7.3 If Contractor is delayed in the completion of the Work due solely to acts of Engineer, fire, floods, strikes, or other causes beyond the control and without the fault or negligence of Contractor, the time for completion shall be extended for a period equivalent to the time of such delay. Unless Contractor notifies Engineer of any such delay and the causes thereof within seven (7) days after the delay commences, Contractor will be deemed to have waived any extension of time. Engineer's determination that an

excusable delay does or does not exist shall be final and Contractor shall accept any extension of time in full and complete satisfaction for any increased cost or expense resulting from such excusable delay.

- 7.4 Labor Agreements - In the event that Contractor is a party to any labor agreement the expiration of which might reasonably be anticipated to cause a delay in performance hereunder, Contractor shall give Engineer as much advance written notice as is practicable of the date of expiration of such agreement and Contractor's expectations with respect thereto. Contractor shall also advise Engineer as promptly as practicable of any strike or other difference with employees which might reasonably be anticipated to cause a delay in performance hereunder, and shall keep Engineer seasonably advised of all developments relating thereto.

8. GOVERNMENTAL AND INDUSTRY STANDARDS AND REGULATIONS

- 8.1 Permits and licenses necessary for the prosecution of the Work by Contractor shall be secured and paid for by Contractor. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work, and Contractor agrees to hold Engineer harmless from any liability or penalty which might be imposed by reason of an asserted or established violation of any such laws, ordinances, rules, or regulations.
- 8.2 Any provision which is required by law, ordinance, or regulation to be included in a contract of this type is deemed to be incorporated herein the same as if it were included in total herein.
- 8.3 Compliance with Laws - Contractor shall comply with all Federal, state and local laws and ordinances and all lawful regulations of any public authority. Without limiting the generality of the foregoing, Contractor warrants that all materials or services furnished under this order shall comply with all Federal, state and local laws, rules and regulations pertaining to safety and health. Contractor will comply with all applicable laws, regulations, ordinances, executive orders, and rules with regard to discrimination as to age, color, creed, sex, ancestry or national origin, physical handicap and veteran status, including but not limited to Executive Orders 11246,11458,11701, the Vietnam Veteran's Readjustment Act of 1974, the Rehabilitation Act of 1973 and the Americans With Disabilities Act.

9. SHOP AND SITE DRAWINGS

- 9.1 Contractor shall furnish reproducible copies of all drawings prepared or used by Contractor in performing the Work and such drawings shall be properly identified as directed by Engineer. All drawings submitted by Contractor shall be first checked by Contractor and corrected before being submitted to Engineer. Approval of drawings by Engineer shall not relieve Contractor from responsibility for errors or omissions therein. All changes required as a result of such errors or omissions shall be made by Contractor without cost to Engineer irrespective of any prior approval by Engineer.
- 9.2 All plans drawings specifications, and similar documents, prepared by Contractor, and any copies thereof, shall be the sole property of Engineer, and Contractor shall deliver such documents to Engineer at the completion of the Work or as otherwise required by Engineer.
- 9.3 During the progress of the Work, Contractor shall keep at its Site office, in good and legible form, a record of all Work done different from or in addition to that shown on Engineer's drawings or previously approved Contractor drawings. Such changes shall clearly and accurately show the "as-built" conditions and dimensions. Contractor shall deliver copies of such drawings to Engineer as requested.

10. MATERIALS ACCEPTANCE

- 10.1 Unless otherwise specifically stated in the specifications, all equipment and materials supplied by Contractor and incorporated in the Work are to be new and of the best grade of their respective kind. Where equipment and materials are referred to in the specifications as equal to any particular standard, Engineer shall decide the question of equality before Contractor places an order or incorporates them into the Work. Contractor shall, prior to procurement or use, furnish to Engineer for its approval the name of the manufacturer of materials or equipment which it contemplates incorporating in the Work, together with their performance capacities and other pertinent information. Samples of materials shall be submitted for approval when so directed. Equipment and materials installed or used without such approval may be rejected by Engineer at any time. Engineer may require Contractor to remove from the Work such equipment or materials as Engineer deems defective, deficient, or not equal to the quality specified. Contractor shall remove such equipment or materials and replace the same at its sole cost and expense to the satisfaction of Engineer.

- 10.2 Contractor shall furnish Engineer with copies of all orders issued to vendors for materials, and these copies of orders must show shipping points, shipping dates and quantities. Orders shall be sent to the Engineer as soon as they are placed with the vendors. Prices need not be shown on such copies of orders sent to Engineer except in those cases where the order applies to work to be done on other than a firm lump-sum basis.
- 10.3 Non-Conforming materials - All materials shall be subject to Engineer's right of inspection and rejection. Engineer shall have a reasonable time within which to inspect the goods and shall not be obligated to inspect goods purchased as spare parts, inventory or for future use until the same are to be used by Engineer. Excess or defective goods or goods not in accordance with Engineer's specifications will be held for reasonable period of time for disposition in accordance with Contractor's instructions at Contractor's risk and expense and, if Contractor directs, will be returned at Contractor's expense. Returned goods may be replaced by Contractor only upon Engineer's formal Purchase Order placed by a duly authorized representative of Engineer. If inspection discloses that a portion of the goods received are not in accordance with the specifications or descriptions thereof, Owner shall have the right to cancel any unshipped portion of this order. Payment for goods or services furnished or performed pursuant to this order shall not constitute acceptance thereof by Engineer and such payments shall be deemed to have been made without prejudice to any and all claims Engineer may have against Contractor. The remedies here in above provided to Engineer are not exclusive and are in addition to all other remedies available to Engineer pursuant to law, this Contract or otherwise.
- 10.4 Packing - All uninstalled goods to be turned over to Engineer shall be shipped fully assembled (or where not practicable to do so, as completely assembled as permitted by the carrier), suitably packed and accompanied by packing list. Cartons containing packing lists must be so marked. Uncrated or bundled goods must be tagged with waterproof tags. No charge for packing or draying shall be made unless agreed to in writing by Engineer.

11. WARRANTY

- 11.1 In addition to the specific warranties, if any, required by the Owner's Purchase Order or specifications for the Work, Contractor warrants the Work to be performed and the materials to be furnished under this Contract shall be free from any defects and contaminants in materials or workmanship, and the materials or finished Work will perform in accordance with the drawing and specification requirements and the representations of Contractor for a period of one (1) year from the date of final acceptance of the completed Work and Facility by Engineer. Contractor shall repair or replace any defective materials or workmanship which may develop during said one-year period, and any damage to other work caused by the repairing of such defects, at Contractor's sole cost and expense and without cost to Engineer including costs of removal and re-installation. Any such repairs or replacement and the affected Work shall be warranted for an additional one (1) year period from the date of such repairs or replacement. At Engineer's option, Engineer may remedy any such defects and Contractor shall be liable for all costs arising thereof. The foregoing warranty shall inure to the benefit of Engineer and shall have the right to enforce the terms of this warranty. The above warranty shall be in addition to and not in substitution or limitation of any warranties or remedies implied by law.
- 11.2 The Work shall comply with all applicable Federal, state, provincial, and local laws, ordinances and regulations. No disclaimer of warranty or limitation of warranty or liability, or exclusion of types of damages, appearing in any form used by Contractor will have any effect whatsoever. The foregoing warranties and obligations will also apply to all goods supplied by Contractor for any repair or replacement of goods originally supplied. Contractor will pass on to Engineer the benefit of any manufacturer's warranties with respect to the goods.

12. SUPERINTENDENCE

- 12.1 Engineer's Field Construction Manager shall have responsibility for the general supervision and direction of all the work at the Site, but such general supervision and direction shall in no manner relieve Contractor of any of its obligations, liabilities, and responsibilities under this Contract for supervision, direction, and coordination of the Work.
- 12.2 Contractor shall supply a competent full-time superintendent for the Work to be performed by Contractor, who shall be subject to continuing approval by Engineer and who shall be present at the Site at all times during the progress of the Work with authority to act for Contractor. Any notice given to such

superintendent shall be adequate for all purposes of this Contract. Contractor's superintendent shall not be removed or replaced without the prior written consent of Engineer.

13. STATUS OF CONTRACTOR

- 13.1 In conduct of the work hereunder, the Contractor is independent of the Engineer and is not an agent or employee of the Engineer.
- 13.2 Under no circumstances shall Contractor refer any matter concerning this Contract to the Owner or other person or company without the prior written consent of Engineer.

14. EXPEDITING, INSPECTION, AND TESTING

- 14.1 Engineer and their representatives shall at all times have access to the Work in preparation or in progress for purposes of expediting, inspection, and testing. Contractor shall provide sufficient, safe, and proper facilities for such inspection and testing. When any Work is being executed away from the Site, Engineer shall be notified in reasonable time where such Work is to be done and when it will be ready for inspection or testing, so that they may, if they so desire, inspect or witness tests before delivery to the Site or before such Work is covered. Failure to discover or reject any defective Work shall not relieve Contractor from responsibility for the Work.
- 14.2 If at any time a question arises as to the quality of the Work or its satisfactory performance by Contractor, Engineer shall have the right to direct Contractor to stop the work or any part thereof without cost to Engineer until an inspection thereof has been made and compliance with this Contract has been assured. Failure to discover or reject any defective Work shall not relieve Contractor from responsibility for the Work.
- 14.3 If Engineer shall, in its sole discretion, find any part of the Work to be unsatisfactory, then Engineer may require Contractor to remove such unsatisfactory Work from the Site, and Contractor shall immediately repair or replace such Work, at its sole cost and expense, in a manner which is satisfactory to Engineer. If Contractor fails to promptly comply with Engineer's direction, Engineer may undertake such repairs or replacements and Contractor shall be responsible for all costs arising therefrom.

15. RESPONSIBILITY FOR LINES, GRADES, AND CONNECTING WORK

- 15.1 Engineer will establish lot lines, restrictions, a bench mark, and the principal lines and levels of the structures. Contractor will furnish all secondary lines and levels required for its Work.
- 15.2 Contractor shall check all lines, grades, and elevations previously established before proceeding with its Work and make certain they are suitable for receiving its Work. If any faults exist, Contractor shall notify Engineer in writing and, unless otherwise notified by Engineer, shall not proceed until such faults are corrected. If Contractor does proceed without such correction having been made, such action shall be construed as its acceptance of such lines, grades, and elevations, and Contractor shall be responsible for the correctness of same. If by reason of such action it is found necessary to reconstruct any part of the Work, Contractor shall remove and rebuild such Work without expense to Engineer.
- 15.3 Before commencing its Work, and from time to time as the Work progresses, Contractor shall examine the Work installed by others, insofar as it may affect Contractor's Work, and shall promptly notify Engineer in writing if any conditions exist that will prevent Contractor from complying with the requirements of this Contract. Should Contractor start, its Work without such notification, Contractor shall be deemed to have accepted all preceding work. Further, if by reason of such action, it is found necessary to reconstruct any part of its Work, Contractor shall remove and rebuild the same at its sole cost and expense. Contractor shall familiarize itself with the specifications and drawings of Work to be done by others related to that part of the construction in which the Contractor is participating.
- 15.4 If Contractor removes, alters, destroys, or defaces the property of Owner or the work of another contractor in the performance of the Work, Contractor shall promptly repair or replace the affected property or work to the satisfaction of Engineer and Owner.

16. MATERIALS AND SERVICES FURNISHED BY ENGINEER

- 16.1 All materials, supplies, equipment, labor, services, including unloading, receiving, storage, and control services, or any other things required for the performance of the Work are to be furnished by Contractor unless otherwise expressly provided. If any materials, supplies, equipment, labor, services, or any other

things are to be furnished by other than Contractor, then Engineer shall use reasonable efforts to have same furnished at the time required by Contractor, but Engineer shall not be liable to Contractor for any cost arising from any delay in the furnishing thereof.

17. USE OF PREMISES

17.1 Contractor shall confine its apparatus, storage of materials, and operations of its workmen to limits indicated by laws, ordinances, permits, or directions of the Owner or Engineer's Field Construction Manager and shall not unreasonably encumber the Site and adjacent areas with its materials, equipment, vehicles (company and personal), trailers, storage containers, other property, assembly areas, work, movement, or any other activity or item.

18. TITLE AND RESPONSIBILITY FOR WORK

18.1 The title to all work completed and in the course of construction at the Site and to all materials which are delivered and stored at the Site and which will necessarily be incorporated in the Work, as between Engineer and Contractor, shall be the Engineer's.

18.2 Contractor shall be responsible for its materials and for all materials supplied to it by Engineer and all of its work performed until completion and final acceptance by Engineer and Contractor. The Work shall be delivered by Contractor complete and undamaged. All machinery and equipment shall be calibrated, aligned, and adjusted by Contractor, and at the conclusion of Contractor's work, shall be operable, and be in good repair.

19. LIABILITY FOR DAMAGE TO PERSONS AND PROPERTY

19.1 Contractor shall be responsible and liable for all losses, expenses, damages, demands, and claims in connection with or arising out of any injury, or alleged injury, to persons (including death), or damage, or alleged damage, to property sustained or alleged to have been sustained in connection with or to have arisen out of the performance of the Work by Contractor, its contractors, agents, servants, and employees, including losses, expenses, or damages sustained by Engineer and Contractor agrees to indemnify and hold harmless Engineer, their agents, servants, and employees from any and all such losses, expenses, damages, demands, and claims, and agrees to defend any suit or action brought against them, or either of them, based on any such alleged injury or damage, and to pay all damages, costs, and expenses, including attorneys' fees, in connection therewith or resulting thereof. Additionally, Contractor shall (a) assume full responsibility for any damages caused by its negligence or that of its employees or agents; (b) make all proper income tax and social security deductions and payments and file all returns and forms required in connection therewith; (c) assume full responsibility for injuries occurring to its employees while in the course of their employment and protect itself against liability therefore by means of Worker's Compensation Insurance or otherwise as it sees fit; and (d) comply with all laws, Federal and State, which may regulate the performance of this contract, including, but not limited to laws relating to wages and hours, and keep records showing such compliance and furnish proof of such compliance to Engineer or Owner as it may rightfully demand.

19.2 At Engineer's request, Contractor shall promptly repair, restore, or replace any damaged or destroyed property, including tools and equipment, belonging to Engineer or others for which Contractor, or its contractors or suppliers or their respective employees or invitees may be responsible hereunder.

20. PROTECTION OF WORK AND SAFETY

20.1 Contractor must comply with all applicable safety procedures, environmental laws, rules or regulations as required by the Owner. Contractor shall continuously maintain adequate protection of all its Work from damage and theft and shall protect Owner's property from injury or loss arising in connection with Contractor's performance of the Work.

20.2 Contractor shall take all necessary precautions for the safety of employees, visitors, invitees, and licensees on the Site and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and regulations and building codes and with all instructions and regulations of Engineer's Safety Departments to prevent accidents or injuries to persons on, about, or adjacent to any area where the Work is being performed. Contractor shall erect and properly maintain, at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by its Work. Contractor shall designate a responsible

- member of its organization, whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to Engineer.
- 20.3 Contractor shall be responsible for any fines, penalties, or assessments levied against or imposed upon itself, Engineer arising from or related to any failure or alleged failure by Contractor or the Work to comply with applicable health, safety, or environmental laws, rules, regulations, or standards.
- 20.4 Exchange of Pertinent Safety Information – If requested, the Contractor will provide the following with the Engineer or Owner, prior to commencement of the Work:
- 20.4.1 Contractor – Prior 2 yrs of applicable accident logs (MSHA, OSHA, MOL records, etc)
 - 20.4.2 Contractor - applicable safety standards (Lockout/tagout, MSDS sheets, Hot Work Permit System, etc)
 - 20.4.3 Contractor – Certificates of safety training
 - 20.4.4 Contractor ⇒ CNA – Certificates of Insurance (see below for specifics)
 - 20.4.5 Contractor – Copies of site specific safety training
- 20.5 Adherence to governing and/or applicable standards. - All structures, substructures, equipment, hardware wiring, plumbing, and associated systems installed, modified, or otherwise included in this project/contract will comply with all pertinent safety and health standards to include but not limited to: Mine Safety and Health Act (MSHA), Occupational Safety and Health Act (OSHA), Ministry of Labour (MOL), American National Standards Institute (ANSI), National Institute of Occupational Safety and Health (NIOSH), National Fire Protection Agency (NFPA), and the National Electrical Code (NEC). The Contractor must specifically address all necessities to comply with the aforementioned to include but not limited to: personal protective equipment, tools, safety devices, manuals, training, and mobile equipment. The Contractor is required to know all laws and regulations that apply to the contract and/or operation(s) and follow/include them. Subcontractors must meet these standards as well.
- 20.6 Required Training – The Owner’s site is regulated by numerous government agencies. The Contractor is required to know which laws/regulations apply to their operation(s) and follow them. Engineer will not provide any training other than site specific hazard awareness training. The Contractor is required to comply with the convening authority (EPA/MSHA/OSHA/MOL) to include but not limited to:
- 20.6.1 Mine Safety and Health Administration (MSHA) - Any contract employee(s) on site more than 5 consecutive days will be MSHA part 46 certified with appropriate documentation. Contractor work occurring in below ground mines must also have the applicable part 48 training. Contractors will document and report their injuries to the local MSHA office accordingly.
 - 20.6.2 Occupational Health and Safety Administration (OSHA) – Contractors will have all required training documented and records maintained on site for federal inspectors. Contractors will record all injuries on their OSHA 300 logs.
 - 20.6.3 Canadian Ministry of Labour (MOL) - Contractors will have all required training documented and records maintained on site for federal inspectors. Contractors will record all injuries on their respective injury logs.
 - 20.6.4 Environmental Protection Agency (EPA) – Contractors will not alter emissions, ground, subterranean, or surface waters of the site without prior approval of the project superintendent. If such work is required, your bid must include all required permits, permit alterations, and applicable fees.
 - 20.6.5 All Contractor Employees, regardless of size or duration of project, must at a minimum receive site specific training.
- 20.7 Contractor Equipment – The Contractor will not use any of Owner’s equipment, tools, personal protective equipment, maintenance shop devices or other items required to fulfill the contract. Engineer reserves the right to evaluate, reject, or accept contractor equipment needs on a case-by-case basis.
- 21. INSURANCE**
- 21.1 Loss Prevention and/or Property Insurer Review of Project – Prior to any work occurring, a pre-construction meeting with the Owner, Maintenance Manager, and the Contractor’s Director of Loss

Prevention or his authorized representative will occur ensuring a complete understanding / inclusion of the applicable insurance and loss prevention requirements.

- 21.2 Certificates of Insurance – Each contractor and subcontractor shall at its expense procure, maintain, and enforce appropriate certificates of insurance for the duration of this project. Other projects with long-term implications may require further longevity. Engineer reserves the right to project (at Contractor’s expense) umbrella insurance should any of the following insurance requirements lapse or otherwise not indemnify Engineer. Said contractor will name Engineer’s businesses, equipment, and employees as an insured with respect to the contractor’s operations hereunder under all insurance required in this addendum. All certificates must contain a clause specifically reading in substance as follows: “The insurer will notify Fluid Engineering, Inc. North America, in writing, at least thirty (30) days prior to any cancellation or to any change in or reduction of the coverage shown therein.” The aforementioned insurance policies shall be written by insurance companies which are both licensed to do business in the applicable state and have a Best Rating of A- or higher. Indemnification amounts are as follows:
- 21.2.1 Worker’s Compensation, Occupational Disease, and Employers Liability Insurance in accordance with the applicable state and having an Employer’s Liability limit of at least \$1,000,000 per each employee and \$1,000,000 per each accident. (Note – In Ohio and Ontario, Workers Compensation is run by the state and province respectively).
 - 21.2.2 Statutory Longshoremen’s and Harbor Workers Coverage (as applicable for U.S. contractors working on or bodies of water on commercial shipping lanes or routes.)
 - 21.2.3 Employment Practices Liability Insurance with a combined single limit of \$1,000,000.
 - 21.2.4 Comprehensive General Liability Insurance - \$2,000,000 combined single limit for bodily injury and property damage.
 - 21.2.5 Automobile Liability Insurance ([if applicable] -\$1,000,000 combined single limit for bodily injury and property damage liability. Insurance shall include coverage for all owned, non-owned, or hired vehicles.
 - 21.2.6 Excess Comprehensive Personal Injury and Property Damage Liability Insurance (Umbrella) coverage with respect to the policies set forth in (a) (Employee’s Liability Only), (c) and (d) above to provide an aggregate combined single limit of \$0 to 10,000,000, depending upon the size and scope of the contract work to be performed.
 - 21.2.7 Said insurance policies shall be in a form satisfactory to CNA who will be named an Additional Insured with Waiver of Subrogation Rights on the above coverage’s. Renewal certificates evidencing continuation of the required coverage must be furnished to the ALPM until the work being performed by the Contractor has been completed and accepted.
- 21.3 Engineer retains the right to require higher levels of insurance if appropriate (at Engineer’s sole discretion) based on the scope and nature of the project. Additional insurance requirements shall be communicated prior to the placement of the Purchase Order.

22. CLEANING UP

- 22.1 Contractor shall at all times keep the Site and Facility and all driveways and streets clear of rubbish caused by Contractor’s operations and, at the completion of the Work, shall remove all rubbish from and about the premises and all tools, equipment, temporary work, and surplus materials, and shall leave the Work clean and ready for use. If Contractor does not attend to such cleaning immediately upon request, Engineer may cause such cleaning to be done by others and charge the cost of the same to Contractor. In the event there is a question as to the ownership or responsibility for rubbish, or as to whom should bear the expense of its removal, the decision of the Engineer shall govern.

23. LABOR

- 23.1 Whenever an actual or potential labor dispute is delaying or threatens to delay performance of the Work, Contractor shall immediately notify Engineer in writing, giving all relevant information concerning the dispute and its background. Engineer may terminate this Contract in the event of a threatened or actual strike or labor dispute which disrupts the Work of Contractor or others.
- 23.2 At Engineer’s request, Contractor will provide a method of identifying its employees and checking such employees into and out of the Site or Facility. Such method shall be satisfactory to Engineer and shall be provided at Contractor’s sole cost and expense.

- 23.3 Contractor shall employ at the Site only those employees who work in harmony with the employees of Engineer, Engineer, or other contractors. Engineer may at any time refuse admittance to the Site or expel from the Site any employee of Contractor and its contractors, agents, or suppliers whose presence Engineer considers undesirable.
- 23.4 Contractor shall include the provisions of this labor section in any contract which Contractor may be permitted to enter into with any other contractor relating to the Work.

24. PATENTS AND CONFIDENTIAL INFORMATION

- 24.1 Contractor shall defend all suits or claims and shall indemnify and hold and save Engineer harmless from liability of any nature or kind, including attorneys fees, and any other costs and expenses for or on account of infringement or claimed infringement of any patent or any patented or unpatented invention, article, material, or process manufactured or used in the performance of the Work, or incorporated into the Work, or occasioned by the use of the Work by Engineer or another; except that Contractor shall have no responsibility under this Article for any infringement or claimed infringement necessarily resulting from compliance with specific requirements of the specifications or drawings received from Engineer unless Contractor has information that a particular process or article specified may cause or result in an infringement of a patent in which event Contractor shall be responsible unless it promptly notifies Engineer of such information in writing.
- 24.2 Contractor represents that there are no royalty payments to any Engineer or licensor for any patent, trademark, or copyright other than those clearly and specifically stated in Contractor's proposal. In addition to Contractor's indemnification obligation stated above, Contractor shall be solely responsible for the payment of any royalty or fee, including continuing royalties, arising from the Work.
- 24.3 Contractor agrees for itself and for its employees to hold all drawings, specifications, Contract provisions, and any other information supplied by Engineer, or obtained or produced by Contractor in the performance of the Work, in strict confidence and shall use its best efforts to prevent disclosure of such information to any third party or to any employee not directly employed in performance of the Work. Contractor agrees not to use any such documents or information except in connection with its performance of the Work hereunder. 24.4 If, at any time, Engineer requests, Contractor shall execute and cause its employees, and contractors, as permitted herein, and material suppliers to execute secrecy agreements, adequate in the opinion of Engineer, to protect any confidential or proprietary information disclosed to such parties.

25. PERFORMANCE AND PAYMENT BONDS

- 25.1 If, at any time Engineer requests, Contractor shall furnish performance and payment bonds in form and amount and with sureties satisfactory to Engineer. Contractor represents that neither its proposal nor the Contract price includes any amount for the cost of performance or payment bonds. The cost of any such bonds will be reimbursed to Contractor upon submission of satisfactory evidence of the payment thereof. Failure or inability to obtain such bonds shall be cause for termination of the Contract under Article 29.1 hereof.

26. LIENS AND DISPUTES

- 26.1 Contractor (1) shall indemnify and save harmless Engineer and the property of Owner from all claims, demands, causes of action, or suits of whatever nature arising out of the services, labor, and materials furnished by Contractor or its contractors under this Contract, and from all laborers', materialmen's, and mechanics' liens arising out of the services, labor, and materials furnished by Contractor or any of its contractors or materialmen under this Contract, and (2) shall keep Engineer's property free and clear of all claims and encumbrances arising from the performance of the Work by Contractor or its contractors or materialmen. Engineer may discharge any said claim, demand, cause of action, suit, lien, or encumbrance and hold all costs and expenses thereof, including attorneys' fees, against the account of Contractor.
- 26.2 Contractor, for itself, its contractors, materialmen, laborers, and for all other persons performing any labor or furnishing any services, labor, or materials for any of the Work, shall waive, to the full extent permitted by law, all right to have filed or maintained any mechanics' or other liens or claims for or on account of the services, labor, or materials to be furnished hereunder. Contractor shall execute or have executed such additional documents as are necessary to properly implement this release. Including, without limitation, a form substantially similar to Exhibit A hereto, which form may be altered in order to comply with applicable state law.

- 26.3 Prior to final payment, Engineer may, at his sole discretion, request (1) additional, similar releases and waivers from every contractor, materialman, laborer, and other person furnishing services, labor, or materials in connection with the work and receive copies of or (2) receipts in full together with an affidavit that the receipts cover all the services, labor, and materials for which a lien might be filed except as covered by the releases and waivers of liens; but, if any contractor, laborer, materialman, or other person refuses to furnish a waiver or release or receipt in full, Engineer, at its sole option, may require Contractor at its own expense, to furnish a bond satisfactory to Engineer to indemnify Engineer against any claim or lien or Engineer may discharge any said claim or lien and hold all costs and expenses thereof, including attorneys' fees, against the account of Contractor.
- 26.4 In the event of any dispute or controversy, Contractor, for itself and its contractors, as permitted herein, and materialmen, agrees that it will continue to prosecute the Work diligently to meet the schedule of the Work and the time for completion. Engineer agrees to promptly enter into negotiations to resolve any such dispute by agreement with Contractor in accord with the provisions of this Contract.

27. PAYMENTS

- 27.1 As identified and provided in the Purchase Order the Engineer shall make payments as follows:
- 27.1.1 Within thirty (30) days after final completion of the Work by Contractor and acceptance of the Work by Engineer and Engineer, the amount which Engineer determines to be due Contractor under this Contract will be paid, provided Contractor shall have furnished to Engineer, in the required number of copies, a satisfactory release of all claims and liens against Engineer and/or Engineer arising under and by virtue of this Contract, other than such claims, if any, as may, with the consent of Engineer, be specifically excepted by Contractor from the operation of the release in stated amounts to be set forth therein.
- 27.2 During the progress of the Work, Contractor shall keep an accurate record of the man-hours used in performing the Work by date and craft and copies of all purchase orders, invoices, and receipts. Engineer shall have the right to audit all such records during the progress of the Work and for a period of four years following completion and acceptance of the Work, during which time Contractor agrees to maintain such records at its own expense. For Work performed on any cost basis other than firm lump sum, Engineer shall have full access to priced copies of all such records, purchase orders, invoices, and receipts in order to verify the cost of the Work and any burdens or overheads and profit relating thereto
- 27.3 Contractor's Invoices — Work from different Purchase Orders shall be invoiced separately. All invoices must be itemized in reasonable detail, and must show the order number and project name or description. Invoices bearing transportation charges must include reasonable detail regarding the shipment and original transportation bills.
- 27.4 Any deviations from these specifications can result in the cost required to meet the Engineer's requirements and business interruption losses being withheld from final payment. Moreover, any fines imposed by any convening government authorities are the responsibility of the named contractor. Fines to Engineer created by actions of the contractor may also be deducted from final payment.

28. SUSPENSION OF THE WORK

- 28.1 Engineer may, at any time, suspend the Work or any portion thereof upon giving notice to Contractor. Contractor shall strictly comply with Engineer's notice and shall minimize the cost of such suspension. Any part of the Work not suspended shall continue to be prosecuted with full diligence by Contractor.
- 28.2 In the event of any such suspension by Engineer, Contractor shall be compensated for the actual cost of such suspension, provided that Contractor shall minimize such cost by every reasonable means and, further provided, that within seventy-two (72) hours of such suspension Contractor shall provide an estimate of such cost computed on a daily basis.
- 28.3 In the event of any such suspension of the Contractor by the Owner for violation of safety procedures or negligence, it shall be the discretion of the Engineer to complete the requirements of the contract with an alternate contractor. In this event, full responsibility of payment to fulfill the requirements of the contract shall be assumed by the contractor.

29. TERMINATION

29.1 Engineer reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Contractor shall immediately stop all work hereunder and shall immediately cause any of its suppliers or subcontractors to cease such work. Contractor shall be paid, as Contractor's sole and exclusive remedy, a reasonable termination charge consisting of a percentage of the order price reflecting the work performed prior to the notice of termination, plus actual direct cost resulting from termination, less a deduction for the resale market value of the work actually performed. Contractor shall not be paid for any work done after the receipt of the notice of termination, nor for any costs incurred by its suppliers or subcontractors which Contractor could reasonably have avoided. Contractor shall not be paid for any lost or anticipated profits except as indirectly included in progress payments made prior to or due at the time of termination.

30. USE OF WORK AND ACCEPTANCE

30.1 Owner may at any time take possession of and use for any purpose any partially completed portion of the Work upon Engineer's giving written notice to Contractor. Such taking possession or use shall not be deemed to be Engineer's acknowledgment of completion or acceptance of said portion of Work and shall not limit or waive Contractor's responsibilities.

30.2 After Contractor has corrected all known deficiencies and the Work has been tested or operated at design conditions, then Contractor shall give written notice to Engineer that it has-completed the Work. Within a reasonable time thereafter, Engineer will issue a notice to Contractor certifying completion and acceptance of the Work or give notice to Contractor of the deficiencies to be remedied before notice of completion and acceptance will be issued. Engineer's notice of completion and acceptance shall not relieve Contractor from its warranty or other continuing obligations.

31. SAFETY

31.1 In conjunction with Article 20, Contractor agrees to comply with all of the Owner's specific plant safety procedures/requirements, and all OSHA requirements. It is the Contractor's responsibility to obtain Owner requirements and to make sure all workers understand and comply with these requirements.

32. NOTICES

32.1 All written notices required under the terms of this Contract shall be addressed by Engineer to Contractor at the address shown in the heading of the Purchase Order, and shall be addressed by Contractor to Engineer at the address and individual issuing this Contract for Engineer as shown in the Purchase Order. All notices shall be deemed to have been properly given if mailed, postage paid, to the above indicated addresses.

33. ASSIGNMENT

33.1 Contractor shall not assign this Contract or sublet the Work or any part of it or any moneys to become due hereunder without the prior written consent of Engineer.

33.2 In the event Engineer shall consent to any assignment or subletting, Contractor shall remain wholly liable for any work by, or actions of, such transferee.

34. NON-WAIVER OF DEFAULTS

34.1 Any failure by Engineer at any time, or from time to time, to enforce any of the terms or conditions of this Contract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of Engineer at any time to avail himself of such remedies as it may have for any breach or breaches of such terms or conditions by Contractor

34.2 The rights and remedies of Engineer hereunder shall be cumulative and in addition to any other rights available under applicable law or in equity.

35. GOVERNING LAW

35.1 This Contract is to be interpreted in accordance with, and its administration and performance governed by, the laws of the state from which Engineer has issued this Contract, as identified in the heading to these Contract General Conditions.

35.2 In the event of any dispute or controversy, the parties hereto agree that city and state of Engineer's office from which this Contract was issued, as identified in the heading to these Contract General Conditions, shall be the forum for any cause of action at law or in equity.

36. SEVERABILITY

36.1 Should any part or provision of this Contract be found to conflict with governing law or be illegal or unenforceable, the validity, force, and effect of the remaining parts or provisions shall not be affected.

37. HEADINGS

37.1 All headings and the index to these Contractor General Conditions have been inserted for convenience of reference only and are not to be considered a part of this contract and shall in no way affect the interpretation of this Contract.

Appendix A

Fluid Engineering, Inc.

Waiver of Liens Agreement

Project: _____

Purchase Order Number: _____

The undersigned (the “Contractor” or “Sub-Contractor”) for itself, its subcontractors, immediate and remote, and all material, persons, and other parties acting through or under it, agrees that neither it nor any other person furnishing labor or materials to it or to any subcontractor, shall file or maintain any mechanic’s liens against any property of Fluid Engineering, Inc. (the “Engineer”) for any labor or material furnished for or in connection with the performance of work for the Engineer, and expressly waives and relinquishes the right to file or maintain any such lien or claim. The Contractor or Sub-Contractor agrees that it shall incorporate the foregoing together with a provision requiring the inclusion of same for all lower tier subcontractors or orders made by it hereunder. The Contractor or Sub-Contractor shall further execute such memorandum or other instrument evidencing the foregoing no lien agreement as Engineer may request for the purpose of public filing or recording. The Contractor or Sub-Contractor acknowledges that the Waiver of Liens for themselves and all lower tier subcontractors and orders made is a condition of their Purchase Order.

The Contractor or Sub-Contractor shall, from time to time, at the Engineer’s request prior to final payment, furnish the Engineer such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish to the reasonable satisfaction of the Engineer that no lien against the Engineer’s property or right to file any such lien exists in favor of any person whomsoever for or by reason of any material furnished, labor performed, or other thing done in connection with the performance of the work under the contract.

Date: _____

By: _____

Representing: _____

Appendix A (Continued)

Fluid Engineering, Inc.

Acknowledgment

Project: _____

Purchase Order Number: _____

State of : _____

_____ County

I, the undersigned authority, a notary public in and for said County and said State, hereby certify that (name) _____, the (title) _____ of (company) _____ acknowledged before me on this day that, being informed of the contents of the waiver, he executed the same voluntarily on (date) _____, 20__ .

Given under my hand and official seal, this _____ day of _____, 20__ .

By: _____

(Notary Public)

My Commission expires _____