



**The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444**

PURCHASING AND CONTRACT ADMINISTRATION DIVISION

INVITATION TO BID CONSTRUCTION

**ITBC NO.: 2025-025
ATLANTIC AVENUE PAVILION REPAIR
PROJECT NO.: 24-010**

DUE DATE AND TIME: March 19, 2025 @ 2:00 P.M., (LOCAL TIME)

INSTRUCTIONS

Sealed Bids must be received on or before the due date and time (local time). All Bids will be publicly opened at City Hall, unless otherwise specified.

The City will only accept electronic submittals for this Invitation to Bid Construction (ITBC). ITBC's will be accepted through a secure mailbox at BidNet Direct, www.bidnetdirect.com/cityofdelraybeach until the Due Date and Time indicated in this ITBC. Bidnet Direct does not accept electronic Proposals after the Due Date and Time. It is the sole responsibility of the Proposer to ensure its electronic ITBC submission is complete prior to the solicitation Due Date and Time. Electronic submission of Proposals will require the uploading of forms and/or attachments as designated in this RFQ. Electronic submission must include a signed original of the Solicitation Summary form. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited.

If the Solicitation Summary form is not included, the City may deem the Bid non-responsive. Proposals must contain all information required to be included in the submittal, as described in this Solicitation.

BROADCAST

The City of Delray Beach utilizes electronic online services for notification and distribution of its solicitation documents. The City's solicitation information can be obtained from: (a) BidNet Direct; (b) Purchasing webpage on the City of Delray Beach <https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations>; and (c) Request via email; descollinesk@mydelraybeach.com.

Proposers who obtain solicitations from sources other than those named above are cautioned that the Request for Proposals package may be incomplete. The City will not evaluate incomplete Proposal packages. Bidnet Direct is an independent entity and is not an agent or representative of the City. Communications to independent entities do not constitute communications to the City. The City is not responsible for errors and omissions occurring in the transmission or downloading of any documents, addenda, plans, or specifications from these websites.

CONTACT

Any questions regarding the specifications and Solicitation process must be submitted in writing through the “Question” feature on www.bidnetdirect.com/cityofdelraybeach. Requests for clarification and additional information must be received prior to the deadline for Submission of Questions on **March 7, 2025 @ 5:00 P.M., (LOCAL TIME)**.

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The City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444

LEGAL ADVERTISEMENT

INVITATION TO BID CONSTRUCTION

ITBC NO.: 2025-025
ATLANTIC AVENUE PAVILION REPAIR
PROJECT NO.: 24-010

DUE DATE AND TIME: March 19, 2025 @ 2:00 P.M., (LOCAL TIME)

The City of Delray Beach, Florida ("City") is seeking bids from qualified firms for the **structural repairs** of the **Atlantic Avenue Pavilion Repair** project, in accordance with the terms, conditions, and specifications contained in this Invitation to Bid Construction.

Invitation to Bid Construction documents are available beginning **February 10, 2025**, on the Purchasing and Contract Administration Division's webpage of the City of Delray Beach website at:

<https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations>

Documents may also be obtained via BidNet Direct at www.bidnetdirect.com//cityofdelraybeach, by contacting the City Purchasing and Contract Administration Division at descollinesk@mydelraybeach.com or by phone at (561) 243-7442.

Bids will be accepted through a secure mailbox at Bidnet Direct (www.bidnetdirect.com//cityofdelraybeach) until the Deadline for Submission as indicated in this ITBC. The Due Date and Time for submission of submittals is **March 19, 2025 @ 2:00 P.M., (LOCAL TIME)**. Late Proposals will not be accepted. The City will only accept electronic Proposals for this ITBC.

The City will hold a **Non-Mandatory** Virtual Pre-Bid Conference on **February 27, 2025 @ 2:00 P.M., (LOCAL TIME)** online via Microsoft Team meeting via the link provided below:

Microsoft Teams Meeting

[Join the meeting now](#)

Meeting ID: 295 846 750 835

Passcode: aE9gH3Dz

Dial in by phone

+1 352-448-9762,,685762888# United States,

Phone conference ID: 685 762 888#

It is the responsibility of the Bidder to ensure all pages are included in the submission. All Bidders are advised to closely examine the solicitation package.

The City of Delray Beach is exempt from Federal and State Taxes for tangible personal property tax.

The City of Delray Beach reserves the right to accept or reject any or all Bids, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such coverage and terms it deems will best serve the interests of the City.

CITY OF DELRAY BEACH

SECTION 1: INSTRUCTIONS TO BIDDERS

1. Defined Terms.

Terms used in these Instructions to Bidders which are defined in the City of Delray Beach, Florida Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to the CITY, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, most qualified, responsible, and responsive Bidder to whom CITY (on basis of CITY'S evaluation as hereinafter provided) makes an award that is most advantageous to the CITY. The CITY'S evaluation of the bid **shall** take into consideration the cost (total, unit price, or combination of both), CITY'S prior experience with bidder, demonstrated expertise of bidder, references of bidder, qualifications of bidder and ability of bidder to complete the project in a timely manner. The term "Bidding Documents" includes the Invitation to Bid Construction, Instructions to Bidders, the Bid Form, and the proposed contract documents (including all Addenda issued prior to receipt of Bids). "Addenda" means all written or graphic instruments issued by the City prior to the execution of the Contract that modifies or interprets the Bidding Documents by additions, deletion, clarifications or corrections. "Bid" means a complete and properly signed proposal to do the Work for the sum stipulated therein, submitting in accordance with the Bidding Documents. "Responsible Bidder" means a bidder having the required qualifications to perform the work set forth in the Advertisement for Bids; the Bidder's responsibility is determined by the City's good faith evaluation of whether, in the City's opinion, the Bidder possesses the judgment, skill, experience and financial resources necessary to perform the Contract. "Non-Responsible Bidder" means a bidder who, as judged by the CITY, lacks those attributes of a Responsible Bidder necessary to perform the Contract. "Responsive Bid" means a bid in which the Bidder describes the Work in the same way as it is described in the advertisement for Bids; the Bidder's responsiveness is determined by the CITY'S evaluation of the Bid's conformance in all material respects to the Advertisement for Bids. "Days" means calendar days unless otherwise stated.

2. Copies of Bidding Documents.

- 2.1. Complete sets of the Bidding Documents in the number and for the sum, if any, stated in the Advertisement for Bids may be obtained from CITY Purchasing and Contract Administration Division.
- 2.2. Complete sets of Bidding Documents **shall** be used in preparing Bids; neither CITY nor CONSULTANT assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3. CITY and CONSULTANT in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining bids on the Work and do not confer a license or grant for any other use.

3. Qualifications of Bidders.

- 3.1. To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within three (3) business days of CITY'S request written evidence, such as financial data, previous experience; present commitments and other such data as may be called for in the Instructions to Bidders. Each Bid must contain evidence of Bidder's qualifications to do business in the state where the Project is located. The CITY reserves the right to make such investigations as it may deem necessary to establish the competency and financial ability of any Bidder to perform the Work and if, after investigation, the evidence of his competency or financial ability is not satisfactory, the CITY reserves the right to reject his bid.
- 3.2. Bidder **shall** submit information and documentation requested in this Section that confirms it meets the following qualification requirement(s). For the purposes of this ITBC, a responsible Bidder is a Bidder that meets the minimum qualification requirements below.

- 3.2.1. Bidder has previously provided acceptable services for the type of work identified in this ITBC. **Provide the following information for up to five (5) client references to verify Bidder has provided acceptable and applicable services.**

- A. Owner Name
- B. Owner's Primary Contact for Work Provided
 - i. Name
 - ii. Title
 - iii. Phone Number
 - iv. Email Address
- C. Project Information
 - i. Name
 - ii. Address
 - iii. Brief Description
 - iv. Start/End Date
 - v. Number of Change Orders and/or Amendments
 - vi. Within Budget?

- 3.2.2. Bidder has a Florida State General Contractor's license or current certificate of competency issued by Palm Beach County Examining Board having jurisdiction over licensing of Contractors in the type of work involved in this contract. **Provide proof, in the form of a copy of license(s), that the Bidder meets this qualification.**

- 3.2.3. Bidder must have been in the business of for a minimum of sixty (60) months prior to the Due Date and Time. **Provide supporting documentation (e.g. state, county, city business license; occupational license) that confirms Bidder has been in business for a minimum of sixty months prior to the Due Date and Time.**

- 3.2.4. Bidder must have experience in constructing a minimum of **Five (5)** similar projects since **2018**, with a minimum contract value of **\$350,000**, that had the following components, general rough/finish carpentry (wood framing); structural steel; metal roof; Electrical; Landscaping; and MOT; per the construction documents.

Provide the following information for the five (5) qualifying projects:

- A. Name of Project Owner
- B. Contact Name
- C. Contact Email
- D. Location / Address of Project
- E. Dates of Project (start/end)
- F. Brief Description of Project
- G. List of the components of the project as stated above

NOTE: The City recognizes that it is unlikely that candidates for this solicitation will have all of the similar experience requested in a single project. Experience in each of the different elements is desired, however, it is not required that all types of similar project experience is included in the same project.

- 3.2.5. Bidder has no reported conflict of interests in relation to this ITBC. No additional documentation is required.

The City will verify from Bidder's Conflict of Interest Disclosure Form.

- 3.2.6. Provide proof that Bidder is registered with the States of Florida, Division of corporations to do business in Florida. **No documentation is required. The City will verify.**

- 3.2.7. **Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, or any of its employees, is or has been involved within the last three (3) years.**

4. Examination of Contract Documents and Site.

- 4.1. In submitting a Bid, the Bidder represents that it has examined the location of the proposed Work, by thorough examination of the Contract Documents, requirements of the Work and the accuracy of the estimate of the quantities of the Work to be done; and **shall** not at any time after the submission of a bid dispute or complain of such estimate nor the nature or amount of work to be done. The Bidder further represents and warrants that it has visited the site, become familiar with local conditions under which the Work must be performed and has correlated its personal observations with the requirements of the Contract Documents.
- 4.2. Bidder **shall** be familiar with and fully comply with all federal, state and local laws, ordinances, rules and regulations that in any way affect the cost, progress or performance of the Work. Failure to familiarize himself with applicable laws, ordinances, rules and regulations will in no way relieve bidder from the responsibility included in the applicable laws. Bidder is solely responsible for compliance with all federal, state and local laws, ordinances, rules, regulations and applicable building codes.
- 4.3. Information and data reflected in the Contract Documents with respect to Underground Utilities at or contiguous to the site is based upon information and data furnished to the CITY and the CONSULTANT by the owners of such Underground Utilities or others, and the CITY does not assume responsibility for the accuracy or completeness thereof.
- 4.4. Reference may be made to the Technical Specifications for the Identification of:
- 4.4.1. Those reports of exploration and tests of subsurface conditions at the site which have been utilized by CONSULTANT in preparation of Contract Documents. Bidder may rely upon the accuracy of the technical data contained in such reports but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for the purposes of bidding or construction.
- 4.4.2. Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by CONSULTANT in preparation of the Contract Documents. Bidder may rely upon the accuracy of the technical data contained in such drawings but not upon the completeness thereof for the purposes of bidding or construction.
- 4.4.3. Copies of such reports and drawings will be made available by the CITY to any Bidder on request. Those reports and drawings are not part of the Contract Documents, and such technical data has been identified and established in Technical Specifications.
- 4.5. In submitting a Bid, Bidder warrants the accuracy of the conformation of the ground, the character and quality of the substrata, the types and quantity of materials to be encountered, the nature of the groundwater conditions, the character of equipment and facilities needed preliminary to and during the execution of the work, the general and local conditions and all other matters which can in any way affect the Work of this Project. The prices established for the work to be done will reflect all costs pertaining to the Work. Any claims for extras based on substrata or groundwater table conditions will not be allowed.
- 4.6. By submission of its bid, Bidder affirms that he has, at his own expense, made or obtained any additional examinations, investigations, explorations, tests, and studies and obtained

any additional information and data which pertain to the physical conditions (surface, subsurface, and Underground Utilities) at or contiguous to the site or otherwise, prior to bidding which may affect cost, progress, or performance of the Work and which Bidder deems necessary to determine its Bid for performing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents and/or he has satisfied himself with respect to such conditions and he **shall** make no claims against the CITY or the CONSULTANT if on carrying out the Work he finds that the actual conditions do not conform to those indicated. In submitting its Bid, Bidder further warrants the accuracy of the plans and specifications with regard to all underground facilities.

- 4.7. On request, the CITY will provide Bidder access to the site to conduct such investigations and tests as Bidder deems necessary for submission of his Bid. Bidder **shall** schedule such access in advance with the CITY.
- 4.8. Upon completion of such additional field investigations and tests, Bidder **shall** completely restore disturbed areas.
- 4.9. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by CONTRACTOR. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by CITY unless otherwise provided in the Contract Documents.
- 4.10. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of Article 4 of the Instructions to Bidders, "Bidder's Examination of Contract Documents and Site", that without exception the Bid is premised upon performing the work required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or 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 of the Work.

5. Pre-Bid Conference

- 5.1. The City will hold a **Non-Mandatory** Pre-Bid Conference virtually on **February 27, 2025 @ 2:00 P.M., (LOCAL TIME)** online via Microsoft Team meeting via the link provided below:

Microsoft Teams Meeting

[Join the meeting now](#)

Meeting ID: 295 846 750 835

Passcode: aE9gH3Dz

Dial in by phone

+1 352-448-9762,,685762888# United States,

Phone conference ID: 685 762 888#

- 5.2. The City will **not** conduct a site visit for this solicitation.
- 5.3. The purpose of the Pre-Bid Conference is to provide and obtain information relative to the scope, purpose, nature, and extent of the work, and any local conditions, which may affect the performance of work. Submission of a Bid **shall** constitute an acknowledgement by the Bidder that it has thoroughly examined and is familiar with the requirements of this Solicitation package. The failure or neglect of the Bidder to examine the Solicitation package **shall** in no way relieve the Bidder of any obligation with respect to its Bid or the

requirements of the Contract. No claim for additional compensation will be allowed which is based on a lack of knowledge of the requirements of this Solicitation package or the resultant Contract.

- 5.4. If you need a sign language interpreter or materials in accessible format for this event, please contact the Purchasing and Contract Administration Division at descollinesk@mydelraybeach.com or by phone at (561) 243-7442 at least five (5) days in advance of the scheduled conference.

6. Interpretations and Addenda.

- 6.1. All questions about the meaning or intent of the Contract Documents are to be directed to the Purchasing and Contract Administration Division. Interpretations or clarifications considered necessary by the Purchasing and Contract Administration Division in response to such questions will be issued by addenda mailed or delivered to all parties recorded by the Purchasing and Contract Administration Division as having received the Bidding Documents. Questions received less than ten (10) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 6.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by CITY or CONSULTANT.
- 6.3. The Bidder **shall** carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, **shall** examine the site and local conditions, and **shall** at once report to the CITY and CONSULTANT errors, inconsistencies for ambiguities discovered.

7. Bid Security.

- 7.1. Each Bid must be accompanied by Bid security made payable to the City of Delray Beach in an amount of **five percent (5%)** of the Bidder's maximum Bid price and in the form of a certified check or cashiers check drawn upon any State or National Bank of Florida or a Bid Bond issued by a surety meeting the requirements of Paragraph 6.1 of the General Conditions. Said check or bond **shall** be made payable to the CITY and **shall** be given as a guarantee that Bidder, upon receipt of notification of tentative award of the contract, will enter into an Agreement with the CITY, and furnish the necessary documents including but not limited to: insurance certificates, Payment Bond and Performance Bond; each of the said bonds to be in the amount stated herein, all bonds **shall** be written by a surety authorized to conduct business in the State of Florida and **shall** have a registered agent in the State of Florida, meeting the requirements of Paragraph 6.1 of the General Conditions. Bid Bonds issued on any form, other than those provided herein, will not be acceptable.

No bids will be considered unless accompanied by the required bid security. To submit an original bid security, in lieu of submitting an electronic bid bond using Surety 2000 through BidNet Direct, Vendor must submit an original bid security in a sealed envelope, with the solicitation number, solicitation title, date and the time of bid opening, and address listed on the envelope. A copy of the bid security should also be uploaded into BidNet Direct. The uploaded copy of the bid guarantee does not replace the original bid security submission requirement. Vendors must submit the original bid guarantee, by the solicitation due date and time, to: City of Delray Beach Purchasing Division 100 NW 1st Avenue, Delray Beach, FL 33444.

- 7.2. The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security whereupon the Bid security will be returned. If the apparent successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Intent

to Award, the CITY may annul the Notice of Intent to Award and the Bid security of that Bidder will be forfeited. The CITY may then accept the bid of the next most qualified responsible responsive Bidder, or re-advertise for bids. If the bid of the next most qualified responsible responsive Bidder is accepted, this acceptance **shall** bind such Bidder as though he was the original successful Bidder. There **shall** be no binding contract until such time as the CITY accepts the contract and makes final award of the contract. The Bid Security of other Bidders whom CITY believes to have a reasonable chance of receiving the award may be retained by the CITY until the earlier of the seventh day after the effective date of the Agreement or the ninety-first day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not responsive will be returned within ten (10) days after the Bid opening.

8. Contract Time.

The number of calendar days within which, or the date by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Time) are set forth in the Bid Form and the Agreement.

9. Liquidated Damages.

Provisions for liquidated damages, if any, are set forth in the Agreement.

10. Substitute or "Or-Equal" Items.

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to CONSULTANT, application for such acceptance will not be considered by CONSULTANT until after the Effective Date of the Agreement. The procedure for submittal of any such application by Contractor and consideration by CONSULTANT is set forth in Paragraphs 7.6.1, 7.6.2 and 7.6.3 of the General Conditions which may be supplemented in the General Requirements. No substitution will be considered prior to receipt of Bids unless written request for approval has been received by CONSULTANT at least ten (10) days prior to the date for receipt of Bids. Furthermore, no substitutions will be permitted in the absence of the express written consent of CONSULTANT.

11. Subcontractors, Suppliers and Others.

11.1. If the Bid Form requires the identity of certain Subcontractors, Suppliers and other persons and organizations, including those who are to furnish the principal items of material and equipment, to be submitted, the Bidder **shall** provide such identification. If requested by the CITY or CONSULTANT, Bidder **shall** provide an experience statement with pertinent information regarding similar projects and other evidence of qualification for each Subcontractor, supplier, person or organization. If the CITY or CONSULTANT after due investigation has reasonable objection to any proposed Subcontractor, supplier, other person or organization, either may, before the Notice of Intent to Award is given, request the apparent successful Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent successful Bidder declines to make any such substitution, the CITY may retract its award of the Contract to Bidder and award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid Security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom the CITY or CONSULTANT does not make written objection prior to the giving of the Notice of Intent to Award will be deemed acceptable to the CITY and CONSULTANT subject to revocation of such acceptance after the Effective Date of the Agreement. Subcontractors **shall** not be changed without the approval of the CITY and the CONSULTANT. No acceptance by the CITY or CONSULTANT of any such Subcontractor, Supplier or other person or organization **shall**

constitute a waiver of any right of the CITY or CONSULTANT to reject defective work or materials not conforming with these specifications.

- 11.2. In contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, the apparent successful Bidder, as a condition precedent to being awarded the Contract, **shall** identify in writing to the CITY those portions of the Work that such Bidder proposes to subcontract. If the Bidder is awarded the Contract based upon such representations, it is precluded from subcontracting out any additional portions of the Work.
- 11.3. No Bidder **shall** be required to employ any Subcontractor, other person or organization against whom Bidder has reasonable objection.
- 11.4. **No more than eighty percent (80%) of the dollar value of the total contract work may be accomplished by subcontractors.** Balance of work must be accomplished by selected Contractor's own forces. Each bidder must furnish with his proposal, a list of the items he proposes to sub-contract and the estimated cost of these items.

12. Bid Form.

- 12.1. Bids must be submitted on the Bid Form formulated by the CITY. The Bid Form is included with the Bidding Documents. Failure to submit a Bid on the Bid Form provided herein or to fully complete the Bid in accordance with these instructions renders the Bid void and **shall** not be considered for award by the CITY.
- 12.2. All blanks on the Bid Form must be completed in ink or by typewriter and the Bidder will be responsible for its correctness.
- 12.3. Bids by corporations must be executed in the corporate name by the president, a vice-president, or other corporate officer accompanied by evidence of authority to sign and the corporate seal must be affixed and attested by the secretary or an assistant. The corporate address and state of incorporation **shall** be shown below the signature.
- 12.4. Bids by partnerships must be executed in the partnership name and signed by a partner, accompanied by evidence of authority to sign, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 12.5. All names must be typed or printed below the signature.
- 12.6. The Bid **shall** contain an acknowledgment of receipt of all Addenda, the numbers of which **shall** be filled in on the Bid Form.
- 12.7. The address to which communications regarding the Bid are to be directed must be shown.
- 12.8. The Bidder **shall** comply with the Florida Trench Safety Act, Fla. Stat. 553.60 et seq. All Bids **shall** include all information required by Statute.
- 12.9. The Bidder **shall** comply with the Public Entity's Crime Statute, Fla. Stat. 287.133. All Bids **shall** include the information required by Statute.
- 12.10. The Bidder **shall** comply with the Drug-Free Workplace Statute, Fla. Stat. 287.133 and provide information required by Statute.

13. Submission of Bids.

- 13.1. Sealed Electronic Proposals of the Bid **shall** be submitted at the time and place indicated in the Bid form. Each bid **shall** be accompanied by all required documents. Bidder assumes full responsibility for timely delivery of its Bid, which must be sent electronically

or be means whereby the Bidder receives positive notification for delivery to the CITY. Oral, telephonic, faxed or telegraphic Bids are invalid and will not receive consideration.

- 13.2. The CITY **shall** have the right to reject Bids from Bidders whom the CITY has determined to be Non-Responsible. A Bidder determined to be Non-Responsible **shall** be prohibited from bidding or receiving Contracts for any future work for the CITY until the CITY, declares the Bidder once again responsible.

14. Modification and Withdrawal of Bids.

- 14.1. Bids may be modified or withdrawn only by an appropriate electronically submitted document in the same manner the original Bid was duly executed and delivered.
- 14.2. If any Bidder files a duly signed written notice with the CITY executed by an appropriate official, and promptly thereafter demonstrates to the reasonable satisfaction of the CITY that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. Opening of Bids.

Bids will be opened and read aloud publicly at the time and place indicated in the Invitation to Bid Construction.

16. Bids to remain Open.

All Bids **shall** remain subject to acceptance for one hundred and twenty (120) days after the day of the Bid opening, but the CITY may, at the sole discretion of the City, release any Bid and return the Bid Security prior to that date.

17. Award of Contract.

- 17.1. The CITY reserves the right to accept any Bid or combination of Bid alternates which, in the CITY'S judgment will best serve the City's interest, reject any and all Bids, to waive any and all informalities and/or irregularities, and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, the CITY reserves the right to reject the Bid of any Bidder if the CITY believes that it would not be in the best interest of the City to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the CITY. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 17.2. In evaluating Bids, the CITY **shall** consider the cost, CITY'S prior experience with bidder, demonstrated expertise of bidder, references of bidder, qualifications of bidder and ability of bidder to complete the project in a timely manner as well as whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Intent to Award.
- 17.3. The CITY may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the work as to which the identity of Subcontractors, Suppliers and other persons and organizations must be submitted as provided in Section 10. The CITY also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Intent to Award.

- 17.4. The CITY may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility qualifications and financial ability of the Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the work in accordance with the Contract Documents to the CITY'S satisfaction within the prescribed time.
- 17.5. If the contract is to be awarded, the contract will be awarded to the most responsible, responsive Bidder whose evaluation indicates that the award will serve the highest public interest and be in the best interest of the CITY.
- 17.6. The CITY reserves the right to reduce the quantities of work to be done and to completely eliminate any items of the work listed in the Proposal in order that the work can be completed within the amount of available funds.
- 17.7. If the contract is to be awarded, the CITY will give the successful Bidder a Notice of Intent to Award within one hundred and twenty (120) days after the day of the Bid opening.
- 17.8. In the event of irregularity in the bidding procedure, the CITY reserves the right to reject an unopened Bid, or receive and record it, if in the CITY'S best judgment such action accrues to the best interest of the CITY. Receiving and recording a Bid does not constitute a waiver of irregularities by the CITY.
- 17.9. Upon the CITY'S award of the Contract, the Bidder's failure to execute the Contract within fifteen (15) calendar days from the date of the notification of award **shall** be just cause and the CITY may annul and void the award and declare forfeiture of the bid security or good faith deposit in liquidation of all damages sustained.
- 17.10. Within fifteen (15) calendar days of the Notice of Intent to Award of the Contract, Bidder **shall** submit to the CITY and Consultant in writing a list of all subcontractors, principal suppliers and fabricators, persons or entities proposed for the principal portions of the Work.
- 17.11. Upon execution of the Contract by the CITY and the successful Bidder, submittal of the required performance and payment bonds, certificates of insurance, and receipt and approval of the required post-bid information, the CITY will issue the Notice to Proceed.

18. Contract Security and Insurance.

Article 6 of the General Conditions sets forth the CITY'S requirements as to performance and payment Bonds. When the successful Bidder delivers the executed Agreement to the CITY, it must be accompanied by the required performance and payment Bonds and required insurance certificates and policies if applicable. The surety on such bonds **shall** be a duly authorized nationally recognized surety company satisfactory to the CITY. Such bond **shall** be executed and issued by a resident agent licensed and having an officer in Palm Beach, Dade, Broward or Martin County, Florida, representing such corporate surety. Attorney-in-fact who signs bonds must file with such bond a certified copy of their Power-of-Attorney to sign said bonds. All bonds and insurance must meet the requirements of Article 6 of the General Conditions.

19. Signing of Agreement.

When CITY gives a Notice of Intent to Award to a successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen (15) days thereafter, Contractor **shall** sign and deliver the required number of counterparts of the Agreement and attached documents to CITY with the required bonds and insurance certificates. Within thirty (30) days thereafter, the CITY upon final award by the City Commission **shall** deliver one fully signed counterpart to CONTRACTOR. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. Qualification of Surety.

See paragraph 6.1 of the General Conditions for the CITY'S requirements.

21. Florida Trench Safety Act-Compliance.

In the event this contract requires trench excavation, the requirement of Florida Statutes 553.60, et seq., **shall** be adhered to by all Bidders. Every Bidder **shall** provide a certification on the form provided and other required documentation.

22. Public Entity Crimes.

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

23. Drug-Free Workplace.

Every Bidder **shall** provide a certification on the form provided indicating whether the Bidder has implemented a drug-free workplace program pursuant to the requirements of Florida Statute Section 287.087. Preference in the award process **shall** be given, according to the statutory requirements, to a business that certifies it has implemented a drug-free workplace program.

24. Building Permits.

The CONTRACTOR **shall** make application and obtain the necessary building permits from the CITY or other governing bodies. There **shall** be no cost for permits issued by the CITY.

25. Sales Tax.

The CONTRACTOR'S attention is directed to the fact that all materials and supplies necessary for completion of this contract are subject to Florida Sales and Use Tax in accordance with Florida Statutes.

26. Sub-Contracting / MBE Participation:

The CITY reserves the right to accept or reject any or all bids wherein a subcontractor is named and to make the award to the Bidder, who, in the opinion of the CITY will be in the best interest of and/or most advantageous to the CITY. The CITY also reserves the right to reject a bid of any Bidder if the bid names a subcontractor who has previously failed in the proper performance of an award or failed to deliver on time contracts of a similar nature, or who is not in a position to perform properly under this award. The CITY reserves the right to make said determination.

It is the policy of the CITY that Minority and Women Business Enterprises (M/WBEs) **shall** have the maximum opportunity to participate in, and perform projects financed with CITY, State and Federal Funds. Bidders are hereby informed that the CITY encourages the utilization and participation of Minority and Women Business Enterprises in contracts financed with CITY funds. Since subcontract awards by successful Bidders to minority/women firms are crucial to the achievement of the CITY'S objectives, Bidders are encouraged to seek Minority and Women Business Enterprises for participation in subcontracting opportunities. Assistance in identifying qualified Minority and Women Business Enterprises may be obtained from the CITY'S Purchasing and Contract Administration Division Office.

27. Contractor's Certification.

CONTRACTOR'S bidding on this project must hold a State license or a current certificate of competency issued by Palm Beach County Examining Board having jurisdiction over licensing of CONTRACTORS in the type of work involved in this contract. The Bidder must submit proof this requirement has been met.

28. Indemnification.

The Bid **shall** include in its price the sum of \$10.00 in consideration, for the indemnification provision. The indemnification provision contained in Section 7.28 of the general conditions is incorporated herein, and made a part hereof, as if fully set forth herein.

29. Force Majeure.

No party **shall** be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of any party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event **shall** a lack of funds on the part of any party be deemed Force Majeure.

30. Undefined General Allowance.

An undefined general allowance may be included as part of the Schedule of Bid Prices. This allowance is included to cover contract item identified in Section 01020 - Undefined General Allowances. Prior to the initiation of any expenditure of any undefined general allowance, an executed formal Change Order is necessary for the utilization of allowance funds. The method for computing Change Order dollar amounts **shall** be as specified in the General Conditions.

31. Cone of Silence.

The Palm Beach County Lobbyist Registration Ordinance (Sections 2-351 through 2-357 of the Palm Beach County Code of Ordinances) is applicable in the City of Delray Beach. Section 2-355 of the Palm Beach County Lobbyist Registration Ordinance includes a "Cone of Silence" provision that limits communication during the City's procurement process in regard to this ITBC, which provides as follows:

- (a) **Cone of silence** means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitation; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.
- (b) For the purposes of this section, a person's representative **shall** include but not be limited to the person's employee, partner, officer, director, CONSULTANT, lobbyist, or any actual or potential subcontractor or CONSULTANT of the person.
- (c) Pursuant to Section 2-355 of Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all Solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the cone of silence. The cone of silence applies to any person or person's representative who responds to a particular request

- for proposal, request for qualification, bid, or any other competitive solicitation, and **shall** remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation **shall** provide notice of cone of silence requirements and refer to this article.
- (d) The provisions of this article **shall** not apply to oral communications at any public proceeding, including prebid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence **shall** not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
 - (e) The cone of silence **shall** not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.
 - (f) The cone of silence **shall** terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action that ends the solicitation process.
 - (g) Any contract entered into in violation of the cone of silence provisions in this section **shall** render the transaction voidable.

32. Inspector General.

Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors.

Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

33. Protests.

33.1 Standing

Parties that are not actual bidders, proposers or responders, including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, **shall** not have standing to protest or appeal any determination made pursuant to this Section.

33.2 Protest Filing

33.2.1 Protest of Failure to Qualify. Upon notification by the City that a bidder, proposer or responder is deemed non-responsive and/or non-responsible, the bidder, proposer or responder who is deemed non-responsive and/or non-responsible may file a protest with the City Clerk by close of business on the third business day after notification (excluding the day of notification) or any right to protest is forfeited. It **shall** be the sole responsibility of such bidder, proposer or responder to verify the operating hours of City Hall.

33.2.2 Protest of Award of Agreement. After a Notice of Intent to Award an Agreement is posted, any actual bidder, proposer or responder who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the City Clerk by close of business on the third business day after posting (excluding the day of posting) or any right to protest is forfeited. It **shall** be the sole responsibility of such bidder, proposer or responder to verify the operating hours of City Hall.

A Notice of Intent to Reject all Bids, Proposals or Responses is subject to the protest procedure.

33.2.3 Content and filing. The protest **shall** be in writing, **shall** identify the name and address of the protester, and **shall** include a factual summary of, and the basis for, the protest. Filing **shall** be considered complete when the protest and the Protest Bond are received by the City Clerk.

33.3 Protest Bond

Any bidder, proposer or responder filing a protest **shall** simultaneously provide a Protest Bond to the City in the amount set forth in the Sealed Competitive Method documents. If the protest is decided in the protester's favor, the entire Protest Bond **shall** be returned to the protester. If the protest is not decided in the protester's favor, the Protest Bond **shall** be forfeited to the City. The Protest Bond **shall** be in the form of a cashier's check and **shall** be in the amount specified in the Sealed Competitive Method documents.

33.4 Protest Procedures

33.4.1 A bidder or proposer that has submitted a response to a Formal Solicitation and is adversely affected by the decision of award may file a formal written protest within three (3) business days from the time of initial posting of the intended award. Notice of Intent to Award **shall** be posted in BidNet Direct.

Note: Suspended or debarred vendors are ineligible to submit a bid protest.

33.4.2 Formal written protests **shall** not exceed fifteen (15) type-written pages (including exhibits and attachments) and in all other respects **shall** comply with the formatting requirements for an appellate brief as set forth in the Florida Rules of Appellate Procedure. A written protest is considered received by the City when it is delivered to and received by the City Clerk or designee. The City Clerk **shall** time/date stamp all written protest immediately upon receipt. Delivery to and receipt by any other City employee or staff member **shall** not constitute receipt by the City of Delray Beach. Protests submitted via email do not meet the requirements of this Section. Protesters **shall** file their written protests with the City between the hours of 8:00a.m. and 5:00 p.m. Service of a protest by mail or courier **shall** not expand the time period allowed for delivery of a protest.

33.4.3 In computing any time period prescribed or allowed by this protest policy, the day of the act or event from which the designated time period begins to run **shall** not be included. The last day of the period so computed **shall** be included unless it is a Saturday, Sunday, federal holiday, or holiday observed by the City, in which event the period **shall** run until the end of the next business day which is neither a Saturday, Sunday, federal holiday, nor a holiday observed by the City. A written protest **shall** not challenge the specifications, scope of work, relative weight of evaluation criteria, or a formula for assigning points.

33.4.4 Fee Required

The letter of protest **shall** be accompanied by a non-refundable protest application fee in an amount equal to one percent (1%) of the protestor's bid or five thousand dollars (\$5,000.00), whichever is less. The protest application fee must be a cashier's check, a certified check, or an attorney's trust account check made

payable to the City of Delray Beach. Failure to provide the required protest application fee **shall** deem the protest as incomplete and invalid.

33.4.5 Authority to Resolve Protests

The City's consideration of a timely written protest **shall** not necessarily stay the award process, as may be in the best interest of the City. The Purchasing Director may recommend to the City Manager to render moot any written protest that is overtaken by events, in which case the City Manager may abate or dismiss such protest. Within ten (10) business days (excluding Saturdays, Sundays, legal holidays, and City observed holidays) of receipt of the formal written protest, the Chief Financial Officer and the City Attorney **shall** attempt to settle or resolve the dispute, at the City Attorney's sole discretion. A decision will be rendered in writing and **shall**: (1) state the reasons for the action taken; and (2) inform the protestor of its right to appeal as provided herein. A copy of the decision of the Chief Financial Officer and the City Attorney **shall** be mailed or otherwise furnished immediately to the protestor. The protesting party may appeal the decision of the Chief Financial Officer and the City Attorney, by submitting the appeal to the City Manager within seven (7) days (excluding Saturdays, Sundays, legal holidays and City-observed holidays) from the date of the written decision. The appeal **shall** be in writing and **shall** state with specificity the grounds therefore and also the action requested of the City Manager. The City Manager **shall** attempt to settle or resolve the matter at his/her sole option. The City Manager **shall** render a decision, in writing, within 10 days (excluding Saturdays, Sundays, legal holidays and City observed holidays) following receipt of the appeal. A decision of the City Manager under this section **shall** be final and conclusive on the protester. Timely submittal of a protest or appeal required. Failure of a party to submit timely a written protest to the Chief Procurement Officer within the time provided in this Section **shall** constitute a waiver of such party's right to protest pursuant to this Section. Costs. Any and all costs incurred by a protesting party in connection with a protest pursuant to this Section **shall** be the sole responsibility of the protesting party.

Failure to follow the protest procedures or failure to meet any deadline set forth herein **shall** automatically nullify any protest or claim brought by an aggrieved bidder, offeror, or contractor. The City is not subject to or bound by the requirements and/or procedures set forth in Chapter 120, Florida Statutes.

33.5 Stay of Award of Agreement or Sealed Competitive Method

In the event of a timely protest, the City Manager **shall** stay the award of the Agreement or the Sealed Competitive Method unless the City Manager determines that the award of the Agreement without delay or the continuation of the Sealed Competitive Method is necessary to protect any substantial interest of the City. The continuation of the Sealed Competitive Method or award process under these circumstances **shall** not preempt or otherwise affect the protest.

33.6 Appeals to City Commission

The protesting party may appeal the decision of the Chief Financial Officer and the City Attorney, by submitting the appeal to the City Manager within seven (7) days (excluding Saturdays, Sundays, legal holidays and City-observed holidays) from the date of the written decision. The appeal **shall** be in writing and **shall** state with specificity the grounds therefore and also the action requested of the City Manager. The City Manager **shall** attempt to settle or resolve the matter at his/her sole option. The City Manager **shall** render a decision, in writing, within ten (10) days (excluding Saturdays, Sundays, legal holidays and City observed holidays) following receipt of the appeal. A decision of the City Manager under this section **shall** be final and conclusive on the protester.

33. 7 Failure to File Protest

Any actual bidder, proposer or responder that does not formally protest or appeal in accordance with this Section **shall** not have standing to protest the City Commission's award.

END OF SECTION 1

[remainder of page intentionally left blank]

SECTION 2: PROPOSAL

Proposal of _____
(Contractor)

(Address)

to furnish and deliver all materials and to do and perform all work in accordance with the Contract Documents for the Project entitled:

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

To: Purchasing and Contract Administration Division
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the CITY in the form included in the Contract Documents to complete all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain open for one hundred and twenty (120) days after the day of Bid opening. Bidder will sign and deliver to the CITY the Agreement and submit the Contract Security, Insurance Certificates and other documents required by the Contract Documents within fifteen (15) days after the date of OWNER'S Notice of Intent to Award. If Bidder fails to sign the Agreement and deliver the Agreement to the CITY accompanied by the required security, insurance certificates and other documents within the time specified, the CITY has the authority to rescind the bid award and retain the bid security which **shall** be forfeited as liquidated damages.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
 - a. Bidder has examined copies of all the Contract Documents and of the following addenda:

<u>Number</u>	<u>Date</u>	<u>Number</u>	<u>Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

[] **Attached Bid Security in the amount of five percent (5%) of the Bidders maximum bid price**

[] **Acknowledgement of all addendums**

receipt of all of which is hereby acknowledged and also copies of the Advertisement for Bids and the Instructions to Bidders;

- b. Bidder has examined the site and locality where the Work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as Bidder deems necessary. **Bidder warrants and represents that there are no defects, errors or inconsistencies in the plans, specifications or any of the Contract Documents and that the actual site conditions comport to the conditions set forth therein.**

- c. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or a corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the CITY; no City official nor any City employee has a direct or indirect interest in said bid, in the supplies or work to which it relates, to any person associated with the firm performing the work, or to the profits resulting from the work.

[remainder of page intentionally left blank]

4. Bidder agrees that the Work will be substantially completed within **One Hundred Thirty-Five (135)** calendar days from the date of the issuance of the Notice to Proceed and completed and ready for final payment in accordance with paragraph 15.13 of the General Conditions within **thirty (30) calendar days** from the date of Substantial Completion.

NOTE: In submitting a Bid, Bidder acknowledges and is duly notified that no onsite work shall commence prior to July 4th, 2025. All onsite work shall commence after the July 4th City Holiday celebration.

Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

5. The undersigned agrees as follows:

Accompanying this Proposal is a certified check, cashier's check or bid bond, in the amount of **five percent (5%)** of total Bid Price, meeting the requirements of the Contract Documents for \$_____ payable to the City of Delray Beach which is to be forfeited if, in the event that this Proposal is accepted, the undersigned **shall** fail to execute the contract and furnish satisfactory Contract Security and furnish insurance certificates under the conditions and within the time specified in the Instructions to Bidders; otherwise, said certified check, cashier's check or bid bond is to be returned as provided herein.

6. Communications concerning this Bid **shall** be addressed to the Bidder as indicated below.
7. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

Submitted on _____.
(date)

If a Corporation

Signature of Bidder

Corporate Seal

By: _____

Print Name: _____

Address of Bidder: _____

Incorporated under the laws of the State of _____.

If an Individual, Partnership, or Non-Incorporated Organization

Signature of Bidder

By: _____

Print Name: _____

Address of Bidder: _____

Certificate of Competency number _____

The names of the corporate officers, or partners, or individuals doing business under trade name, is as follows:

Signature of Bidder

By: _____

Print Name: _____

Title: _____

Business Address: _____

Incorporated under the laws of the State of _____.

CERTIFICATE
(If a Partnership)

STATE OF _____)
COUNTY OF _____) SS

I HEREBY CERTIFY that a meeting of the partners of _____, a
Partnership under the laws of the State of _____ held on _____, 20__ the
following resolution was duly passed and adopted:

"RESOLVED, that _____, as _____ of the
Partnership, be and he is hereby authorized to execute the Proposal dated _____,
20__, between the City of Delray Beach, Florida and this Partnership, and that this execution
thereof, attested by the _____ of the Partnership be the official act and deed
of this Partnership."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Signature and Stamp of Notary Public

My Commission Expires:

CONFLICT OF INTEREST DISCLOSURE FORM

The award of this contract is subject to the provisions of Chapter 112, *Florida Statutes*. All Proposers must disclose within their Proposal: the name of any officer, director, or agent who is also an employee of the City of Delray Beach.

Furthermore, all Proposers must disclose the name of any City employee who owns, directly or indirectly, an interest of more than five percent (5%) in the Proposer's firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for evaluation team members and other key personnel involved in the award of this contract.

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

_____ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other Cities, Counties, contracts, or property interest for this Proposal.

_____ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this Proposal.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

[remainder of page intentionally left blank]

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity; may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit Proposal on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-consultant, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

[remainder of page intentionally left blank]

NOTIFICATION OF PUBLIC RECORDS LAW
Pertaining to Public Contracts and Requests for Contractor Records
Pursuant to Chapter 119, *Florida Statutes*

Pursuant to Chapter 119, *Florida Statutes*, Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Delray Beach in order to perform the service. Upon request from the City of Delray Beach' custodian of public records, contract shall provide the City of Delray Beach with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes* or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract. If the Contractor does not transfer the records to the City of Delray Beach. Contractor upon completion of the contract, shall transfer, at no cost, to the City of Delray Beach all public records in possession of the Contractor or keep and maintain public records required by the City of Delray Beach in order to perform the service. If the Contractor transfers all public records to the City of Delray Beach upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Delray Beach, upon request from the City of Delray Beach' custodian of public records, in a format that is compatible with the information technology systems of the City of Delray Beach.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OFFICE OF THE CITY CLERK LOCATED AT 100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444, PHONE NUMBER (561) 243-7000, EMAIL ADDRESS: CITYCLERK@MYDELRAYBEACH.COM

Acknowledged:

Firm Name

Signature

Name and Title (Print or Type)

Date

[remainder of page intentionally left blank]

DRUG FREE WORKPLACE CERTIFICATION

IDENTICAL TIE BIDS: Preference **shall** be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quantity, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program **shall** be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program (Florida Statutes Section 287.087). In order to have a drug-free workplace program, a business **shall**:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, and available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Bidders Signature

(Print or type)

[remainder of page intentionally left blank]

TRUTH-IN-NEGOTIATION CERTIFICATE

The undersigned warrants (i) that it has not employed or retained any company or person, other than bona fide employees working solely for the undersigned, to solicit or secure the Agreement and (ii) that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than its bona fide employees working solely for the undersigned or agreed to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement.

The undersigned certifies that the wage rates and other factual unit costs used to determine the compensation provided for in the Agreement are accurate, complete, and current as of the date of the Agreement.

Name: _____

Title: _____

Date: _____

Signature: _____

[remainder of page intentionally left blank]

SCRUTINIZED COMPANY CERTIFICATION

This certification is required pursuant to Florida State Statute Section 287.135.

As of July 1, 2011, a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

Companies must complete and return this form with its response.

Company: _____ FID or EIN No.: _____

Address: _____

City: _____ State: _____ Zip: _____

I, _____, as a representative of _____
certify and affirm that this company is not on the Scrutinized Companies with Activities in Sudan List or the
Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Name: _____

Title: _____

Date: _____

Signature: _____

[remainder of page intentionally left blank]

TRENCH SAFETY ACT
Florida Statutes Section 553.60 et seq.

"Trench Safety Act" Compliance

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 et. seq., which became effective October 1, 1990, **shall** be in effect during the period of construction of the project. The Bidder by signing and submitting the bid is, in writing, assuring that it will perform any trench excavation in accordance with the applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance.

Method of Compliance

Cost

Bidder acknowledges that this cost is included in the applicable items of the Proposal and in the Grand Total Bid Price. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the Owner and Engineer are not, responsible to review or assess City's safety precautions, programs or costs, or the means, methods, techniques or technique adequacy, reasonableness of cost, sequences or procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Florida Statute Section 553.60 et. seq. cited as the "Trench Safety Act". Bidder is, and the City and Engineer are not, responsible to determine if any safety or safety related standards apply to the project, including, but not limited to, the "Trench Safety Act".

Name: _____

Title: _____

Date: _____

Signature: _____

[remainder of page intentionally left blank]

AFFIDAVIT REGARDING THE USE OF COERCION FOR LABOR AND SERVICES

Vendor Name: _____

Vendor FEIN: _____

Vendor's
Authorized
Representative
Name and Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

Email Address: _____

Florida Statute §787.06(13) requires all nongovernmental entities executing, renewing, or extending a contract with a governmental entity to provide an affidavit signed by an officer or representative of the nongovernmental entity under penalty of perjury that the nongovernmental entity does not use coercion for labor or services as defined in that statute. The City of Delray Beach, Florida is a governmental entity for the purposes of this statute.

As the officer or representative of the company, I certify that the company identified above does not:

- Use or threaten to use physical force against any person;
- Restrain, isolate, or confine or threaten to restrain, isolate, or confine any person without lawful authority and against his or her will;
- Use lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied towards the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroy, conceal, remove, confiscate, withhold, or possess any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification, of any person;
- Cause or threaten to cause financial harm to any person;
- Entice or lure any person by fraud or deceit;
- Provide controlled substances as outlined in Schedule I or Schedule II of Florida State Statute §893.03 to any person for the purpose of exploitation of that person.

Under penalties of perjury, I declare that I have read the foregoing document and the at the facts stated in it are true.

Signature: _____
(Authorized Signature)

Print Name
and Title: _____

Date: _____

CONE OF SILENCE

The Palm Beach County Lobbyist Registration Ordinance (Sections 2-351 through 2-357 of the Palm Beach County Code of Ordinances) is applicable in the City of Delray Beach. Section 2-355 of the Palm Beach County Lobbyist Registration Ordinance includes a "Cone of Silence" provision that limits communication during the City's procurement process in regard to this ITBC, which provides as follows:

- (a) **Cone of silence** means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitation; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.
- (b) For the purposes of this section, a person's representative **shall** include but not be limited to the person's employee, partner, officer, director, CONSULTANT, lobbyist, or any actual or potential subcontractor or CONSULTANT of the person.
- (c) Pursuant to Section 2-355 of Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all Solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the cone of silence. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and **shall** remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation **shall** provide notice of cone of silence requirements and refer to this article.
- (d) The provisions of this article **shall** not apply to oral communications at any public proceeding, including Prebid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence **shall** not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- (e) The cone of silence **shall** not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.
- (f) The cone of silence **shall** terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action that ends the solicitation process.
- (g) Any contract entered in violation of the cone of silence provisions in this section **shall** render the transaction voidable.

Contractor's Name: _____ Signature: _____

Date: _____

BID BOND

STATE OF _____)
) SS
COUNTY OF _____)

KNOW ALL MY BY THESE PRESENTS that _____ as Principal, and
_____ as surety, are held and firmly bound unto the City of Delray

Beach, Florida, hereinafter called the City in the penal sum of _____ dollars (\$) lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, whereas the Principal has submitted the accompanying bid, dated _____, for project titled:

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

NOW, THEREFORE,

- (a) It is a condition precedent to the submission of said bid that a certified check, cashiers check or bid bond in the amount of **five percent (5%)** of the base bid be submitted with said bid as a guarantee that Bidder would, if awarded the contract, enter into a written contract with the CITY for the completion of the Work specified in the Contract Documents for the amount indicated in the Bid.
- (b) If the Principal **shall** not withdraw said bond within one hundred and twenty (120) days after date of the same, and **shall** within fifteen (15) days after the prescribed forms are presented to him for signature, enter into a written contract with the CITY in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligation **shall** be void and of no effect, otherwise the sum herein stated **shall** be due and payable to the CITY and the surety herein agrees to pay said sum immediately upon demand of the CITY in good and lawful money of the United States of America as liquidated damages for failure thereof of said principal.

IN WITNESS WHEREOF, the above-bounded parties executed this instrument under their several seals,

this _____ day of _____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

I _____ (person), on behalf of
_____ (surety)

_____ (surety company) have read

and examined the Performance and Payment Bonds attached to Bid No. _____.

Signature

Date

WITNESS: If Sole Ownership or Partnership, two (2) Witnesses required. If Corporation, Secretary Only will attest and affix seal.

WITNESSES:

PRINCIPAL

(firm name)

Print Name: _____

By: _____
(Signature of Authorized Officer)

(affix Seal)

Print Name: _____

Print Name: _____

Title: _____

Business Address: _____

WITNESSES:

SURETY

(firm name)

Print Name: _____

By: _____
(Signature of Authorized Officer)

(affix Seal)

Print Name: _____

Print Name: _____

Title: _____

Business Address: _____

Name of Local Insurance Agency _____

INFORMATION REQUIRED OF BIDDER

BIDDER'S GENERAL INFORMATION:

Bidder **shall** furnish the following information. Failure to comply with this requirement will render Bid non-responsive and may cause its rejection. Additional sheets **shall** be attached as required.

- (1) CONTRACTOR'S name and address:

- (2) CONTRACTOR'S telephone number: _____

- (3) Number of years as a CONTRACTOR in this type of work: _____

- (4) Names and titles of all officers of CONTRACTOR'S firm:

- (5) Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract:

- (6) Principal Materials Manufactures and Subcontractors. This proposal is being submitted by the hereinafter stated CONTRACTOR who proposes to perform work specified and shown on the Drawings. The Bid Proposal shown on the preceding page(s) has been calculated and tabulated using basic material prices. The following is a list of material manufactures and subcontractors whose materials and services said CONTRACTOR propose to furnish and utilize if the awarded a CONTRACT for the work specified herein and shown on the Plans. It is understood that the following list is not complete but includes the names of manufacturers of the principal components and subcontractors supplying principal services to said project. It is also understood that if awarded a Contract, the CONTRACTOR will furnish the materials of the manufactures and utilize the services of the subcontractors stated herein and that if for any reason whatsoever CONTRACTOR wishes to substitute materials or subcontractors, he **shall** request permission in writing from the City stating fully the reason for making such a request prior to ordering same.

All of said manufacturers or their authorized vendors have been made aware of all the appropriate portions of the Contract Documents and agree that their materials will meet all of the requirements stated therein and that deliveries will be scheduled so as not to impede the progress of the work.

<u>Materials</u>	Manufacturer
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

<u>Subcontractors</u>	
Name	Duties
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<hr/>	<hr/>
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Signature of Bidder

By:_____

Print Name:_____

QUESTIONNAIRE

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business in the State of Florida as a Contractor?
2. What is the last project of this nature that you have completed?
3. Have you ever failed to complete work awarded to you: If so where and why?
4. Name three individuals or corporations for which you have performed work and to which you refer?
5. List the following information concerning all contracts on hand as of the date of submission of this proposal. (In case of co-venture, list the information of all co-venturers).

<u>NAME OF PROJECT</u>	<u>OWNER</u>	<u>TOTAL CONTRACT VALUE</u>	<u>CONTRACTED DATE/OF COMPLETION</u>	<u>%OF COMPLETION TO DATE</u>
----------------------------	--------------	-------------------------------------	--	---------------------------------------

(Continue list on insert sheet, if needed)

6. Have you personally inspected the proposed work and have you a complete plan for its performance?
7. Will you sublet any part of this work? If so, give details.
8. What equipment do you own that is available for the work?
(Attach additional sheets as necessary)

9. What equipment will you purchase for the proposed work?

10. What equipment will you rent for the proposed work?

State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the President and Secretary. If a partnership, state the names of all partners. If a trade name, state the names of the business under the trade name. It is absolutely necessary that this information be furnished).

Correct Name of Bidder

a) The business is a (Sole Proprietorship) (Partnership) (Corporation)

b) The address of principal place of business is _____

c) The names of the corporate officers or partners, or individuals doing business under a trade name, is as follows:

Signature of Bidder

By: _____

Print Name: _____

Business Address: _____

Incorporated under the laws of the State of _____.

END OF SECTION 2

SECTION 3: SAMPLE AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____, 20____,
by and between the CITY OF DELRAY BEACH, FLORIDA, hereinafter called the CITY or OWNER, and
_____, hereinafter called CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

- 1.1 CONTRACTOR **shall** complete all Work as specified or indicated in the Contract Documents. For the project entitled:

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

- 1.2 The Contractor, in full and complete satisfaction of its role as general contractor, hereby accepts responsibility for the completion of the Work as provided by the Contract Documents, and will perform the procurement of materials and equipment required by the Contract Documents, construction coordination, construction, supervision and project management as may be required in order to construct the Work in accordance with the Contract Documents such that the finished Work **shall** be performed and completed and the Work will be performed in accordance with all required state and local code requirements as are described in the Contract Documents. Notwithstanding, the foregoing **shall** not be construed to impose any design responsibility on Contractor except where such design responsibility is an existing contractual requirement of the Contractor pursuant to Florida law in performance of the Work or the Contract Documents.
- 1.3 The Contractor **shall** schedule and attend regular meetings with the City and Consultant as required for the timely and proper completion of the Project, but in no event less than twice a week. The following people **shall** attend the meeting on behalf of Contractor: Project Executive and General Superintendent.
- 1.4 The Contractor hereby represents and warrants to the City that the Contractor has and will continue, to the extent appropriate during the Project: (1) to evaluate the scope, schedule and budget established by the City, for the Project in order, among other things, (a) to assess the quality and soundness of such program, schedule and budget, (b) to identify and evaluate alternatives to the City's schedule so as to reduce the time required for construction, (c) to evaluate and recommend alternative materials and systems and methods of achieving the City's program schedule and cost requirements or other design parameters, and (2) as and when requested by the City or the Consultant, to discuss and review the cost, scope and schedule any suggested revisions to same.
- 1.5 The Contractor hereby represents and warrants to the City that (a) the Contractor has carefully reviewed and **shall** continue to review the Drawings (including all notes and specifications contained in the Drawings), designs and other Contract Documents, (b) the responsibilities of the Contractor are properly identified and assigned therein, and (c) the Contractor will timely bring to the attention of City (via written notification) if it discovers that the Drawing (including all notes and specifications contained in the Drawings) contain any errors, omissions, inconsistencies, or areas of conflict or overlap in the Work to be performed by the Contractor, with sufficient advanced notice so as not to delay the progress of the Work.

- 1.6 The Contractor **shall** coordinate and integrate the activities of the Consultant, Contractor, the City, and other persons or entities participating in the construction of the Project.
- 1.7 The Contractor hereby represents and warrants that the Contractor has particular expertise and experience in the construction of projects similar to the Project and in the performance of the Work and other services required hereunder.
- 1.8 The Contractor **shall** not be relieved of its obligations to perform the Work in accordance with the Contract Documents and applicable Florida Law, either by tests, inspections, approvals, activities, duties, actions or inactions of the Threshold inspectors, special inspectors, the Consultant, building department inspectors, building department officials or by persons or entities other than the Contractor.
- 1.9 No Recovery for Changed Market Conditions.
In entering into the Agreement, the Contractor represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19, Monkey Pox, and related worldwide pandemics ("Pandemics"); and (2) the current military conflict involving Russia and the Ukraine (the "Ukraine Military Conflict"). The Contractor further represents and warrants that in entering into this Agreement, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to impacts from the Pandemics and the Ukraine Military Conflict. The Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account these impacts from the Pandemics and the Ukraine Military Conflict, and has included all of those factors in the Project Schedule and Contract Sum.

The Contractor will not seek any price increases or time extensions relating to or arising from any impacts from the Pandemics or Ukraine Military Conflict.

The City **shall** not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

Article 2. CONSULTANT.

The Project will be administered by a third-party construction engineering and inspection firm, who is hereinafter called CONSULTANT and who will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. ENTIRE AGREEMENT.

- 3.1 The Contract Documents consist of this Agreement, all terms and conditions of the solicitation, General and Supplementary Conditions, the City's Bid Package (including M/WBE Program Requirements and Project Manual), Drawings and Specifications, Addenda issued prior to execution of this Agreement, other documents and exhibits listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein (the "Contract Documents").
- 3.2 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent or in conflict with any of the terms of this Agreement, this Agreement **shall** govern. The parties **shall** not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. NO CHANGES, AMENDMENTS OR MODIFICATIONS OF

ANY OF THE TERMS OR CONDITIONS OF THE CONTRACT DOCUMENTS **SHALL** BE VALID UNLESS REDUCED TO WRITING AND SIGNED BY BOTH PARTIES.

- 3.3 Any of the Contract Documents not attached hereto but expressly identified in this Agreement are hereby incorporated by reference and **shall** be deemed to be of the same force and effect as if actually attached hereto.
- 3.4 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. On the Drawings, given dimensions **shall** take precedence over scaled measurements and large-scale drawings over small-scale drawings.
- 3.5 In the event of any conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities, keeping in mind that the better quality or greater quantity of Work **shall** be provided in accordance with the City's interpretation:
- (1) This Agreement, the General Conditions, and all Exhibits hereto, as modified;
 - (2) Addenda, with those of later date having precedence over those of earlier date;
 - (3) City's Bid Package; and
 - (4) Drawings and Specifications.
- 3.6 In the case of an inconsistency between the Drawings and Specifications or within either document not clarified by an Addendum, the better quality or greater quantity of Work **shall** be provided in accordance with the City's interpretation.

Article 4. CONTRACT SUM.

- 4.1 The City **shall** pay, and the Contractor **shall** accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Contract Price (including all Contractor fees) of _____ dollars (\$ _____), subject to additions and deductions by Change Order as provided in the Contract Documents. The Contract Price **shall** include Contractor's Fee for the proper performance of the Work. Contractor agrees and represents that the level of staffing, administrative resources, and other conditions of General Conditions **shall** be sufficient for the Project throughout completion of the Work.
- 4.2 It is the intent and understanding of Contractor in providing a Contract Price for this Work, that the Contract Documents provide for the construction of the Work by the Contractor, including all devices, fasteners, materials or other work not shown in the Drawings but which are reasonably inferable therefrom and any and all incidental accessories necessary to complete the Work (even if not specified in the description of the Work, but necessary for proper installation and operation (not arising from a design deficiency in the design criteria of the equipment) of the Work as required by the Contract Documents), all of which **shall** be included as part of the Cost of the Work. The expression "reasonably inferable" and similar terms in the Contract Documents **shall** be interpreted to mean reasonably inferable by a contractor familiar with the Work and exercising the care, skill and diligence of the Contractor by the Contract Documents. Notwithstanding, the foregoing **shall** not be construed to impose any design responsibility on Contractor except where such design responsibility is contractually required or an existing requirement of Florida law in the performance of the Work or the Contract Documents.
- 4.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Consultant, Contractor **shall** include in the Contract Price for such further development consistent with the Contract Documents and reasonably inferable therefrom as necessary to produce the indicated results (not arising from a design deficiency in the design criteria). Such further development does not include changes in scope, systems, kinds and quality of materials,

finishes or equipment, all of which, if required, **shall** be incorporated by Change Order. Contractor will construct the Project in strict accordance with the Contract Documents.

4.4 Subcontractor Buyout/Value Engineering

4.4.1 Contractor **shall** work with the City to negotiate the most complete and economical deals with the Subcontractors that have not been “bought out” as of the date of this Agreement in order to establish and or achieve the Contract Price.

4.4.2 In addition, in order to control costs, the Contractor **shall** submit to the City, for the City’s review for any unbought scope of Work, (i) a bid analysis and list of proposed Subcontractors for the performance of the several portions of the Work, (ii) the scope of Work to be performed under each respective subcontract, (iii) a detailed estimate of the Cost of the Work based on such bids, (iv) a list of alternate selections of persons or entities for each proposed Subcontractor and their respective bids, along with a list of the differences between the alternate bids and those set forth in the bid analysis, and (v) the instructions, clarifications, written responses, and other information given to or submitted by the bidders. The Contractor **shall** consult with the City before awarding the subcontract and **shall** provide the City with a copy of each proposed subcontract for the City’s review. The Contractor **shall** provide the City with a complete copy of each executed subcontract.

4.4.3 Until the Subcontractor Buyout is complete, Contractor **shall** provide City with written ongoing budget updates on a weekly basis or as requested by City.

4.4.4 Contractor **shall** participate in Value Engineering the Contract Documents with the City and/or Consultant with the goal of finding acceptable means for reducing the Cost of the Work. Upon acceptance by City of recommendation for Value Engineering, the Contract Documents **shall** be modified to reflect such changes. All savings in connection with Value Engineering of the Work **shall** revert to City.

4.5 Contractor represents to City that prior to execution of this Agreement, Contractor has compared and reviewed all general and specific details on the Drawings and that all conflicts, discrepancies, errors, and omissions, which are within the commonly accepted knowledge base of a licensed general contractor and subcontractors, or which a reasonably prudent licensed general contractor or subcontractor would have discovered, have been disclosed to the City. Contractor **shall** represent the same upon inspection of any Drawings prepared after execution of this Agreement. Therefore, Contractor warrants that 1) the Contract Price includes, without limitation, the cost of correcting all conflicts, discrepancies, errors, or omissions which Contractor identified; 2) that Contractor’s review and comparison of all drawings has been taken into consideration the Project can be constructed in accordance with the Contract Documents and therefore, the Contractor represents that the Contract Price represents the total cost of the Work; 3) that Contractor can complete the Project in the time set forth in the Agreement and the approved Project Schedule; and 4) that Contractor has considered all customary issues that could impact price and time, including the inefficiencies pertaining to the Pandemics as well as the Ukrainian Military Conflict.

4.6 Schedule of Values. The Contractor **shall** provide to City, for City’s written approval, a written Schedule of Values with supporting Subcontractor bids and scope of work used to establish each line item in the Contract Price, which Schedule of Values **shall** be used for all payment applications going forward.

Article 5. CONTRACT TIME; LIQUIDATED DAMAGES.

5.1 The work will be substantially completed within **One Hundred Thirty-Five (135)** calendar days from the date of the issuance of the Notice to Proceed and completed and ready for final payment in accordance with paragraph 15.13 of the General Conditions within **thirty (30) calendar days** from the date of Substantial Completion.

- 5.2 Liquidated Damages. The CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that the CITY will suffer financial loss if the Work is not completed within the times specified in paragraph 5.1 above, plus any extensions thereof allowed solely in accordance with Article 13 of the General Conditions.

They also recognize that the actual loss suffered by the CITY if the Work is not completed on time is not readily ascertainable at the time of entering this Contract. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR **shall** pay the CITY for each calendar day that expires after the time specified in paragraphs 5.1 for substantial completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR **shall** neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR **shall** pay the CITY for each calendar day that expires after the time specified in paragraph 5.1 for completion and readiness for final payment. CONTRACTOR expressly acknowledges that such sum is not payable as a penalty but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, and additional overhead and costs likely to be sustained by the CITY, estimated at the time of executing the Contract. If the CITY reasonably believes in its discretion that Substantial Completion will be delayed, it **shall** be entitled, but not required to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. Partial use or occupancy of the Work **shall** not result in the Work deemed substantially completed, and such partial use or occupancy **shall** not be evidence of Substantial Completion.

- 5.2.1 Amount of Liquidated Damages. Applicable liquidated damages are the amounts established in the following schedule:

<u>Original Contract Amount</u>	<u>Daily Charge Per Calendar Day</u>
\$299,999 and under.....	\$980
\$300,000 but less than \$2,000,000.....	\$1,699
\$2,000,000 but less than \$5,000,000.....	\$2,650
\$5,000,000 but less than \$10,000,000.....	\$3,819
\$10,000,000 but less than \$20,000,000.....	\$4,687
\$20,000,000 but less than \$40,000,000.....	\$7,625
\$40,000,000 and over.....	\$10,467 plus 0.00005 of any amount over \$40 million (rounded to nearest whole dollar)

- 5.2.2 The above liquidated damages provision **shall** not affect the City's right to terminate this Agreement as provided in this Agreement nor **shall** it limit any of the other remedies as provided in the Contract Documents. The City's exercise of its right to terminate this Agreement **shall** not release City's claim for liquidated damages in the amount set forth herein or Contractor's defenses thereto.
- 5.2.3 Assessments of liquidated damages **shall** be immediately due and payable to the City or, at the City's option, may be deducted from payments that may be due and owing to Contractor. To the extent the City agrees in writing to phased Substantial Completion, the above-referenced liquidated damages will apply as to each respective phase of Substantial Completion.
- 5.2.4 Any Subcontract Agreements providing for liquidated damages at a per diem amount lower than the per diem amount set forth in this Agreement is subject to City's prior written approval.
- 5.3 Recovery of Damages Suffered by Third Parties. In addition to the damages provided for in paragraph 5.2.1 and pursuant to Section 337.18 of the Florida Statutes, when the CONTRACTOR fails to complete the work within the Contract Time the CITY may recover from the CONTRACTOR

amounts that the CITY pays for damages suffered by third parties unless the failure to timely complete the work was caused by the CITY's act or omission.

- 5.4 In addition to the liquidated damages set forth above, City **shall** also be entitled to proceed directly against Subcontractors and suppliers (in Contractor's name) responsible for delays in achieving Substantial Completion for the full amount of damages City has incurred, plus any and all acceleration and/or Extraordinary Measures costs as provided in the General and Supplementary Conditions. Said pass-through claim **shall** be at Contractor's sole cost and expense.

Further, Contractor **shall** make appropriate claim(s) against all available insurance and the Subcontractor, supplier, and/or manufacturer responsible for delays in achieving Substantial Completion, and if the Subcontractor, supplier and/or manufacturer fails to pay costs incurred by Contractor and the City for the City's actual damages, acceleration, and/or Extraordinary Measures costs, Contractor **shall** default or terminate such Subcontractor and/or supplier and Contractor **shall** make and diligently pursue, at Contractor's sole cost and expense, the appropriate claim against its Subcontractors, for the benefit of City. Any recovery from Contractor's Subcontractors and suppliers **shall** be included in fully compensating City, and not in place of City's recovery of liquidated damages from Contractor. To assist City with claims against Subcontractors and suppliers as set forth above, Contractor **shall** provide City with Project Records as determined by City to assist City in identifying Contractor's Subcontractors and suppliers responsible for delays in achieving Substantial Completion and or Final Completion.

Article 6. PAYMENT PROCEDURES.

CONTRACTOR **shall** submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by the CONSULTANT as provided in the General Conditions.

**ATTN: Engineering Division Manager
Engineering Division, Public Works Department
Swinton Operations Complex
434 South Swinton Avenue
Delray Beach, Florida 33444**

- 6.1 Progress Payments. The CITY **shall** make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by CONSULTANT, on or about the First day of each month during construction as provided below and to the extent Contractor's Applications for Payment are timely submitted pursuant to the Contract Documents. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values initially submitted by the Contractor and approved by the City as established in Paragraph 3.6.3 of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements. Each Application for Payment submitted by the Contractor **shall** be accompanied by substantiating data and lien waivers as provided in the Contract Documents.
- 6.1.1 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of the work completed until 50% of the work has been completed and installed, then payment may be made in an amount equal to 95% of the work completed, but in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT **shall** determine, or the CITY may withhold, in accordance with paragraph 15.7 of the General Conditions.
- 6.1.2. Prior to Substantial Completion, progress payments for materials and equipment not incorporated in the Work but delivered and suitably stored and accompanied by documentation satisfactory to the CITY, as provided in paragraph 15.2 of the General Conditions, will be made in an amount equal to 0% as established by the Schedule of Values.

- 6.1.3 The CITY is entitled to withhold amounts due CONTRACTOR for any defective or non-conforming work as well as for liquidated damages.
- 6.1.4 In addition, as a further condition to payment of each progress payment, Contractor **shall** submit to the City and Consultant: (i) a sworn and certified Progress Payment Affidavit, which recites that all laborers, material suppliers and Subcontractors dealing with the Contractor have been paid in full through the date of the prior application for payment which has been received by Contractor from City, with the exception of disputed payments; (ii) a partial release of lien conditioned upon payment from Contractor for the current Application for Payment, (iii) partial releases of lien from all lienors providing Work on the applicable Application for Payment through the date of the last payment made, (iv) partial releases of lien conditioned only upon payment from all lienors providing Work on the applicable Application for Payment, through the date of the current Application for Payment, (v) any evidence of payment of any indebtedness incurred with respect to the Work of Contractor, as may be required by the Consultant and such other evidence that Consultant may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed, and (vi) where required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made.
- 6.1.5 Each Application for Payment **shall** be based on the Schedule of Values approved by the City unless subsequently amended by Change Order in accordance with the Contract Documents. If the Schedule of Values is subsequently amended by Change Order in accordance with the Contract Documents, then each subsequent Application for Payment **shall** be based on the Amended Schedule of Values. The Schedule of Values **shall** allocate the entire Contract Price among the various portions of the Work. As individual subcontracts are executed, the actual subcontract value will be identified separately in the Schedule of Values in place of any estimates that made up the original Contract Price, with any remaining portion of the line item carried in the same scope of Work, to complete the Work in any particular division, as long as the Contract Price is not increased. The Schedule of Values **shall** be prepared in such form and supported by such data to substantiate its accuracy as the City or Consultant may require. This Schedule of Values and each update approved by the City **shall** be used as a basis for reviewing the Contractor's Applications for Payment.
- 6.1.6 In taking action on the Contractor's Application For Payment, the Consultant and the City **shall** be entitled to reply on the accuracy and completeness of the information furnished by the Contractor and **shall** not be deemed to represent that the City and/or Consultant has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with this Article or other supporting data; that the Consultant and/or the City has made exhaustive or continuous on-site inspections; or that the City and/or Consultant has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Agreement. Such examinations, audits, and verifications, if required by City, will be performed by the City's auditors acting in the sole interest of the City.
- 6.1.7 For each progress payment made prior to Substantial Completion of the Work as defined in the Contract Documents, determined and certified by Consultant and/or the City, the City may withhold the following amount, as retainage, from the payment otherwise due: Five Percent (5%) of all payments until the Work reaches Final Completion as defined in the Contract Documents and determined and certified by Consultant and City. Contractor **shall** include a similar retainage provision pertaining to its subcontractors and suppliers.
- 6.1.8 In the event of any default by the Contractor under the Contract Documents for which the Contractor has not cured or commenced to cure, the City may withhold any payment or

part of any payment in the amount of the costs and damages incurred by City to correct, remedy and/or mitigate any Contractor defaults or the amount of the costs of damages, including Liquidated Damages (provided the Contract Time has expired), reasonably estimated to be incurred to correct, remedy and/or mitigate any Contractor defaults including, but not limited to: (1) defective Work not remedied; (2) claims or liens filed; (3) failure of the Contractor to make payments in accordance with the terms of this Agreement and the subcontract agreements for properly performed Work by the Subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all lienors giving notices; (5) damage to the City's property caused by Contractor, its Subcontractors or anyone working for Contractor, notwithstanding insurance coverage as required by the Contract Documents; (6) failure of the Work to progress satisfactorily or according to schedule; and (7) failure to carry out the Work in accordance with the Contract Documents.

- 6.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 15.13 of the General Conditions, the CITY **shall** pay the remainder of the Contract Price as recommended by CONSULTANT as provided in said paragraph 15.13.
- 6.3 The making of progress payments or Final Payment **shall** not constitute or be deemed to be a waiver by the City of any claims which the City may have against the Contractor under the provisions of this Agreement or otherwise: and provided, further, that the making of the Final Payment **shall** not be deemed a waiver by the City of any claims which the City may have against the Contractor for latent defects or any other defect or an incomplete item which is not readily apparent at the time such Final Payment is made; and provided further, that the making of Final Payment **shall** not be deemed a waiver by the City of any obligation of the Contractor under the provisions of the Contract Documents or otherwise to repair or correct any Work or materials that prove defective as a result of faulty materials, equipment or workmanship.
- 6.4 Acceptance of Final Payment by the Contractor, a Subcontractor or material or equipment supplier **shall** constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment or as provided in this Agreement.

Article 7. SUBCONTRACTS.

No more than eighty percent (80%) of the dollar value of the total Work under the Contract Documents may be accomplished by subcontractors. The balance of Work must be accomplished by selected CONTRACTOR'S own forces.

Article 8. CONTRACTOR'S REPRESENTATIONS.

In order to induce the CITY to enter into this Agreement CONTRACTOR makes the following representations:

- 8.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 8.2 CONTRACTOR has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 8.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.3 of the General Conditions
- 8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 8.5 CONTRACTOR has given CONSULTANT prompt written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents no later than seven (7) calendar days from discovery of such, and the written resolution thereof by CONSULTANT is acceptable to CONTRACTOR.

Article 9. NO DAMAGES FOR DELAY.

- 9.1 All time in the Contract Documents is calculated on a consecutive calendar day basis.
- 9.2 Time is of the essence in this Agreement, and any breach of same **shall** go to the essence hereof, and CONTRACTOR, in agreeing to complete the Work within the time herein mentioned, has taken into consideration and made allowances for all reasonable hindrances and delays incident to Contractor's Work.
- 9.3 CONTRACTOR agrees to commence the Work when directed by the CITY and to diligently and continuously perform such Work and to coordinate the Work with other Work being performed on the Project by other trades and/or Separate Contractors, if any, so that the CITY **shall** not be delayed by any act or omission of CONTRACTOR in completion of the Project within the time specified above.
- 9.4 CONTRACTOR **shall** not be entitled to any claim for damages on account of hindrance or delays from any cause whatsoever, but if caused by any act of God or active interference on the part of the CITY, such act, hindrance or delay may only entitle the CONTRACTOR to receive an extension of time as its sole and exclusive remedy for such delay, as set forth in Article 13 of the Contract General Conditions. Contractor **shall** not be entitled to an increase in the Contract Price or to payment of any other additional monies from the City for costs incurred as a result of such delay, including additional or extended General Conditions costs or General Requirements costs. The City's exercise of its rights under this Agreement **shall** in no way be considered active interference.
- 9.4.1 An extension of time to complete the Work **shall** be determined by the CONSULTANT provided the CONTRACTOR provides CONSULTANT and CITY with notice in writing of the cause of said act, hindrance, or delay within twenty (20) calendar days after its occurrence.
- 9.4.2 In the event the request for extension is not made in writing within that twenty-day time period, CONTRACTOR acknowledges and agrees it has forever waived any and all rights to such an extension.
- 9.4.3 All extensions of time **shall** be authorized only by a written change order executed by the CITY, CONSULTANT, and CONTRACTOR; in the absence of a written and fully executed change order, CONTRACTOR **shall** not be entitled to any claim for additional time.
- 9.4.4 This "no damage for delay" provision **shall** encompass any damages for delay or disruption even if the CONTRACTOR completes construction of the Work in a timely fashion in accordance with this Agreement.

9.4.5 Damages as referenced in this “no damage for delay” provision **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, consequential damages, liquidated damages and/or punitive damages.

9.4.6 The CONTRACTOR recognizes and specifically acknowledges the terms and conditions of this “no damage for delay” clause upon execution of this Contract.

Article 10. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between the CITY and CONTRACTOR concerning the Work consist of the following:

- 10.1 This Agreement.
 - 10.2 Advertisement for Bids.
 - 10.3 Instructions to Bidders.
 - 10.4 Bid Submittal.
 - 10.5 Bid Bond.
 - 10.6 Florida Performance and Payment Bonds.
 - 10.7 Certificates of Insurance.
 - 10.8 Notice of Intent to Award.
 - 10.9 Notice to Proceed.
 - 10.10 Certificate of Substantial Completion.
 - 10.11 Warranty of Title.
 - 10.12 Final Receipt.
 - 10.13 Standard General Conditions.
 - 10.14 Technical Specifications.
 - 10.15 Construction Plans dated _____.
- with each sheet bearing the following general title:

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

- 10.16 Exhibits to this Agreement.
- 10.17 Addenda number _____ to _____, inclusive.
- 10.18 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 4.4 and 4.5 of the General Conditions.

- 10.19 The documents listed above are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in this Article 10. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 4.4 and 4.5 of the General Conditions.

Article 11. INDEMNITY.

- 11.1 In consideration of Ten Dollars (\$10.00) in hand paid and other valuable consideration, receipt of which is hereby acknowledged, CONTRACTOR agrees to defend, indemnify, and hold harmless the CITY, their agents, and employees in accordance with this Article 11 and paragraph 7.28 of the General Conditions which is incorporated herein and made a part hereof as if fully set forth herein. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statutes 725.06, as amended. It is further the specific intent and agreement of said parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.
- 11.2 To the fullest extent permitted by law, the Contractor **shall** defend, indemnify and hold harmless the City, the Consultant, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees (at the trial and appellate levels), arising out of or resulting from performance of the Work, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation **shall** not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article 11.
- 11.3 In any and all claims against the Indemnified Parties by any employee of the Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Agreement **shall** not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- 11.4 The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion **shall** be considered severed such that it will not affect the remaining portions of these indemnification provisions.
- 11.5 The Indemnitors' indemnity obligations under this Section **shall** also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), and punitive and consequential damages (if any) arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with any provision of the Contract Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Agreement and/or the other the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Moreover, and without limiting the foregoing, the Indemnitor's indemnity obligations under this Section include any and all claims by third parties against Indemnified Parties for consequential damages arising from and/or in connection with this Agreement and/or the performance and/or failure of the Work.

- 11.6 The Contractor **shall** indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Agreement.
- 11.7 The Contractor **shall** include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify, and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as the Contractor is liable to the City pursuant to this provision.
- 11.8 The provisions of this Section **shall** survive Final Completion and Final Payment or termination of this Agreement.

Article 12. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Agreement be delayed beyond the specified or adjusted time limit authorized by the City, CONTRACTOR **shall** reimburse the CITY for all expenses of CONSULTING and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for CONSULTING and inspection incurred by the CITY will be charged to CONTRACTOR and be deducted from payments due CONTRACTOR as provided by this Contract. Said expenses **shall** be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

Article 13. MISCELLANEOUS.

- 13.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meaning indicated in the General Conditions.
- 13.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 13.3 The CITY and CONTRACTOR each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- 13.4 The agreement **shall** be void if not signed by both the CITY and the CONTRACTOR.
- 13.5 No change or modification of this Agreement **shall** be valid unless in writing and signed by City and the duly authorized representative of Contractor. No waiver of any of the provisions of this Agreement **shall** be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 13.6 The partial or complete invalidity of any one or more provisions of this Agreement **shall** not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, **shall** not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

Article 14. CITY PROVISIONS.

- 14.1 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**
- 14.2.1 Contractor **shall** comply with public records laws, specifically to:
- 14.2.1.1 Keep and maintain public records required by the City to perform the service.
 - 14.2.1.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
 - 14.2.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
 - 14.2.1.4 Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor **shall** destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor **shall** meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
 - 14.2.1.5 If the Contractor does not comply with this section, the City **shall** enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.
- 14.2 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.
- 14.3 The continuation of this Agreement beyond the end of any fiscal year **shall** be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 14.4 By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the

termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs **shall** be the responsibility of the Contractor.

- 14.5 This Agreement **shall** be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement **shall** only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party **shall** pay their own attorney's fees and costs, including appellate fees and costs.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the CITY and CONTRACTOR have caused this Agreement to be executed the day and year shown above.

ATTEST:

CITY OF DELRAY BEACH

Alexis Givings, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

CONTRACTOR

By: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification ____

Type of Identification Produced _____

Notary Public – State of _____

SAMPLE SURETY PERFORMANCE AND PAYMENT BOND

Bond No _____

By this Bond, We _____, as Principal, whose principal business address and phone number are _____, as Contractor under the contract dated _____, 20____. Between Principal and the City of Delray Beach, whose principal address and phone number are _____ for the construction of:

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

(hereinafter referred to as "Contract") the terms of which Contract are incorporated by reference in its entirety into this Bond and _____, as Surety, whose principal business address and telephone number are _____ the sum of (U.S. dollars) \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that Principal:

1. Performs, all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract and
3. Pays City all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that City sustains because of a default by Principal under the Contract, including but not Limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Contract.

then this bond is void; otherwise, it remains in full force.

In the event that Principal **shall** fail to comply fully with, carry out and perform the terms and conditions of the Contract the Surety, following receipt of a written demand by the Obligee to correct Principal's default(s), and having failed to correct such default (s) within a reasonable time , **shall** be deemed to be in default fifteen (15) days after receipt of an additional written demand by the Obligee to correct the Principal's default, and the Obligee **shall** be entitled to enforce any remedy against Surety available to the Obligee including, but not limited to recovery of damages for the Surety's delay.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty **shall** be deemed to be a period of one (1) year from the date of final acceptance by the City. This Bond does not limit the City's ability to pursue suits directly with the Principal seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3) include Florida Statutes.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05 (2), Florida Statutes.

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.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20____.

CONTRACTOR: _____
(Contractor Name)

WITNESS: _____ BY: _____
(President, Managing Partner, or Joint Venturer)

(SEAL)

SURETY: _____

FLORIDA AGENT OF SURETY: _____

(Copy of Agent's current Identification Card as issued by State of Florida Insurance Commissioner must be attached)

WITNESS: _____ BY: _____
(Attorney-in-Fact)

(CORPORATE SEAL)

LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: _____

ISSUANCE DATE: _____

APPLICANT:
{Name of Corporation}
{Address}
{City, State, Zip}

BENEFICIARY:
CITY OF DELRAY BEACH
100 N.W. 1ST AVENUE
DELRAY BEACH, FL 33444

FOR U.S.D. \$ _____
DATE OF EXPIRATION: _____

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN FAVOR OF THE BENEFICIARY, THE CITY OF DELRAY BEACH, FLORIDA FOR THE ACCOUNT OF THE ABOVE-REFERENCED APPLICANT, AVAILABLE BY YOUR DRAFTS DRAWN ON **{Name of Bank}** PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF **{Amount of Money}**, THE AMOUNT REFERENCED ABOVE.

DEMANDS OF THE LETTER OF CREDIT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CITY MANAGER OF THE CITY OF DELRAY BEACH CERTIFYING EITHER: (1) THAT SAID LETTER OF CREDIT IS ABOUT TO EXPIRE AND HAS NOT BEEN RENEWED, OR (2) THAT WORK HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND AGREEMENTS (INCLUDING ANY AMENDMENTS THEREOF) FOR THE FOLLOWING PROJECT: **{Name of Project}** (THE 'PROJECT').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR FROM EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, WITHOUT ANY AMENDMENT, UNLESS THIRTY (30) DAYS BUT NO MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE **SHALL** NOTIFY THE CITY OF DELRAY BEACH IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR BY COURIER VIA HAND DELIVERY AT THE ABOVE-LISTED ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THE CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO **{Name of Bank}** (THE 'BANK'), WHICH IS DULY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA IN ACCORDANCE WITH THE TERMS HEREOF. IF A DRAFT, AS DESCRIBED IN THIS LETTER OF CREDIT, IS PRESENTED PRIOR TO THE EXPIRATION DATE AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT AND UPON PRESENTATION IT IS WRONGFULLY DISHONORED BY THE BANK, THE BANK AGREES TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD THE CITY PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

{Name of Bank Branch}

{Address}

{City, State, Zip}

ATTN: **{Department}**

ALL DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INSTRUMENT WHICH WILL BE RETURNED TO THE BENEFICIARY AFTER ENDORSING THE BACK OF SAME WITH THE AMOUNT OF EACH DRAWING BY US.

PARTIAL DRAWINGS ARE PERMITTED.

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE OF THE ORIGINAL CREDIT. ALL DRAFTS MUST BE MARKED "DRAWN UNDER **{Name of Bank}** LETTER OF CREDIT NUMBER _____ DATED _____, 20__.

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600", AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW **SHALL** PREVAIL. IF A CONFLICT BETWEEN THE LAW OF ANOTHER STATE OR COUNTRY AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW **SHALL** PREVAIL. VENUE FOR ANY DISPUTES RELATING TO THE ENFORCEMENT OF THIS LETTER OF CREDIT **SHALL** BE PALM BEACH COUNTY, FLORIDA.

{Name of Bank}

BY: _____

{Name}

{Title}

LIMITED POWER OF ATTORNEY

_____ and _____
(Principal) (Surety)

hereby grants the City Clerk of the City of Delray Beach Power of Attorney to insert the date of execution on the contract, surety bonds to the contract and agreement entitled, _____

In Witness Whereof, we have hereunto set our hand and seal this _____ day of _____, 20____.

Principal (SEAL)

Surety (SEAL)

WITNESS: _____

PRINT NAME: _____

WITNESS: _____

PRINT NAME: _____

[remainder of this page left blank intentionally]

CORPORATE ACKNOWLEDGEMENT

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ (name of officer or agent, title of officer or agent),
of _____ (name of corporation acknowledging), a
_____ (state or place of incorporation) corporation, on behalf of the corporation. He/She
is (personally known to me) (or has produced identification) _____
(type of identification).

By: _____

Print Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature and Stamp of Notary Public

My Commission Expires:

[remainder of this page left blank intentionally]

NOTICE OF INTENT TO AWARD

DATE: _____

TO: _____
(Bidder)

ADDRESS: _____

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

You are notified that your Bid dated _____, for the above Contract has been considered. You are the apparent Successful Bidder. Accordingly, notice is hereby given of the Tentative Award of this contract to you.

The Contract Price of your contract is: \$ _____

Dollars

Cents

Five (5) copies of each of the proposed Contract Documents, (except Drawings) accompany this Notice of Intent to Award.

You must comply with the following conditions precedent within fifteen (15) days of the date of this Notice of Intent to Award (that is by _____):

1. You must deliver to the CITY five (5) fully executed counterparts of the Agreement including all the Contract Documents. Each of the Contract Documents must bear your signature on the cover page of each set of Contract Documents.
2. You must deliver with the executed Agreement, Insurance Certificates and the Contract Security Bonds as specified in the Instructions to Bidders and in Article 6 of the General Conditions together with Power of Attorney for use by the City for the purpose of inserting the date of execution of the Contract Surety Bonds and the Agreement, within fifteen (15) calendar days from the date of this Notice to you.
3. You should have the following prepared for the preconstruction conference.
 - (a) A preliminary project construction progress schedule.
 - (b) An itemized schedule of payment and values.
 - (c) A detailed shop drawing submission plan.

Failure to comply with these conditions within the time specified will entitle the CITY to consider your bid abandoned, to annul this Notice of Intent to Award and to declare your Bid Security forfeited.

Within forty-five (45) days after you comply with those conditions, if the contract is approved by the City Commission, the CITY will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

City of Delray Beach

By: _____

Print Name: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF INTENT TO AWARD is hereby acknowledged by
_____ this the _____ day of _____, 20____.

By: _____

Print Name: _____

Title: _____

Copy to: City of Delray Beach
(Use Certified Mail, Return Receipt Requested)

NOTICE TO PROCEED

DATE: _____

TO: _____
(Contractor)

ADDRESS: _____

ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010

You are notified that the Contract time under the above contract will commence to run on the _____ day of _____, 20____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement the dates of Substantial Completion and Final Completion are the _____ day of _____, 20____ and the _____ of _____, 20____, respectively.

City of Delray Beach

By: _____

Print Name: _____

Title: _____

Copy to _____
(Use Certified Mail, Return Receipt Requested)

cc: Purchasing Manager
Project file

CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE: _____

TO: _____
(Contractor)

ADDRESS: _____

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

CONTRACT DATE: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

TO: City of Delray Beach, Florida

AND TO: _____
(CONTRACTOR)

The Work to which this Certificate applies has been inspected by authorized representatives of the CITY, CONTRACTOR and CONSULTANT, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

(Date of Substantial Completion)

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list **shall** be completed or corrected by CONTRACTOR within _____ days of Substantial Completion.

The responsibilities between the CITY and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance, and warranties **shall** be as follows:

RESPONSIBILITIES:

CITY:

CONTRACTOR:

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Executed by CONSULTANT on this ____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

CONTRACTOR accepts this Certificate of Substantial Completion on this ____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

The CITY accepts this Certificate of Substantial Completion on this ____ day of _____, 20__.

By: _____

Print Name: _____

Title: _____

WARRANTY OF TITLE
(For Periodic Progress Payments)

STATE OF _____)

) SS

COUNTY OF _____)

CONTRACTOR: _____

ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010

BEFORE ME, the undersigned authority, personally appeared _____
(the "Affiant"), who after being duly sworn, says that he is the "CONTRACTOR", pursuant to a Contract (the
"Contract") dated the ____ day of _____, 20____, with the CITY OF DELRAY BEACH, FLORIDA,
(the "OWNER"), for the supply of certain labor and/or materials (the "Work"), to certain property, as shown
and described in the Contract Documents, subsequent Addenda or Change Orders, and on behalf of the
Contractor makes the following warranties:

- I. The CONTRACTOR warrants that it has fully completely in accordance with the plans and specifications therefore, that portion of the Work, pursuant to the Contract (the "Completed Work") covered by the attached Periodic Progress Payment Request.
- II. The CONTRACTOR further warrants and represents that:
 1. All subcontractors, vendors, material men, suppliers, and other parties of whatever kind of nature who are entitled to payment from the CONTRACTOR for providing labor and/or materials to the CONTRACTOR pursuant to the Contract as of the date in the last previous request for payment have been paid in full and therefore have delivered to the CONTRACTOR validly executed Partial Release of claims with respect thereto.
 2. Title to all materials and equipment covered by the attached Periodic Pay Request for Payment dated the ____ day of _____, 20____, passes to the City at the time of payment free and clear of all liens.

By: _____

Print Name: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Signature and Stamp of Notary Public
My Commission Expires:

FINAL RECEIPT

STATE OF _____)
) SS
COUNTY OF _____)

_____ being first duly sworn, deposes and says as follows:

1. HE/SHE is _____ of _____
(Title) (Name of Corporation or Firm)
a _____ corporation which is named in Construction Contract dated the
_____ day of _____, 20____, between said corporation as the CONTRACTOR and the CITY OF
DELRAY BEACH, FLORIDA (the CITY) as the OWNER for the construction of:

**ITBC NO.: 2025-025
Atlantic Avenue Pavilion Repair
PROJECT NO.: 24-010**

2. CONTRACTOR has fully completed all construction and work under the Contract and Title to all work, materials and equipment under the Contract passes to the CITY at the time of final payment, free and clear of all liens, and all labors, and material men and subcontractors have been paid in full for performing or furnishing the work, labor or materials under the Contract.

3. Receipt by CONTRACTOR of the final payment from CITY in the amount of
_____ dollars (\$_____)

shall constitute a full release and discharge by CONTRACTOR to the CITY of all claims or liens of CONTRACTOR against OWNER arising out of, connected with, or resulting from performance of the Contract, including full payment for all extra work and material furnished by the undersigned in the construction of said improvements.

4. The undersigned further certifies that all non-exempt taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

5. This statement under oath is given in compliance with Sections 713.05 and 713.06, Florida Statutes.

Signed and sealed in
the presence of:

Affiant Contractor
By: _____
Print Name: _____
Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature and Stamp of Notary Public

My Commission Expires:

END OF SECTION 3

SECTION 4: SCOPE OF WORK AND LIST OF EXHIBITS

1. **General Requirements**

The Scope of Work requires the furnishing of all services and other deliverables necessary for the successful completion of the proposed project. The contractor **shall** furnish all labor, equipment, and materials required under this scope. The Scope of Work includes **disassemble the existing pavilion structure down to the foundation, reconstruct the pavilion with steel columns, new standing metal roofing, new electrical components (lines, outlets and lighting), restore landscaping and irrigation surrounding the pavilion; per the construction documents.**

2. **Specifications**

Specifications for this project are herein incorporated into this solicitation as:

Exhibit A – Technical Specifications

3. **Drawings**

Drawings for this project are herein incorporated into this solicitation as:

Exhibit B – Construction Plans

Exhibit C – Landscape Plans

4. **Project Timeline**

The awarded Bidder **shall** agree to substantially complete the work no later than **One Hundred Thirty-Five (135)** calendar days after the Notice to Proceed is issued. The City will adjust contract time for weather days and holidays in accordance with City of Delray Beach standard specifications. Final Completion **shall** be within **thirty (30) calendar days** from the date of Substantial Completion.

5. **Bid Items**

Refer to Exhibit A, Technical Specifications, for a complete listing of bid items and descriptions.

END OF SECTION 4

SECTION 5: STANDARD GENERAL CONDITIONS

**STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT
FOR THE CITY OF DELRAY BEACH, FLORIDA**

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STANDARD GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

ADDENDA - Written or graphic instruments, explanations, interpretations, changes, corrections, additions, deletions or modifications of the contract documents issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

AGREEMENT - The written agreement between the CITY and CONTRACTOR covering the Work to be performed; when other Contract Documents are attached to the Agreement, they become a part of the Agreement. The Agreement is also referred to as the Contract, interchangeably.

APPLICATION FOR PAYMENT - The form accepted by CONSULTANT which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

BID - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed, properly signed or guaranteed.

BONDS - Bid, Performance and Payment bonds and other instruments which protect against loss due to inability, failure or refusal of the CONTRACTOR to perform the work specified in the contract documents.

CALENDAR DAY - A calendar day of 24 hours measured from midnight to the next midnight, including Saturdays, Sundays and holidays and regardless of the weather.

CHANGE ORDER - A document recommended by CONSULTANT which is signed by the CONTRACTOR and the CITY which authorizes an addition, deletion, or revision in the work, or an adjustment in the Contract Price or Contract Time, issued on or after the execution of the Agreement. Change Orders must be in writing and verbal agreements of any matter are expressly excluded from any definition.

CITY - The City of Delray Beach, Florida, a Florida municipal corporation, its authorized and legal representatives, the public entity with whom the Contractor has entered into the agreement and for whom the work is to be provided. The City may also be referred to in the Contract Documents as the Owner.

CONSTRUCTION SUPERINTENDENT - The construction superintendent **shall** be in attendance at the project site during performance of the Work and **shall** represent the CONTRACTOR. Communications given to the construction superintendent or decisions made by the construction superintendent **shall** be as binding as if given to or made by the CONTRACTOR. Important communications or decisions **shall** be confirmed in writing. Other communications or decisions **shall** be similarly confirmed by written request in each case.

CONSULTANT(S) - City of Delray Beach Public Works Department, Engineering Division or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.

CONTRACT DOCUMENTS - The Advertisement for Bids, Instructions to Bidders, Proposal, Bid Bond, Agreement, Payment Bond, Performance Bond, Certificate of Insurance, Notice of Intent to Award, Notice to Proceed, Certificate of Substantial Completion, Warranty of Title, Final Receipt - Release of Lien, General Conditions, Supplemental General Conditions, Technical Specifications, Contract Drawings, Addenda and Change Orders executed pursuant to the Contract Documents.

CONTRACT PRICE - The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Documents which can be modified only by written change order.

CONTRACT TIME - The number of successive calendar days stated in the Contract Documents for the completion of the Work.

CONTRACTOR - The person, firm, or corporation with whom the CITY has executed the Agreement to furnish the Work called for in the Contract Documents and its representatives, agents, employees, officers, directors and all others affiliated therewith.

DEFECTIVE WORK - Work determined by the City or Consultant to be unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to the CONSULTANT'S recommendation of final payment.

DRAWINGS - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the Work, which have been prepared or approved by CONSULTANT and which are considered part of the Contract Documents.

EFFECTIVE DATE OF THE AGREEMENT - The date indicated in the Agreement, but if no such date is indicated it means the date on which the Agreement is signed by the last of the two parties to sign the Agreement.

FIELD ORDER - A written order by the CONSULTANT that does not impact the cost or time of performance of the Work and for which no increase in Contract Sum or Contract Amount **shall** be permitted.

GENERAL REQUIREMENTS - Division 1 of the Technical Specifications.

LAWS AND REGULATIONS; LAWS OR REGULATIONS - Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

NOTICE OF INTENT TO AWARD - The official written notice by the CITY to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein within the time specified, the CITY may enter into an Agreement for the price specified in the Bid.

NOTICE TO PROCEED - The written notice issued by the CITY, or its agents, to the CONTRACTOR requiring the CONTRACTOR to proceed with the Work and establishing the date of commencement of the Contract Time.

PARTIAL UTILIZATION - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

PAYMENT REQUEST - means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the City to which the payment request is submitted.

PROJECT - The entire construction to be performed as provided in the Contract Documents.

PROPER INVOICE - means an invoice which conforms with all statutory requirements and with all requirements that have been specified by the City to which the invoice is submitted.

PURCHASE - means the purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by the City.

RESIDENT PROJECT REPRESENTATIVE (RPR) - The resident project representative, **shall** be in attendance at the Project site during performance of the Work and **shall** represent the CITY directly or through the CONSULTANT. Responsibilities of the RPR are further defined in Paragraph 10.3 of these General Conditions.

SHOP DRAWINGS - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a

supplier and submitted by the CONTRACTOR to illustrate material or equipment for some portion of the Work.

SPECIFICATIONS - (Same definition as for Technical Specifications hereinafter).

SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

SUBSTANTIAL COMPLETION - The Work (or a specified part thereof) has progressed to the point where, in the opinion of CONSULTANT as evidenced by CONSULTANT'S definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project. Substantial Completion cannot occur in the absence of CONSULTANT'S express written approval of such.

SUPPLEMENTARY CONDITIONS - The part of the Contract Documents which amends or supplements these General Conditions.

SUPPLIER - A manufacturer, fabricator, supplier, distributor, material man or vendor.

SURETY - Any person, firm or corporation who is bound by bid or contract bond with and for the CONTRACTOR.

TECHNICAL SPECIFICATIONS - Those portions of the Contract Documents consisting of the General Requirements and written technical descriptions of products and execution of the Work.

UNDERGROUND FACILITIES - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

UNIT PRICE WORK - Work to be paid for on the basis of unit prices rather than on a lump-sum basis.

WORK – The totality of any and all obligations, duties and responsibilities necessary to (or reasonably inferable for) the successful completion of the Project assigned to or undertaken by the CONTRACTOR under the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and other incidentals and the furnishing thereof.

WORK DIRECTIVE CHANGE - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by the CITY and recommended by the CONSULTANT, ordering an addition, deletion or revision in the Work, or which references an emergency or unforeseen physical conditions under which the Work is to be performed. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

WRITTEN AMENDMENT - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly Work-related aspects of the Contract Documents.

ARTICLE 2 – THE WORK

2.1 The CONTRACTOR **shall** perform all of the Work required by the Contract Documents and **shall** provide materials, supplies, tools, equipment, labor, and services directly related to the Work, and **shall** perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and **shall** perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents. The Work includes the construction and services required by the Contract Documents. The Contractor **shall** promptly commence the Work required hereby and fully and diligently execute the entire Work as described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. Contractor represents to the City that Contractor **shall** furnish at all times a sufficient supply of workers, materials, tools and equipment to complete the Work in strict accordance with the Contract Documents, and perform all general requirements and supervision for the construction of the Project in accordance with the Drawings (including all notes and specifications contained in the Drawings) and Specifications. "Work" includes all Work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents, being a complete, fully functioning Project. Further, "Work" includes all associated systems needed for a complete, fully functioning Project. All Work is to be performed in accordance with and as required by all applicable building codes, laws, ordinances, rules, and regulations. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. Contractor **shall** not hinder or delay the City or any separate contractor of the City in the performance of their respective obligations on the Project.

2.2 When completed the Work **shall** conform to the requirements of the Contract Documents and be completely ready for occupancy and finally completed.

2.3 The CONTRACTOR represents and warrants that:

2.3.1 It is financially solvent and has sufficient working capital to perform obligations under this Construction Contract.

2.3.2 It is experienced and skilled in the construction of the type of project described in this Contract Document;

2.3.3 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;

2.3.4 It is a fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "CONTRACTOR" in the Construction Contract;

2.3.5 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and waterways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings; and the location of electric and utility lines and water, sanitary, sewer and storm drain lines. The Contract acknowledges receipt and has reviewed the site geotechnical report as provided by the CITY.

2.3.6 It will comply with all federal, state and local government laws, rules regulations and building codes relating to its responsibilities as set forth in the Contract Documents.

ARTICLE 3 – PRELIMINARY MATTERS

DELIVERY OF DOCUMENTS:

- 3.1. When the CONTRACTOR delivers the signed Agreements to the CITY, the CONTRACTOR **shall** also deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents.

COPIES OF DOCUMENTS:

- 3.2. The CITY **shall** furnish to CONTRACTOR five copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents or as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED:

- 3.3. The Contract Time will commence to run on the day indicated in any Notice to Proceed. A Notice to Proceed may be given at any time within ninety (90) days after the Effective Date of the Agreement.

STARTING THE PROJECT:

- 3.4. CONTRACTOR **shall** start to perform the Work on the date when the Contract Time commences to run, but no Work **shall** be done at the site prior to the date on which the Contract time commences to run.

BEFORE STARTING CONSTRUCTION:

- 3.5. Before undertaking each part of the Work, CONTRACTOR **shall** carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR **shall** promptly report in writing to CONSULTANT any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and **shall** obtain a written interpretation or clarification from CONSULTANT before proceeding with any Work affected thereby; CONTRACTOR **shall** have a continuing obligation to promptly report any conflicts, errors, ambiguities or discrepancies in the Contract Documents to the CONSULTANT over the duration of the Project.

3.5.1 The CONTRACTOR and Subcontractor have fully examined and compared all Drawings, Specifications and other Contract Documents and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.

3.5.2 With respect to all construction materials, labor, methods, means, techniques and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that CONTRACTOR is aware of as a result of the examination and comparison of the Contract Documents have been either corrected or clarified to the satisfaction of the CONTRACTOR prior to execution of this Construction Contract.

3.5.3 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work **shall** be functional and in accordance with the requirements of the Contract Documents.

3.5.4 The Contract Time is adequate for the performance of the Work.

3.5.5 The CONTRACTOR is responsible for all means, methods, techniques and sequencing of construction.

3.5.6 If, after execution of this Construction Contract, the CONTRACTOR detects a conflict, discrepancy, error or omission in the Contract Documents then it **shall** immediately notify CONSULTANT and CITY prior to proceeding with the specific portion of the Work.

3.5.7 CONTRACTOR **shall** have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and **shall** immediately give written notice to the CITY and CONSULTANT of any conflict, ambiguity, error or omission which the CONTRACTOR may find with respect to these documents before proceeding with the affected Work.

3.5.8 In the event of a conflict among the Contract Documents, the most stringent requirement to the CONTRACTOR **shall** control.

3.5.9 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In case of discrepancy between the Drawings (including all notes and specifications contained in the Drawings) and Specifications, or inconsistencies within or between parts of the Contract Documents, or between any of the Contract Documents and applicable standards, codes, and ordinances, the Contractor **shall** (1) provide the better quality or greater quantity of Work, (2) comply with the more stringent requirement, and (3) provide that which is most beneficial to the City; either or all in accordance with the Consultant's interpretation. On the Drawings, given dimensions **shall** take precedence over scaled measurements, and large-scale drawings over small-scale drawings. Before ordering any materials or doing any Work, the Contractor **shall** verify measurements at the Project site and **shall** be responsible for the correctness of such measurements. The Contractor must call any such conflict or discrepancy between the Contract Documents and/or between the Contract Documents and applicable standards, codes and ordinances and/or between the Contract Documents it discovers to the City's attention, in writing, prior to proceeding with the Work and in sufficient time so as to not to delay the progress. No extra charge, compensation or time adjustment will be allowed on account of differences between actual dimensions encountered in the performance of the Work and the dimensions indicated on the Drawings. Contractor must verify all grades, elevations, dimensions, locations and quantities indicated on the Contract Drawings prior to the performance of Work. The Contractor **shall**, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, locations and quantities. In all cases of interconnection of its Work with existing or other Work, it **shall** verify at the site all grades, elevations, dimensions, locations and quantities relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations and quantities **shall** be promptly rectified by the Contractor without any additional cost to the City and without any time extension to Contractor. Any differences found **shall** be submitted to the Consultant for resolution before proceeding with the Work and in such time so as not to delay the progress of the Work.

3.5.10 Whenever a product to be furnished by Contractor requires it to be in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other Association Standard, including the requirement of compliance with any local certifications for products such as a Notice of Acceptance approving the product, the Contractor **shall** present an affidavit from the manufacturer when provided by the manufacturer and, when requested by the Consultant or the City or as set forth in the Contract Documents, customary documents from the manufacturer certifying that the product complies with the particular Standard. When provided by the manufacturer and requested by the Consultant or the City, the specified support test data **shall** be submitted by the Contractor to substantiate compliance.

3.6 At the preconstruction conference, CONTRACTOR **shall** submit to CONSULTANT for review:

3.6.1. a proposed progress schedule indicating the starting and completion dates of the various stages of the Work; and

3.6.2. a preliminary schedule of Shop Drawing submissions and those shop drawings necessary to begin the work; and

3.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price 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 which will be confirmed in writing by CONTRACTOR at the time of submission; and,

3.6.4. Preconstruction video tapes if required by the technical specifications

3.7. The CONTRACTOR **shall** not commence construction operations until the construction progress schedule, schedule of values and the shop drawing submission schedule described above have been reviewed by the CONSULTANT for general conformance with the Contract documents. Failure of the CONTRACTOR to timely submit the required documents for the CONSULTANT'S review **shall** not entitle Contractor to an extension of time or additional compensation under any circumstances. After review of the schedules, no deviation **shall** be made without prior written acceptance by the CITY for general conformance with the Contract Documents.

PRECONSTRUCTION CONFERENCE:

3.8. After the Effective Date of the Agreement, but before CONTRACTOR starts Work at the site, a conference attended by CONTRACTOR, CONSULTANT and others as deemed appropriate by the CITY, CONSULTANT, or CONTRACTOR will be held to discuss the schedules referred to in paragraph 3.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment , and to establish a working understanding among the parties as to the Work. Nothing herein **shall** relieve the CONTRACTOR from the responsibility of contacting local utilities and any other necessary agencies.

FINALIZING SCHEDULES:

3.9. At least ten (10) business days before submission of the first Application for Payment a conference attended by CONTRACTOR, CITY, CONSULTANT and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 3.6. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on the CITY responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the CITY as to form and substance.

ARTICLE 4 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

INTENT:

4.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Florida with exclusive venue in Palm Beach County, Florida.

4.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereto) 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 whether or not specifically called for. When words which 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, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) **shall** be effective to change the duties or responsibilities of the CITY, CONTRACTOR or CONSULTANT or any of their consultants, agents or employees from those set forth in the Contract Documents, nor **shall** it be effective to assign to CONSULTANT'S, agents or employees, any duty or authority to supervise or direct the

furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 10.15 or 10.16. Clarifications and interpretations of the Contract Documents **shall** be issued by the CONSULTANT as provided in paragraph 10.4.

4.3. If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR **shall immediately** notify the CONSULTANT, in writing, at once and before proceeding with the Work affected thereby **shall** obtain a written interpretation or clarification.

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to Assist in locating and reading the provisions hereof.

AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS:

4.4. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

4.4.1. a formal Written Amendment.

4.4.2. a Change Order (pursuant to paragraph 11.4), or

4.4.3. a Work Directive Change (pursuant to paragraph 11.2).

As indicated in paragraphs 11.2 and 12.2, Contract Price and Contract Time may only be changed by a Change Order or by a Written Amendment.

4.5. In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

4.5.1. a Field Order (pursuant to paragraph 10.5)

4.5.2. CONSULTANT'S approval of a Shop Drawing or sample (pursuant to paragraphs 7.26 and 7.27), or

4.5.3. CONSULTANT'S written interpretation or clarification (pursuant to paragraph 10.4).

REUSE OF DOCUMENTS:

4.6. Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the CITY **shall** have or acquire any title to or ownership rights in any of the Contract Documents, drawings, technical specifications or other documents used on the work; and, they **shall** not reuse any of them on extensions of the Project or any other project without prior written consent of the CITY and CONSULTANT.

ARTICLE 5 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

AVAILABILITY OF LANDS:

5.1. The CITY **shall** furnish, as 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 which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. CONTRACTOR **shall** provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.1.1. Occupying Private Land: The Contractor **shall** not (except after written consent from the proper parties) enter or occupy with men, tools, equipment or materials, any land outside the rights-of-way or property of the City. A copy of the written consent **shall** be given to the CITY.

5.1.2. Work in State, County and City Rights-of-Way and Easements: When the Work involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across street, rights-of-way, easements, or other property, the CONTRACTOR **shall** (as the Work progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris **shall** be removed so that the site presents a neat appearance.

5.1.3. Work Adjacent to Telephone, Power, Cable TV and Gas Company Structures: In all cases where Work is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the Contractor **shall** provide written notification to the respective companies of the areas of which Work is to be performed, prior to the actual performance of any Work in these areas.

5.1.4. Use of Public Streets: The use of public streets and alleys **shall** be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. Any earth or excavated material spilled from trucks **shall** be removed by the CONTRACTOR and the streets cleaned to the satisfaction of the CITY, the CONSULTANT, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

PHYSICAL CONDITIONS:

5.2.1. Explorations and Reports: Where applicable, reference is made in the technical specifications, for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CONSULTANT in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations, or opinions contained therein or for the completeness for CONTRACTOR'S purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. Except as indicated in the immediately preceding sentence and in paragraph 5.3, CONTRACTOR **shall** have full responsibility with respect to subsurface conditions at the site.

5.2.2. Existing Structures: Where applicable, reference is made to the technical specifications, for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 5.3) which are at or contiguous to the site that have been utilized by CONSULTANT in preparation of the Contract Documents. CONTRACTOR may rely upon the general accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. Except as indicated in the immediately preceding sentence and in paragraph 5.3, CONTRACTOR **shall** have full responsibility with respect to physical conditions in or relating to such structures. However, where the dimensions and locations of existing structures are of critical importance in the installation or connection of new work, the CONTRACTOR **shall** verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There **shall** be no additional cost to the CITY for CONTRACTOR'S failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR.

5.2.3. Report of Differing Conditions: If CONTRACTOR believes that:

5.2.3.1. Any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 5.2.1 and 5.3.3 is inaccurate, or

5.2.3.2. Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents, CONTRACTOR **shall**, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 7.22), notify the CITY and the CONSULTANT in writing about the inaccuracy or difference. Should the CONTRACTOR fail to notify the CITY and CONSULTANT within five (5) calendar days of discovering such differing site condition, it waives its right to seek additional time or compensation for such deficiency and is precluded from seeking a change order for such work under any circumstances.

5.2.4. CONSULTANT'S Review: CONSULTANT will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the CITY in writing (with a copy to the CONTRACTOR) of CONSULTANT'S findings and conclusions.

5.2.5. Possible Document Change: If CONSULTANT concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 11 to reflect and document the consequences of the inaccuracy or difference.

5.2.6. Possible Price and Time Adjustments: In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Article 12 and 13.

PHYSICAL CONDITIONS - UNDERGROUND FACILITIES:

5.3.1. The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the CITY or CONSULTANT by the owners of such Underground Facilities or by others.

5.3.1.1. The CITY and CONSULTANT **shall** not be responsible for the accuracy or completeness of any such information or data; and,

5.3.1.2. CONTRACTOR warrants that it has examined the information and data presented and that it is accurate and free from any and all defects, inconsistencies, errors and omissions. Further, the CONTRACTOR **shall** be responsible for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 7.20, and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

5.3.1.3. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, **shall** be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR **shall** notify the owner or occupant of such facilities both before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR **shall** obtain permission from their owner, or **shall** make suitable arrangements for their disconnection by their owner. The CONTRACTOR **shall** be responsible for any damage to any such pipes, conduits or cables, and **shall** restore them to service promptly as soon as the Work has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new work are shown, but are to be verified in the field by the Contractor prior to performing the work. The CONTRACTOR **shall** uncover these pipes, ducts, cables, etc., carefully, by hand prior to installing his Work. Any discrepancies or differences found **shall** be immediately brought

to the attention of the CONSULTANT in order that necessary changes may be made to permit installation of the Work.

5.3.2. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown, nor located by the facilities owner and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR **shall**, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 7.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to the CITY and the CONSULTANT. The CONSULTANT will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR **shall** be responsible for the safety and protection of such Underground Facility as provided in paragraph 7.20.

5.3.3. CONTRACTOR is expressly limited to an extension of the Contract Time to the extent that they are attributable to the existence of any such Underground Facility CONTRACTOR could not reasonably have been expected to have been aware of. CONSULTANT, in its sole discretion, **shall** determine whether to award an extension of time under such circumstances. Furthermore, should CONTRACTOR fail to provide the CITY and CONSULTANT with written notice of the error, omission or discrepancy in the Underground Facility within five (5) calendar days of discovering such, it waives its right to a time extension for such error, omission or discrepancy.

REFERENCE POINTS:

5.4. The CITY **shall** provide engineering surveys to establish reference points for construction which in CONSULTANT'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR **shall** be responsible for laying out the Work (unless otherwise specified in the General Requirements), **shall** protect and preserve the established reference points and **shall** make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR **shall** promptly report to the CONSULTANT whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and **shall** be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

5.5 Contractor **shall** maintain at the Project Site, and **shall** make available to the City and Consultant, one record copy of the Drawings marked to indicate any deviations from the Contract Documents (the "As-Built Drawings") in good order. The As-Built Drawings **shall** be prepared and updated during the prosecution of the Work. The prints for As-Built Drawings used will be a set of black-line prints provided by Consultant to Contractor at the start of construction. Contractor **shall** maintain said set in good condition and **shall** use colored pencils to mark-up said set with "as-built information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as either the City or Consultant may reasonably request.

5.6 At the completion of the Work, Contractor **shall** deliver all As-Built Drawings to the City. Final Payment and any retention **shall** not be due and owing to Contractor until the final As-Built Drawings required above are delivered to the City.

5.6.1. As-Built Drawings **shall** be provided in accordance with the City of Delray Beach's Minimum Construction Standards and Specifications, which can be found at:

<https://www.delraybeachfl.gov/home/showdocument?id=10685&t=637764593590530483>

ARTICLE 6 – BONDS AND INSURANCE

BONDS:

6.1. CONTRACTOR **shall** upon delivery of the executed Agreement to the City furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. These Bonds **shall** remain in effect at least **one (1) year** after the date when final payment becomes due based on Contractor's completion of all requirements for Final Payment set forth in these Contract Documents, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR **shall** also furnish such other Bonds as are required by the Supplementary Conditions. Each Bond **shall** be furnished in an amount equal to 100% of the amount of the Contract award. The form and conditions of the Bonds and the Surety **shall** be acceptable and satisfactory to the CITY and Surety **shall** be a nationally recognized Surety Company acceptable to the City, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, for projects not exceeding (\$500,000) five hundred thousand dollars and meet the other requirements of Florida Statutes Section 287.0935 (2001). For projects exceeding five hundred thousand dollars, all bonds **shall** be placed with sureties with a Best Rating of no less than A-VII. Bonds **shall** be executed and issued by a resident agent, licensed and having an office in Florida, representing such corporate sureties. If the CONTRACTOR is a partnership, the Bond should be signed by each of the individuals who are partners; if a corporation, the Bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties; (b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where bond is executed by agent, officer or other representative of Contractor or Surety; (c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

6.2. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 6.1., CONTRACTOR **shall** within five (5) calendar days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 6.1. CONTRACTOR'S failure to timely furnish a substitute surety **shall** constitute a material breach of the Contract and **shall** give the CITY the immediate right to terminate the CONTRACTOR for cause in accordance with Article 16 of the Contract's General Conditions.

CONTRACTOR'S INSURANCE:

6.3. General: CONTRACTOR **shall** purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance and furnishing of the Work and CONTRACTOR'S other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable. The Contractor **shall** purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and having an A.M. BEST's rating of "A-X" or better. The City and Consultant **shall** be named as additional insureds by endorsement under the Contractor's applicable policies or as otherwise described in the Contract Documents. Before starting and during the term of this Contract, the CONTRACTOR **shall** procure and maintain insurance of the types and to the limits specified in paragraph 6.4, inclusive below.

6.4 Coverage: Except as otherwise stated, the amounts and types of insurance **shall** conform to the following minimum requirements which Contractor **shall** procure, carry, maintain and pay for from commencement of the Work through Final Acceptance of the Work:

6.4.1. Workers' Compensation. Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. CONTRACTOR **shall** require all subcontractors to maintain workers compensation coverage during the term of the agreement and up to the date of final acceptance. CONTRACTOR **shall** defend, indemnify and save the CITY and CONSULTANT harmless from any damage resulting to them for failure of either CONTRACTOR or any subcontractor to take out or maintain such insurance.

6.4.1.1. Employers' Liability with Statutory Limits of \$100,000/\$500,000/ \$100,000.

6.4.1.2. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the City with thirty (30) days' written notice of cancellation and/or restriction.

6.4.1.3. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and/or Jones Act if applicable.

6.4.2. Comprehensive General Liability or Commercial General Liability Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy or Commercial General Liability filed by the Insurance Services Office, and must include:

6.4.2.1. Minimum Limits of total Commercial General Liability Insurance coverage **shall** be \$3,000,000.00 per occurrence and in the aggregate combined single limit for Bodily Injury Liability and Property Damage Liability, the basic policy to be in said form with any excess coverage (and the carrier) to meet \$3,000,000.00 minimum to be acceptable to the CITY.

6.4.2.2. Premises and/or Operations.

6.4.2.3. Independent Contractor.

6.4.2.4. Products and/or Completed Operations. CONTRACTOR **shall** maintain in force until at least seven (7) years after completion of all services required under the Contract, coverage for products and completed operations, including Broad Form Property Damage.

6.4.2.5. XCU Coverages.

6.4.2.6. Broad Form Property Damage including Completing Operations.

6.4.2.7. Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.

6.4.2.8. Personal Injury coverage with employees and contractual exclusions removed.

6.4.2.9. Additional Insured. The CITY is to be specifically included as an additional insured (including products).

6.4.2.10. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the City with thirty (30) days' written notice of cancellation and/or restriction.

6.4.2.11. The CONTRACTOR **shall** either require each subcontractor to procure and maintain, during the life of the subcontract, insurance of the type and in the same amounts specified herein or insure the activities of subcontractors in his own insurance policy.

6.4.3. Business Auto Policy. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Service Office and must include:

6.4.3.1. Minimum limit of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

6.4.3.2. Owned Vehicles.

6.4.3.3. Hired and Non-Owned Vehicles

6.4.3.4. Employee Non-Ownership

6.4.3.5. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the City with thirty (30) days' written notice of cancellation and/or restriction.

6.4.4. All Risk Property Insurance - When Applicable. Coverage must include real and personal property and, in an amount, equal to the replacement cost of all real and personal property of the CITY'S for which the CONTRACTOR is responsible and over which he exercises control. Builders Risk insurance must be provided to cover Property under construction and an Installation Floater must cover all machinery, vessels, air conditioners or electric generators to be installed. This insurance **shall** include a waiver of subrogation as to the CONSULTANT, the CITY, the CONTRACTOR, and their respective officers, agents, employees, and subcontractors.

6.4.4.1. Coverage to be provided on a full replacement cost basis.

6.4.4.2. Losses in excess of ten thousand dollars (\$10,000) **shall** be jointly payable to the CONTRACTOR and the CITY.

6.4.4.3. Waiver of occupancy clause or warranty. Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) will not be occupied by the CITY.

6.4.4.4. Maximum Deductible - \$5,000 each claim.

6.4.4.5. Copy of Policy. A certified copy of the policy must be provided to the CITY prior to the commencement of work.

6.4.4.6. Named Insured. The CITY must be included as a named insured.

6.4.4.7. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the City with thirty (30) days written notice of cancellation and/or restriction.

6.4.4.8. Flood Insurance. When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the CONTRACTOR and the CITY must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance coverage available under the National Flood Program.

6.4.5. Excess Liability Coverage. Excess Liability **shall** be an occurrence based with regard to coverage and endorsements specified in this Agreement policy and have a limit in an amount not less than \$ 5,000,000.00 per occurrence and \$5,000,000.00 in the aggregate where applicable and "drop down" for defense and indemnity in the event of exhaustion of the underlying insurance. By its terms, the Excess Policy **shall** cover:

- (1) Personal injury;
- (2) Contractual Liability;
- (3) X.C.U. Liability;
- (4) Off-Site CGL;

(5) Automobile Liability;
(6) Employer's Liability; and,
(7) City and the Additional Insureds on a primary and noncontributory basis by means of an endorsement acceptable to the City.

6.4.6 Contractual Liability Insurance. This coverage **shall** be carried, on a blanket broad form basis, throughout the period of time that the Work is being performed and thereafter for a period of three (3) years and **shall** be in a minimum amount of Ten Million and 00/100 Dollars (\$10,000,000). This coverage is to insure Contractor's indemnity under the Contract Documents, and **shall** insure against the risks enumerated therein.

6.4.7 Pollution Liability Insurance. Contractor **shall** provide pollution liability insurance that provides coverage for liability arising from Contractor's construction activities, whether occurring at or away from the Project Site with per occurrence and aggregate limits of Five Million and 00/100 Dollars (\$5,000,000). Contractor's pollution liability insurance **shall** cover property damage abatement/cleanup, whether on-site or off-site as well as bodily injury, repair and defense costs resulting from liability arising out of pollution conditions as including, but not limited to, exposures arising from silica, water intrusion, petroleum related products, asbestos, lead paint, tank removal, removal of contaminated soil, EIFS, bacteria, fungi and mold. Contractor's pollution liability insurance policy **shall** cover liability of Contractor during the process of construction, installation, removal, storage, encapsulation, transport and disposal of Hazardous Waste, and **shall** include coverage for bodily injury and loss of damage to, or loss of use of property, arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the Project Site, the Project, the atmosphere, any water course or body of water. Contractor **shall** maintain its pollution liability insurance coverage from the Commencement Date of the Work through Substantial Completion of the Work and **shall** renew such coverage annually for the seven (7) years immediately following the date of Substantial Completion of the Work.

6.4.8 A Best Rating of no less than A-7 is required for any carriers providing coverage required under the terms of this Contract. Failure to comply with the insurance requirements as herein provided **shall** constitute default of this Agreement. Neither **Contractor** nor any subcontractor **shall** commence work under the Contract until they have all insurance required under this Section and have supplied the CITY with evidence of such coverage in the form of certified copies of policies (where required) and certificates of insurance, and such policies and certificates have been approved by the CITY. **CONTRACTOR shall** be responsible for and **shall** obtain and file insurance certificates on behalf of its subcontractors. All certified copies of policies and certificates of insurance **shall** be filed with the CITY.

6.4.9 Contractor's failure to provide and maintain the insurance required by this Article **shall** be grounds for termination for cause, and Contractor **shall** be liable for all losses, damages, costs and expenses associated with the failure to maintain the required insurance.

6.4.10 The Contractor **shall** secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanic, any tools, equipment, stagings, towers and forms owned or rented by its subcontractors or agents under this Agreement. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage **shall** not obligate the City or its agents and employees for any losses of owned or rented equipment or for any Work damaged. If the Contractor secures such insurance, the insurance policy **shall** include a waiver of subrogation as follows: "It is agreed that in no event **shall** this insurance company have any right of recovery against the City." The Contractor agrees to cooperate fully with the insurance company or companies in carrying out the provisions and conditions of all policies applicable to Work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports and audits. The Contractor further agrees that notice of every accident will not only be reported immediately to the City, and also to such insurance company or companies.

6.4.11 Every subcontract **shall** contain complete insurance provisions identical to Sections included herein for the benefit, protection, and indemnification of the Contractor and the City.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SUPERVISION AND SUPERINTENDENCE:

7.1. The CONTRACTOR has the obligation to deliver to the CITY the completed job in a good and workmanlike condition in accordance with the requirements of the Contract Documents. CONTRACTOR **shall** supervise and direct the Work completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR **shall** be solely responsible for the means, methods, techniques, sequences and procedures of construction, CONTRACTOR **shall** be responsible to see that the finished Work complies accurately with the Contract Documents. The CONTRACTOR **shall** bear all losses resulting on account of the weather, fire, the elements, or other acts of God or causes of every kind or nature prior to Final Acceptance. The supervision of the execution of this Agreement and the Work thereunder is vested wholly in the CONTRACTOR.

The superintendent will be CONTRACTOR'S representative at the site and **shall** have authority to act on behalf of CONTRACTOR. All communications given to the superintendent **shall** be as binding as if given to CONTRACTOR.

LABOR, MATERIALS AND EQUIPMENT; HOURS OF WORK:

7.2. CONTRACTOR **shall** provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR **shall** at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site **shall** be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the CITY'S written consent (which **shall** not be unreasonably withheld) given after prior written notice to CONSULTANT. The CONTRACTOR is hereby informed, and understands that unless otherwise approved by the City, the City restricts the work between the hours of 5:00 p.m. and 8:00 a.m., unless emergency conditions exist that are endangering life or property as may be determined by the CITY. If the CONTRACTOR is authorized to operate equipment twenty-four (24) hours per day, the engines **shall** be provided with residential type silencers approved by the CITY.

The CONTRACTOR **shall** receive no additional compensation for overtime work. However, additional compensation will be paid to the CONTRACTOR for overtime work only in the event extra work is ordered by the CONSULTANT and the change order specifically authorizes the use of overtime work and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime work of a similar nature in the same locality.

All costs of inspection and testing performed by the CITY during overtime work by the CONTRACTOR which is allowed solely for the convenience of the CONTRACTOR **shall** be borne by the CONTRACTOR. The CITY **shall** have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.

7.3. Unless otherwise specified in the General Requirements, CONTRACTOR **shall** furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and final completion of the work.

7.4. All materials and equipment **shall** be of good quality and new, except as otherwise provided in the Contract Documents. If required by CONSULTANT, CONTRACTOR **shall** furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment **shall** be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents;

but no provision of any such instructions will be effective to assign to the CITY, CONSULTANT, or any of the CITY'S or CONSULTANT'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 10.15 or 10.16.

ADJUSTING PROGRESS SCHEDULE:

7.5. CONTRACTOR **shall** submit to CONSULTANT for review and comment (to the extent indicated in paragraph 3.9) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

SUBSTITUTES OR "OR-EQUAL" ITEMS:

7.6.1. The technical specifications **shall** govern the use of substitute or "or-equal" items. **Consultant shall be solely responsible for determining whether to permit the proposed substitution and Contractor expressly agrees to be bound by Consultant's decision.** The procedure for review by CONSULTANT will include the following as supplemented in the technical specifications. Requests for review of substitute items of material and equipment will not be accepted by CONSULTANT from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR **shall** make written application to CONSULTANT for acceptance thereof, certifying that the proposed substitute will perform equally or better the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which **shall** be considered by CONSULTANT in evaluating the proposed substitute. CONSULTANT may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

7.6.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to CONSULTANT, if CONTRACTOR submits sufficient information to allow CONSULTANT to determine that the substitute proposed is equal or better to that indicated or required by the Contract Documents. The procedure for review by CONSULTANT will be governed by the procedure provided in paragraph 7.6.1 as applied by CONSULTANT and as may be supplemented in the Technical Specifications.

7.6.3. Substitution requests must include the CONTRACTOR'S written waiver of its right to additional compensation or time for the failure of the proposed substitution to properly perform.

7.6.4 In order for a substitution to be considered, one or more of the following conditions must be met:

- a. The substitution request must be timely, fully documented and properly submitted in writing.
- b. The request is directly related to an "or equal" clause in the Contract Documents.

- c. The product or method prescribed in the Contract Documents is no longer available and Contractor has evidence of such.
- d. There is a substantial advantage offered to the CITY in terms of cost, time, energy conservation or other considerations of merit.

7.6.5. CONSULTANT will be allowed a reasonable time within which to evaluate each proposed substitute. CONSULTANT will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CONSULTANT'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

CONCERNING SUBCONTRACTORS, SUPPLIERS AND OTHERS:

7.7.1 CONTRACTOR **shall** not employ any Subcontractor, Supplier or other person or organization (including those acceptable to the CITY and the CONSULTANT as indicated in paragraph 7.7.2), whether initially or as a substitute, against whom the CITY or the CONSULTANT may have objection. CONTRACTOR **shall** not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

7.7.2 If the Technical Specifications or Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) **shall** be submitted to the CITY for acceptance by the CITY and CONSULTANT, and if CONTRACTOR has submitted a list thereof, the CITY or CONSULTANT'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR **shall** submit an acceptable substitute. If after bid opening and prior to the award of the contract, the CITY objects to certain suppliers or subcontractors, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the contract price or contract time. If the contract price or contract time is increased, the CITY may return the bid bond and award the contract to the next qualified, competent bidder. If after the award of the contract, the CITY objects to certain suppliers or subcontractors, the CITY **shall** permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the CITY. No acceptance by the CITY or the CONSULTANT of any such Subcontractor, supplier or other person or organization **shall** constitute a waiver of any right of the CITY or CONSULTANT to reject defective Work. The Contractor **shall** not substitute a Subcontractor, person or entity for one previously selected if the City or Consultant makes objection to such substitution.

7.8. CONTRACTOR **shall** be fully responsible to the CITY and CONSULTANT for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work on the Project just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents **shall** create any contractual relationship between the CITY or the CONSULTANT and any such Subcontractor, Supplier or other person or organization, nor **shall** it create any obligation on the part of the CITY or CONSULTANT to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

7.9. The divisions and sections of the Technical Specifications and the identifications of any Drawings **shall** not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

7.10. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the CITY and the CONSULTANT.

7.10.1 By written agreement, the Contractor **shall** require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the City and Consultant. Each subcontract agreement **shall** preserve and protect the rights of the City and Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and **shall** allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the City. Where appropriate, the Contractor **shall** require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor **shall** make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

7.10.2 Contractor hereby agrees that each subcontract agreement **shall** contain provisions granting the Contractor the right to terminate the subcontract at any time for the Contractor's convenience and without cause.

7.10.3 Contractor hereby agrees that the City has the right to direct the Contractor to terminate any Subcontractor at any time for the City's convenience and without cause.

7.10.4 Contractor **shall** have each Subcontractor performing Work at this Project execute warranties for a minimum period of **one (1) year** in favor of the City utilizing forms approved by the City. Contractor **shall** also have the Subcontractors and material, or equipment manufacturers execute Extended Warranties if required by the Contract Documents in favor of the City utilizing the forms approved by the City.

7.10.5 It is further agreed that all Subcontracts and material and equipment purchase contracts entered into by Contractor or its Subcontractors or material suppliers, **shall** contain a provision stating that, if after termination of Contractor for Contractor's default or completion of the Work, the City may bring any claim directly against any Subcontractor of Contractor, including any surety bond furnished for or on behalf of such Subcontractor, for breach of contract, warranty rights, quality of workmanship, and create third party beneficiary rights of the City in said agreements. It is further agreed and understood that such assignment(s) and third party beneficiary rights are part of the consideration to the City for entering into this Agreement with Contractor and may not be withdrawn. Subcontractor or equipment and material suppliers **shall** be notified of the City's rights. Additionally, nothing contained in this Agreement **shall** constitute an assignment of Contractor's rights against the City or create any third-party beneficiary rights in any Subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the City, in addition to Contractor, to make claim for damage or indemnification directly against any Subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment. Additionally, this assignment is for the purpose of permitting the City to require any such Subcontractor or materials and equipment suppliers to complete the unperformed obligations under such Subcontract, should the Contractor be in default or be terminated by City.

7.10.6 The City **shall** have no obligation to pay, or to see to the payment of, any monies to any Subcontractor. Nothing in this Article or Agreement **shall** be deemed to create any contractual relationship between the City and any Subcontractor, material provider or supplier or to create any rights of any Subcontractor against the City for any actions, debts, obligations, responsibilities or liabilities occurring prior to any assignment executed pursuant to this Article.

PATENT FEES AND ROYALTIES:

7.11. CONTRACTOR **shall** pay all license fees and royalties and assume all costs incident to the use in the performance of Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design,

process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the CITY or CONSULTANT its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to other, the existence of such rights **shall** be disclosed by the CITY in the Contract Documents. CONTRACTOR **shall** indemnify and hold harmless the CITY and anyone directly or indirectly employed by the CITY from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and **shall** defend all such claims in connection with any alleged infringement of such rights.

PERMITS:

7.12. CONTRACTOR **shall** obtain and pay for all construction permits and licenses. The CITY **shall** assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR **shall** pay all governmental charges and inspection fees necessary for prosecution of the Work, which are applicable at the time of opening of Bids. There will be no cost for permits issued by the CITY. CONTRACTOR **shall** pay all charges of utility for connections to the Work, and the CITY **shall** pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

LAWS AND REGULATIONS:

7.13.1. CONTRACTOR **shall** give all notices and comply with all laws, ordinances, rules regulations and building codes applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, neither the CITY nor the CONSULTANT **shall** be responsible for monitoring CONTRACTOR'S compliance with any Laws, ordinances, rules or regulations. In addition, Contractor **shall** be responsible for ensuring the compliance of all subcontractors, suppliers or other entities furnishing labor, services or materials on the Project with all laws, ordinances, rules, regulations and building codes. Contractor's failure to comply with any of the applicable laws, ordinances, rules, regulations or building codes **shall** constitute a material breach of the Contract.

7.13.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws, ordinances, rules or regulations, CONTRACTOR **shall** give CITY and CONSULTANT prompt, written notice thereof (no later than seven (7) days from discovery), and any necessary changes will be authorized by one of the methods indicated in Paragraph 4.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules or regulations, and without such notice to the CITY and CONSULTANT, CONTRACTOR **shall** bear all costs arising there from.

7.13.3. Contractor **shall** comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Contractor agrees to:

- a) Keep and maintain all records that ordinarily and necessarily would be required by the City.
- b) Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Contractor at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records **shall** be transferred to the City prior to final payment being made to the Contractor.

e) If Contractor does not comply with this section, the City **shall** enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

TAXES:

7.14. CONTRACTOR **shall** pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws, ordinances and regulations of the place of the Project which are applicable during the performance of the Work.

USE OF PREMISES:

7.15. CONTRACTOR **shall** confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits and easements, and **shall** not reasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR **shall** assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the CITY or CONSULTANT by any such owner or occupant because of the performance of the Work, CONTRACTOR **shall** promptly attempt to settle with such other party by agreement or otherwise resolve the claim. CONTRACTOR **shall**, to the fullest extent permitted by laws and regulations, indemnify and hold the CITY and CONSULTANT harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY or CONSULTANT to the extent based on a claim arising out of CONTRACTOR'S performance of the Work or the Work of its subcontractor, suppliers, material men or other entities performing Work under the supervision of CONTRACTOR on the Project.

7.16. During the progress of the Work, CONTRACTOR **shall** keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR **shall** remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and **shall** leave the site clean and ready for occupancy by the CITY. CONTRACTOR **shall** restore to original condition all property not designated for alteration by the Contract Documents.

7.17. CONTRACTOR **shall** not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor **shall** CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

RECORD DOCUMENTS:

7.18.1 CONTRACTOR **shall** maintain in accordance with the Technical Specifications in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 10.4) in good order and annotated to show all changes made during construction. The record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the CONSULTANT for reference. Upon completion of the Work, these record documents, samples, and Shop Drawings will be delivered to CONSULTANT for the CITY.

7.18.2 The Contractor **shall** keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The accounting and control systems **shall** be satisfactory to the City. The City (and its auditors) **shall**, during regular business hours and upon reasonable notice, be afforded access to, and **shall** be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Agreement. The Contractor **shall**

preserve these records for a period of four (4) years after Final Payment, or for such longer period as may be required by law. This Section is applicable to all Change Orders or Claims by or against the Contractor and or a Subcontractor of any tier whether or not they affect the Contract Price. To the extent Contractor is able, Contractor agrees to include the provisions of this Section in all its contracts and all tier subcontracts with regard to any audits of payments received by the Contractor to verify that such payments were made and that such payments were made for the use required by the Project. Audits conducted under this Section **shall** be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing audit agency. The Contractor agrees to the disclosure of all information and reports resulting from access to records under this paragraph to the City, provided that the Contractor is afforded the opportunity for an audit exit conference. If the City audits the Contractor's books and records and discovers actual costs or an error in the Contractor's favor by more than one percent (1%) of the Cost of the Work to date, the Contractor **shall** reimburse the City for the cost of such audit and the Contractor **shall** promptly refund the amount overpaid to the City.

7.18.3. At the completion of the Work, Contractor **shall** deliver all As-Built Drawings to the City. Final Payment and any retention **shall** not be due and owing to Contractor until the final As-Built Drawings required above are delivered to the City.

7.18.3.1. As-Built Drawings **shall** be provided in accordance with the City of Delray Beach's Minimum Construction Standards and Specifications, which can be found at:

<https://www.delraybeachfl.gov/home/showdocument?id=13909&t=638657915970924444>

SAFETY AND PROTECTION:

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

7.19.1. All employees on the Work and other persons and organizations who may be affected thereby; and

7.19.2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

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

CONTRACTOR **shall** comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the Work and **shall** erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR **shall** notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and **shall** cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraphs 7.19.1 to 7.19.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work for anyone for whose acts any of them may be liable, **shall** be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or the CONSULTANT or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of 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 and CONSULTANT has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 15.13

that the Work is acceptable (Except as otherwise expressly provided in connection with Substantial Completion).

The safety provisions of applicable laws and building and construction codes **shall** be observed and the Contractor **shall** take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary Machinery, equipment and all hazards **shall** be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

The Contractor **shall** maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on Work under the Contract. The Contractor **shall** promptly furnish the Local Public Agency with reports concerning these matters.

7.20. CONTRACTOR **shall** designate a responsible representative at the site whose duty **shall** be the prevention of accidents. This person **shall** be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

EMERGENCIES AND PRECAUTIONS DURING ADVERSE WEATHER:

7.21.1. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto. CONTRACTOR, without special instruction or authorization from CONSULTANT or the CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR **shall** give CONSULTANT prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If CONSULTANT determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change Order or Change Order will be issued to document the consequences of the changes or variations.

7.21.2. During adverse weather, and against the possibility thereof, the CONTRACTOR **shall** take all necessary precautions to ensure that the Work **shall** be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection **shall** be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The CONTRACTOR **shall** be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he **shall** take such precautions and procure such additional insurance as he deems prudent. The CONSULTANT may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

SHOP DRAWINGS AND SAMPLES:

7.22. After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR **shall** submit to CONSULTANT for review in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 3.9), ordinances, rules and all Shop Drawings which will bear the stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CONSULTANT may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CONSULTANT to review the information as required.

7.23. CONTRACTOR **shall** also submit to CONSULTANT for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

7.23.1. Before submission of each Shop Drawing or sample CONTRACTOR **shall** have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

7.23.2. At the time of each submission, CONTRACTOR **shall** give CONSULTANT specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition **shall** cause a specific notation to be made on each Shop Drawing submitted to CONSULTANT for review of each such variation.

7.24. CONSULTANT will review within ten (10) days of receipt thereof, Shop Drawings and samples but CONSULTANT'S review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and **shall** not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR **shall** make corrections required by CONSULTANT, and **shall** return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR **shall** direct specific attention in writing to revisions other than the corrections called for by CONSULTANT on previous submittals. CONSULTANT will review one (1) re-submittal for each shop drawing or product data. All costs of reviewing additional submittals **shall** be at the CONTRACTOR'S expense.

7.25. CONSULTANT'S review of Shop Drawings or samples **shall** not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CONSULTANT'S attention to each such variation at the time of submission as required by paragraph 7.23.2 and CONSULTANT has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any review by CONSULTANT relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 7.23.1.

7.26. Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to CONSULTANT'S review and acceptance of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

CONTINUING THE WORK:

7.27. CONTRACTOR **shall** carry on the Work and adhere to the progress schedule during all disputes or disagreements with the CITY. No Work **shall** be delayed or postponed pending resolution of any disputes or disagreements. While a change order request is pending, CONTRACTOR is still obligated to fully perform all work in accordance with the Contract Documents and as directed by the Consultant. Contractor **shall** also continue performance of the work during the pendency of a Claim.

INDEMNIFICATION:

7.28. Contractor is bound to the indemnification provisions set forth in Article 11 of the Agreement. In addition, in consideration of ten dollars (\$10.00) and other valuable consideration, the CONTRACTOR **shall** defend, indemnify and save harmless the CITY, its officers, agents and employees, from or on account of any liabilities, damages, received or sustained by any person or persons by or in consequence of any negligence (excluding the gross negligence, or actions based upon the willful, wanton or intentional misconduct of the CITY as well as other exclusions provided by F.S. 725.06(1)(c), recklessness or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by the CONTRACTOR in the performance of this Project. CONTRACTOR agrees that negligent, reckless or intentional wrongful misconduct includes but is not limited to, use of any improper materials or liabilities, damages, losses or costs caused by or on account of the use of any improper materials. CONTRACTOR

agrees that negligent, reckless, or intentional wrongful misconduct also includes but is not limited to the violation of any Federal, State, County or City laws, by-laws, ordinances or regulations by the CONTRACTOR, his subcontractors, agents, servants or employees. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

The indemnification provided above **shall** obligate the CONTRACTOR at Contractor's own expense to provide such defense by counsel of the City's choosing, for any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY which may result from the operations and activities under this Contract whether the construction operations be performed by the CONTRACTOR, his subcontractor or by anyone directly or indirectly employed by either. This indemnification includes all costs and fees including attorney's fees and costs at trial and appellate levels.

CONTRACTOR further acknowledges and agrees that as additional inducement to the CITY'S execution of this agreement, CONTRACTOR does hereby release and forever indemnify and hold harmless the CITY from any and all causes of action and/or claims of any kind at law or in equity, relating to any and all prior agreements between CONTRACTOR and CITY.

The CITY will pay to the CONTRACTOR the specific consideration of ten dollars and other good and valuable consideration as specific consideration for the indemnification provided herein. Furthermore, the CONTRACTOR acknowledges that the bid price includes said consideration for the indemnification provision.

Initials: _____

ARTICLE 8 – OTHER WORK

RELATED WORK AT SITE:

8.1. Without invalidating any portion of the Agreement, the CITY may perform other work related to the Project at the site by the CITY'S own forces, let other direct contracts therefore which **shall** contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Article 13; Contractor, however, **shall**, under no circumstances, be entitled to any additional compensation and is limited to making a claim for an extension of time. If the performance of additional Work by other contractors (the "Separate Contractors") or the Owner is noted in the Contract Documents, no additional adjustment of time or compensation **shall** be considered.

8.2. CONTRACTOR **shall** afford the CITY and Separate Contractors who are a party to such a direct contract (or the CITY, if the CITY is performing the additional work with the CITY'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and **shall** properly connect and coordinate the work with theirs. CONTRACTOR **shall** do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR **shall** not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the CITY and CONSULTANT and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and the Separate Contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and the Separate Contractors.

8.3. If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such Separate Contractor (or the CITY), CONTRACTOR **shall** inspect and promptly report to

CONSULTANT in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR'S work. CONTRACTOR'S failure to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work and CONTRACTOR **shall** not be entitled to any additional time or compensation therefore.

COORDINATION:

8.4. If the CITY contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Technical Specifications and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided in the Technical Specifications. Unless otherwise provided in the Technical Specifications, neither the CITY nor the CONSULTANT **shall** have any authority or responsibility in respect of such coordination.

8.4.1 The Contractor **shall** provide for coordination of the activities of the City's own forces and of each Separate Contractor with the Work of the Contractor. The Contractor **shall** participate with any Separate Contractors and the City in reviewing their construction schedules. The parties acknowledge that the Contractor's schedule has included time for all known Separate Contractors to perform their work, based on Contractor's experience and knowledge. The Contractor **shall** review those portions of the Contract Documents to be performed by the Separate Contractors, if any, that may impact Contractor's performance of its Work, and that may be interrelated with the Work to be performed by the Contractor, and **shall** schedule those separate contractors' work so as to cause no delay to the Work.

8.4.2 The Contractor **shall** coordinate its construction activities with the activities of the Separate Contractors and **shall** provide the necessary personnel and services which are included in the Contract Price necessary to connect and coordinate its Work with theirs at the proper time and in a manner so as not to delay the Work or increase costs.

8.4.3 If any part of the Work depends upon proper execution of work performed by the City or the Separate Contractors, the Contractor, its Subcontractors, and their respective Sub-subcontractors **shall**, prior to proceeding with the Work, inspect such Work and promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor, its Subcontractors, or their respective Sub-subcontractors to comply with these requirements **shall** bar any claims thereafter that defects in Contractor's Work, or delays in the schedule, are due to defects in the Work performed by others.

ARTICLE 9 – THE CITY'S RESPONSIBILITIES

9.1. The CITY **shall** issue all communications to CONTRACTOR through CONSULTANT or CITY staff.

9.2. In case of termination of the employment of CONSULTANT, the CITY **shall** appoint a consultant whose status under the Contract Documents **shall** be that of the former CONSULTANT.

9.3. The CITY **shall** furnish the data required of the CITY under the Contract Documents and **shall** make payments to CONTRACTOR promptly after they are due as provided in paragraphs 15.4 and 15.13.

9.4. The CITY'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 5.1 and 5.4. Paragraph 5.2 refers to the CITY'S identifying and making available to CONTRACTOR copies of all reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by CONSULTANT in preparing the Drawings and Specifications.

9.5. The CITY may execute Change Orders as indicated in paragraph 11.4 if recommended by CONSULTANT. CONSULTANT'S decision, however, is not binding upon the CITY, who may decide, in its sole discretion, to reject a Change Order submitted by the CONTRACTOR.

9.6. In connection with the CITY'S right to stop Work or suspend Work, see paragraph 14.10 and 16.1. Paragraph 16.2 deals with the CITY'S right to terminate services of CONTRACTOR.

ARTICLE 10 – CONSULTANT'S STATUS DURING CONSTRUCTION

CITY REPRESENTATIVE:

10.1. The CONSULTANT will be the CITY'S representative during the construction period. The duties and responsibilities and the limitations of authority of CONSULTANT and the CITY'S representative during construction are set forth in the Contract Documents and **shall** not be extended without written consent of the CITY and CONSULTANT.

VISITS TO SITE:

10.2. After written notice to proceed with the work, the CONSULTANT **shall** make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents; he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction, for which CONTRACTOR is solely responsible, and he will not be responsible for the CONTRACTOR'S failure to perform the construction Work in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the Work; and during such visits and on the basis of his on-site observations, as an experienced and qualified design professional, he will keep the CITY informed of the progress of the work, will endeavor to guard the CITY against defects and deficiencies in the Work of the CONTRACTOR and may reject Work as failing to conform to the Contract Documents and require CONTRACTOR to repair or replace all defective work at no additional cost to the CITY.

PROJECT REPRESENTATION:

10.3. A Resident Project Representative may be assigned to assist CONSULTANT in carrying out his responsibilities to CITY at the site. Resident Project Representative is CONSULTANT'S agent at site, will act as directed by and under the supervision of CONSULTANT, and will confer with CONSULTANT regarding Resident Representative's actions. Resident Project Representative's dealing in matters pertaining to the on-site work **shall** in general be with CONSULTANT and CONTRACTOR keeping the CITY advised as necessary. Resident Project Representative's dealings with subcontractors **shall** only be through or with the full knowledge and approval of CONTRACTOR. Resident Project Representative **shall** generally communicate with the City with the knowledge of and under the direction of CONSULTANT.

10.3.1. Resident Project Representative **shall** where applicable:

10.3.1.1. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with CONSULTANT concerning its general acceptability.

10.3.1.2. Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

10.3.1.3. Working principally through CONTRACTOR'S superintendent, assist CONSULTANT in serving as the City's liaison with CONTRACTOR, when CONTRACTOR'S operations affect the City's on-site operations.

10.3.1.4. Assist in obtaining from the City additional details or information, when required for proper execution of the Work.

- 10.3.1.5. Record date of receipt of Shop Drawings and samples.
- 10.3.1.6. Receive samples which are furnished at the site by CONTRACTOR and notify the CONSULTANT of availability of samples for examination.
- 10.3.1.7. Advise the CONSULTANT and CONTRACTOR of the commencement of any Work requiring a Shop Drawing if the submittal has not been approved by the CONSULTANT.
- 10.3.1.8. Conduct on-site observations of the Work in progress to assist the CONSULTANT in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
- 10.3.1.9. Report to the CONSULTANT whenever Residential Project Representative believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the CONSULTANT of Work that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein **shall** relieve the CONTRACTOR or the CONSULTANT from the duties imposed by contract.
- 10.3.1.10. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to the CONSULTANT appropriate details relative to the test procedures and startups.
- 10.3.1.11. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the CONSULTANT.
- 10.3.1.12. Report to CONSULTANT when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by the CONSULTANT.
- 10.3.1.13. Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the CONSULTANT. Transmit to CONTRACTOR decisions as issued by the CONSULTANT.
- 10.3.1.14. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, CONSULTANT'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
- 10.3.1.15. Keep a diary or logbook, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the CONSULTANT.
- 10.3.1.16. Record all names, addresses and telephone numbers of the CONTRACTOR, all subcontractors and major suppliers of material and equipment.
- 10.3.1.17. Furnish the CONSULTANT periodic reports as required of progress of the Work of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

10.3.1.18. Consult with the CONSULTANT in advance of schedule major tests, inspections or start of important phases of the Work.

10.3.1.19. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to the CONSULTANT, Change Orders, Work Directive Changes, and Field Orders.

10.3.1.20. Report immediately to the CONSULTANT and the CITY upon the occurrence of any accident.

10.3.1.21. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the CONSULTANT, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

10.3.1.22. During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the CONSULTANT for review and forwarding to City prior to final payment for the Work.

10.3.1.23. Before the CONSULTANT issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

10.3.1.24. Conduct final inspection in the company of the CONSULTANT, the City and the CONTRACTOR and prepare a final list of items to be completed or corrected.

10.3.1.25. Observe that all items on final list have been completed or corrected and make recommendations to the CONSULTANT concerning acceptance.

10.3.2. The Resident Project Representative **shall** not:

10.3.2.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment.

10.3.2.2. Exceed limitations of the CONSULTANT'S authority as set forth in the Contract Documents.

10.3.2.3. Undertake any of the responsibilities of CONTRACTOR, subcontractors, or CONTRACTOR'S superintendent.

10.3.2.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

10.3.2.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

10.3.2.6. Accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.

10.3.2.7. Authorize the City to occupy the Project in whole or in part.

10.3.2.8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the CONSULTANT.

CLARIFICATIONS AND INTERPRETATIONS:

10.4. The Initial Decision Maker is the person identified in the Contract Documents to render initial decisions on Claims in accordance with the Contract Documents. The Initial Decision Maker **shall** not show partiality to the City or Contractor and **shall** not be liable for results of interpretations or decisions rendered in good faith. The Consultant **shall** serve as the Initial Decision Maker. CONTRACTOR expressly agrees that CONSULTANT is the sole judge of the requirements of the Contract Documents and the judge of CONTRACTOR'S performance thereunder and thus agrees that all decisions made by CONSULTANT regarding such issues **shall** be binding upon CONTRACTOR and the CITY. The CONSULTANT will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CONSULTANT may determine necessary, which **shall** be consistent with or reasonably inferable from the overall intent of the Contract Documents.

AUTHORIZED VARIATIONS OF WORK:

10.5. CONSULTANT may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field Order and will be binding on the CITY, and also on CONTRACTOR who **shall** perform the Work involved promptly. As such Field Orders involve minor variations to the Work, CONTRACTOR **shall** not be entitled to any additional time or compensation for performing such work and is precluded from submitting change order requests for furnishing such work.

10.6. The CONSULTANT will have authority to disapprove or reject Work which CONSULTANT believes to be defective or believes to be in nonconformance with the intent of the contract documents, and will also have authority to require special inspection or testing of the Work as provided in paragraph 14.9, whether or not the Work is fabricated, installed or completed.

SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

10.7. In connection with CONSULTANT'S responsibility for Shop Drawings and samples, see paragraphs 7.22 through 7.26 inclusive.

10.8. In connection with CONSULTANT'S responsibilities as to Change Orders, see Article 11, 12, and 13.

10.9. In connection with CONSULTANT'S responsibilities in respect of Applications for Payment, etc., see Article 15.

DETERMINATIONS FOR UNIT PRICES:

10.10. CONSULTANT will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. CONSULTANT will review with CONTRACTOR CONSULTANT'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CONSULTANT'S written decisions thereon will be final and binding upon the CITY or CONTRACTOR unless, within ten (10) days after the date of any such decision, either the CITY or CONTRACTOR delivers to the other party to the Agreement and to CONSULTANT written notice of intention to appeal from such a decision.

DECISIONS ON DISPUTES:

10.11. As CONSULTANT is the Initial Decision Maker and, in that role will serve as the interpreter of the requirements of the Contract Documents and judge of the acceptability of the Contractor's Work there

under, claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under this section 10.11 and Articles 12 and 13 in respect of changes in the Contract Price or Contract Time will be referred to CONSULTANT in writing with a request for a formal decision in accordance with this paragraph, which CONSULTANT will render in writing within the time set forth in these Articles. Written notice of each such claim, dispute and other matter will be delivered by the claimant to CONSULTANT and the other party to the Agreement promptly as set forth in paragraph 10.13 below.

10.12. When functioning as interpreter and judge under paragraphs 10.4, 10.10 and 10.11, CONSULTANT will not show partiality to the CITY or CONTRACTOR. The rendering of a decision by CONSULTANT pursuant to paragraphs 10.4, 10.10 and 10.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 15.13) will be a condition precedent to any exercise by the CITY or the CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter. CONTRACTOR'S failure to timely submit a claim to the CONSULTANT in accordance with the requirements of the Contract Documents constitutes a waiver of its claim.

10.12.1 Notice of Claims. Claims by either the City or Contractor **shall** be initiated by notice to the other party and to the Initial Decision Maker. Claims by the Contractor for an increase in the Contract Price or the Contract Time must be made within five (5) days after occurrence of the event giving rise to such Claim.

10.12.2 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided elsewhere in the Contract Documents, the Contractor **shall** proceed diligently with performance of the Contract and the City **shall** continue to make payments in accordance with the Contract Documents.

10.12.3 The Contract Price and Contract Time **shall** be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 10. The City will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

10.12.3.1 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Price, notice as provided in paragraph 10.12.1 **shall** be given before proceeding to execute the portion of the Work that is the subject of the Claim.

10.12.3.2 Claims for Additional Time. If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in paragraph 10.12.1 **shall** be given. The Contractor's Claim **shall** include a Time Impact Analysis and probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

10.12.3.3 If exceptional and unusual adverse weather conditions are the basis for a Claim for additional time, such Claim **shall** be made consistent with the provisions of this Article 10 and in accordance with delay and extension of time provisions of the Contract Documents and must meet all of the requirements for a time extension as set forth in the Contract Documents. Such Claim **shall** be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

10.12.4 Initial Decision. Claims **shall** be referred to the Initial Decision Maker for initial decision. The Initial Decision Maker will be the Consultant, unless otherwise indicated in the Agreement. An initial decision **shall** be required as a condition precedent to mediation or litigation of any Claim. If an initial decision has not been rendered within thirty (30) days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation followed by litigation without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the City. Contractor must continue with its Work when a Claim is pending before the Initial Decision Maker.

10.12.4.1 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

10.12.4.2 In evaluating Claims, the Initial Decision Maker may, but **shall** not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

10.12.4.3 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party **shall** respond, within ten (10) days after receipt of such request, and **shall** either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

10.12.4.4 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision **shall** (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Price or Contract Time or both.

LIMITATIONS ON CONSULTANT'S RESPONSIBILITIES:

10.13. Neither CONSULTANT'S authority to act under this Article 10 or elsewhere in the Contract Documents nor any decision made by CONSULTANT either to exercise or not exercise such authority **shall** give rise to any duty or responsibility of CONSULTANT or CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

10.14. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of CONSULTANT as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective **shall** not be effective to assign to CONSULTANT any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 10.15 or 10.16.

10.15. CONSULTANT will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CONSULTANT will not be responsible to CONTRACTOR for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

10.16. CONSULTANT will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 11 – CHANGES IN THE WORK

11.1 A “Change Order” is defined, for purposes of the Contract Documents, as a written order to the CONTRACTOR executed by the CITY and the CONSULTANT after execution of the Contract, directing a change in the Work and may include a change in the Contract Price or the time for the CONTRACTOR’S performance, or any combination thereof.

11.2 Without invalidating the Agreement and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, CONTRACTOR **shall** promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a Claim may be made therefore as provided in Articles 10, 12 and/or Article 13.

11.3. CONTRACTOR **shall** not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 4.4 and 4.5, except in the case of an emergency as provided in paragraph 7.21 and except in the case of uncovering Work as provided in paragraph 14.9.

11.4. The CITY and CONTRACTOR **shall** execute appropriate Change Orders (or Written Amendments) covering:

11.4.1. Changes in the work which are ordered by the CITY pursuant to paragraph 11.2, are required because of acceptance of defective Work under paragraph 14.13 or correcting defective Work under paragraph 14.14, or are agreed to by the parties.

11.4.2. Changes in the Contract Price or Contract time which are agreed to by the parties

11.4.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CONSULTANT pursuant to paragraph 10.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR **shall** carry on the Work and adhere to the progress schedule as provided in paragraph 7.27.

11.4.4. Execution of a Change Order by the CONTRACTOR constitutes conclusive evidence of the CONTRACTOR’S agreement to the ordered changes in the Work and the change in the Contract Price and the time for performance by the CONTRACTOR. The CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for issues or matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

11.4.5. All Change Orders and adjustments **shall** be in writing and executed by the CONTRACTOR and CITY; otherwise, no claim for additional compensation or time will be permitted.

11.4.6. All Change Orders in which the CONTRACTOR seeks additional time must include a Time Impact Analysis which includes an analysis of how the change **shall** be incorporated into the construction schedule; the status of construction at that time; and the start/finish dates of all affected activities utilizing the dates included in the latest construction schedule. Where the CONTRACTOR fails to append a Time Impact Analysis to the Change Order, it agrees that the delay has no affect on Contract Time.

11.5. It is distinctly agreed and understood that any changes made in the Contract Documents for this Work (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR **shall** in no way annul,

release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

11.6. Notwithstanding, anything to the contrary contained within the Contract Documents, all change orders involving additional cost or extensions of time, **shall** be governed by the ordinances of the City of Delray Beach.

ARTICLE 12 – CHANGE OF CONTRACT PRICE

12.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR **shall** be at his expense without change in the Contract Price.

12.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Although the CONTRACTOR acknowledges the “no damages for delay” provision set forth in Article 9 of the Contract Agreement, should it be entitled to any Claim for additional compensation under any circumstances, any claim for an increase or decrease in the Contract Price **shall** be based on written notice delivered by the party making the Claim to the other party and to CONSULTANT as set forth in Article 10. Notice of the amount of the Claim with supporting data **shall** be delivered within five (5) days after such occurrence (unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim) and **shall** be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect) to which the claimant believes it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price **shall** be determined solely by CONSULTANT in accordance with Article 10 if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 12.2. Failure by the CONTRACTOR to strictly comply with such notice requirements **shall** constitute a complete waiver by the CONTRACTOR of any claim for additional compensation. Furthermore, should the CONTRACTOR be entitled to an increase in the Contract Sum, it **shall** be strictly limited to the direct cost of labor and materials incurred by the CONTRACTOR at the jobsite and **shall** in no event include indirect costs, overhead, lost profits or consequential damages incurred by the Contractor. Furthermore, the CITY **shall** not be liable to the CONTRACTOR for claims of third parties including, but not limited to, subcontractors, suppliers, laborers, etc.

12.3. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price **shall** be determined in one of the following ways:

12.3.1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 12.9.1. and 12.9.2.).

12.3.2. By mutual acceptance of a lump sum (which **shall** include an allowance for overhead and profit in accordance with paragraph 12.6.2.1).

12.3.3. On the basis of the Cost of the Work (determined as provided in paragraphs 12.4 and 12.5) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in paragraphs 12.6 and 12.7).

COST OF THE WORK:

12.4. The term Cost of the Work means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the CITY, such costs **shall** be in amounts no higher than those prevailing in the locality of the Project, **shall** include only the following items and **shall** not include any of the costs itemized in paragraph 12.5.

12.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classification agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the Work **shall** be apportioned on the basis of their time spent on the Work. Payroll costs **shall** include, but not be limited to, salaries and wages plus the cost of fringe benefits which **shall** include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees **shall** include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays **shall** be included in the above to the extent authorized by the CITY.

12.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts **shall** accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts **shall** accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment **shall** accrue to the CITY, and CONTRACTOR **shall** make provisions so that they may be obtained by the City in the most expeditious manner possible

12.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by the CITY, CONTRACTOR **shall** obtain competitive bids from Subcontractors acceptable to CONTRACTOR and **shall** deliver such bids to the CITY who will then determine, with the advice of the CONSULTANT, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work **shall** be determined in the same manner as CONTRACTOR'S Cost of Work. All subcontracts **shall** be subject to the other provisions of the Contract Documents insofar as applicable.

12.4.4. Supplemental costs include the following:

12.4.4.1. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers, which are consumed in the performance of Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

12.4.4.2. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CONSULTANT, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts **shall** cease when the use thereof is no longer necessary for the Work. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front end loaders, backhoes, and tractors, or other equipment, required for the economical performance of the authorized Work, the CONTRACTOR **shall** receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate **shall** be from the latest edition of the Rental Rate blue book for Construction Equipment, published by Equipment Guide Book Co., reduced by 25 percent. Equipment cost **shall** be calculated based upon the actual time the equipment is used in the Work. If said Work required the use of machinery not on the Work or not to be used on the Work, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the Work **shall** be added to the fair rental rate; provided, however, that this **shall** not apply to machinery or equipment already required to be furnished under the terms of the Contract.

12.4.4.3. Sales, consumer, use or similar taxes related to the work and for which CONTRACTOR is liable, imposed by laws and regulations.

12.4.4.4. Royalty payments and fees for permits and licenses.

12.4.4.5. The site costs of utilities, fuel and sanitary facilities.

12.4.4.6. Cost of premiums for additional bonds and insurance required because of changes in the Work.

12.5. The term Cost of the Work **shall** not include any of the following:

12.5.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1, which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

12.5.2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site. CONTRACTOR expressly agrees that Home Office Overhead is not included within the costs of the work.

12.5.3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

12.5.4. Cost of premiums for all Bonds and for all Insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 12.4.4.6 above).

12.5.5. Costs due to the acts or omissions of the CONTRACTOR, any Subcontractor, or anyone whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

12.5.6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 12.4.

CONTRACTOR'S FEE:

12.6. The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profits **shall** be determined as follows:

12.6.1. A mutually acceptable fixed fee; or if none can be agreed upon,

12.6.2. A fee based on the following percentages of the various portions of the Cost of the Work:

12.6.2.1. The cost allowance for overhead and profit **shall** not exceed **fifteen percent (15%)** of the new cost. If the Work is done by a Subcontractor, he may add **ten percent (10%)** of his net cost for overhead and profit and the Contractor may add **five percent (5%)** of the net cost for overhead and profit. If all the Work is done by the Contractor, he may add **fifteen percent (15%)** of the net cost for overhead and profit.

12.6.2.2. No fee **shall** be payable on the basis of costs itemized under paragraphs 12.4.4 and 12.5;

12.6.2.3. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to **ten percent (10%)** of the net decrease; and

12.6.2.4. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee **shall** be computed on the basis of the net change in accordance with paragraphs 12.6.2.1 through 11.6.2.3, inclusive.

12.7. Whenever the cost of any Work is to be determined pursuant to paragraph 12.4 or 12.5, CONTRACTOR will submit in form acceptable to CONSULTANT an itemized cost breakdown together with supporting data.

UNDEFINED GENERAL ALLOWANCES:

12.8. It is understood that CONTRACTOR has included in the Contract Price all undefined general allowances so named in the Contract Documents and **shall** cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the undefined general allowances as may be acceptable to the CONSULTANT, CONTRACTOR agrees that:

12.8.1. The undefined general allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the undefined general allowances to be delivered at the site, and all applicable taxes; and

12.8.2. CONTRACTOR'S costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the undefined general allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change order will be issued as recommended by CONSULTANT to reflect actual amounts due CONTRACTOR on account of Work covered by undefined general allowances, and the Contract Price **shall** be correspondingly adjusted.

UNIT PRICE WORK:

12.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by CONSULTANT in accordance with Paragraph 10.10.

12.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

OMITTED WORK:

12.10. The City may at any time, by written order, without Notice to the Sureties, require omission of such contract work as it may find necessary or desirable. An order for omission of work **shall** be valid only by an executable change order. All work so ordered must be omitted by the CONTRACTOR. The amount by which the contract price **shall** be reduced **shall** be determined as follows:

12.10.1. By such applicable unit prices, or rates for work of a similar nature or character as set forth in the contract; or,

12.10.2. By the appropriate lump sum price set forth in the Contract; or,

12.10.3. By the reasonable and fair estimated cost of such omitted work as determined by the CONTRACTOR and the CONSULTANT, and approved by the CITY.

ARTICLE 13 – TIME AND DELAYS

13.1 All time in the Contract Documents is calculated on a consecutive calendar day basis.

13.2 Time is of the essence in this Contract, and any breach of same **shall** go to the essence hereof, and CONTRACTOR, in agreeing to complete the Work within the time herein mentioned, has taken - into consideration and made allowances for all reasonable hindrances and delays incident to his work

13.3 CONTRACTOR agrees to commence the Work when directed by Owner and to diligently and continuously perform such Work and to coordinate the Work with other Work being performed on the Project by other trades so that the Owner **shall** not be delayed by any act or omission of CONTRACTOR in completion of the Project within the time specified above.

13.3.1 Contractor **shall** perform the Work in strict accordance with the Construction Schedule and the Submittal Schedules submitted to and approved by Consultant and City, in writing.

13.3.2 The Construction Schedule and all subsequently submitted updated Construction Schedules **shall** be in a detailed, precedence-style, resource loaded, critical path method (CPM) type format satisfactory to the City and Consultant, which **shall** also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction, Substantial Completion, Temporary Certificate of Occupancy Dates, Certificates of Occupancy and Final Completion; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Contractor **shall** provide the City with the original/planned, resource loaded Construction Schedule in P6 native electronic files (.xer format) such that the City may see Contractor's logic. Upon review and acceptance by the City and the Consultant of the Construction Schedule, the Construction Schedule **shall** be deemed part of the Contract Documents.

13.3.3 The Contractor **shall** monitor the progress of the Work for conformance with the requirements of the Construction Schedule and **shall** promptly advise the City of any delays or potential delays. The accepted Construction Schedule **shall** be updated one (1) time each month to reflect actual conditions and Contractor **shall** provide the City with a copy of the updated, resource loaded schedule, in P6 native electronic files (.xer format), and a list of all changes made to the schedule, at the time Contractor submits its monthly Payment Application. The updated Construction Schedule should include new start dates, new finish dates and the appropriate percent complete. No additional activities, changes to the Construction Schedules logic or changes to the Construction Schedules durations are to be included in the updated Construction Schedule. The Contractor may, at its option, provide fragnets with added activities and logic changes; however, these changes are to be submitted in a separate document and as a separate electronic file. With all submissions, the .xer electronic file is to be submitted along with PDFs.

13.3.4 In the event any progress report or schedule update indicates any delays or loss of time, the Contractor **shall** propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event **shall** any progress report constitute an adjustment in the Contract Time or the Contract Price unless any such adjustment is agreed to by the City and authorized pursuant to properly executed written Change Order. Contractor **shall** maintain such updated Construction Schedule on a current basis in accordance with the provisions of this Section and **shall** keep proper records available to inspection by the City to substantiate actual activity, resources, duration and completion dates.

13.3.5 Extraordinary Measures. In the event the City or Consultant determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the City **shall** have the right to order the Contractor, in writing, to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts

or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing the Work to avoid the effects of the potential delay; and (4) other similar measures utilizing the most cost effective and reasonable acceleration methods possible to avoid delays and Damages (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures **shall** continue until the progress of the Work complies with the stage of completion required by the Contract Documents and approved Construction Schedule. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule. The Contractor **shall** be responsible for liquidated damages for delays for failure to complete the Work within the Contract Time. All Extraordinary Measures required to keep the Project on schedule and to avoid delays **shall** not be considered a Cost of the Work and **shall** not be a basis to increase the Contract Price. Should Contractor fail to perform the Extraordinary Measures as provided herein, the City **shall** give the Contractor a five (5) business day notice of default. If the Contractor does not commence and continue to correct the default as provided in this Section, then the City may supplement Contractor's crews, supply additional manpower, equipment and facilities, and/or other similar measures to avoid delays. Contractor **shall** be liable to The City for all costs incurred by The City pursuant to this Section. If Contractor does not perform its obligations pursuant to this Section, an appropriate Change Order **shall** be issued deducting from payments then or thereafter due the Contractor the reasonable cost incurred pursuant to this Section. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor **shall** pay the difference to the City.

13.3.6 The City may exercise the rights furnished the City under or pursuant to this Section 13.3.5 as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with any critical dates and/or the Substantial Completion Date or TCO dates, as applicable. Alternatively, the City may exercise termination rights as provided for in the Contract Documents.

13.3.7 All Float contained in the Construction Schedule, as shown in the initial Construction Baseline Schedule or as generated thereafter, **shall** be considered a Project resource belonging in whole to the City for City's sole use as needed to absorb delays caused by any event. All Float **shall** be shown as such in the Construction Schedule on each affected schedule path. The City and Consultant **shall** have the right to examine the identification of (or failure to identify) Float on the schedule in determining whether to approve the Construction Schedule. Once identified, the Contractor **shall** monitor, account for and maintain Float in accordance with critical path methodology.

13.4 CONTRACTOR **shall** make payments promptly to its vendors, subcontractors, suppliers and for labor, material and equipment used by it in the performance of his work.

13.5 The CONTRACTOR **shall** not be entitled to any claim for damages on account of hindrance or delays from any cause whatsoever; but if caused by any act of God or active interference on the part of the Owner, such act, hindrance, or delay may only entitle the CONTRACTOR to receive an extension of time as its sole and exclusive remedy.

13.6 Adverse weather such as rain is not to be considered to be an Act of God unless it exceeds the ten (10) year average as published by the National Weather Service (or equivalent organization acceptable to the Owner at its sole discretion) for that time of year in Palm Beach County.

13.7 An extension of time to complete the Work **shall** be determined by the Owner provided that the CONTRACTOR provides the Owner with notice in writing of the cause of said act, hindrance or delay within twenty (20) calendar days after its occurrence.

13.8 In the event the request for extension is not made in writing within that twenty (20) day time period, CONTRACTOR acknowledges and agrees it has forever waived any and all rights to such an extension.

13.9 All extensions of time **shall** be authorized only by a written change order executed by the Owner and Project Consultant.

13.10 This "no damage for delay" clause, also set forth in Article 9 of the Agreement, will encompass any damages for delay or disruption even if the CONTRACTOR completes construction of the Work in a timely fashion in accordance with this Contract.

13.11 Damages as referenced in this "no damage for delay" **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, consequential damages, liquidated damages and/or punitive damages.

13.12 By way of specific example but not limitation, damages as referenced within this clause includes loss of use, loss of profits, labor inefficiency, loss of bonding capacity, overhead and repair costs, costs of capital replacement, loss of wages, pain and suffering, loss of production costs to replace facilities, equipment and/or product loss, increased and/or extended home office overhead, increased general conditions, costs of mobilization and demobilization, decrease in value, and/or any other damage or loss.

13.13 The CONTRACTOR recognizes and specifically acknowledges the terms and the "no damage for delay" clause upon execution of this Contract.

ARTICLE 14 – WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.1. CONTRACTOR warrants and guarantees to the CITY and CONSULTANT that all Work will be constructed in accordance with the Contract Documents and that all materials and equipment incorporated into any Work covered by the Contract Documents **shall** be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship **shall** be in accordance with construction practices acceptable to the City and Consultant. Prompt notice of all defects **shall** be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in Article 14. The guarantee **shall** remain in effect for **one (1) year** from the date of final acceptance unless a longer period is specified. The CITY **shall** give notice of observed defects with reasonable promptness. Un-remedied defects identified for correction during the guarantee period but remaining after its expiration **shall** be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment which are remedied as a result of obligations of the guarantee **shall** subject the remedied portion of the work to an extended guarantee period of one year after the defect has been remedied. The Surety **shall** be bound with and for the Contractor in the Contractor's faithful observance of the guarantee. However, nothing contained in this Section **shall** affect or hinder the CITY'S ability to collect on the CONTRACTOR'S Performance Bond within a five (5) year period.

ACCESS TO WORK:

14.2. CONSULTANT'S and CONSULTANT'S representatives, other representatives of the CITY, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR **shall** provide proper and safe conditions for such access.

TESTS AND INSPECTIONS:

14.3. CONTRACTOR **shall** give CONSULTANT timely notice of readiness of the Work for all required inspections, tests or approvals.

14.4. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR **shall** assume full responsibility therefor, pay all costs in connection therewith and furnish CONSULTANT the required certificates of inspection, testing or approval. CONTRACTOR **shall** also be responsible for and **shall** pay all costs in connection with any inspection or testing required in connection with the CITY'S or CONSULTANT'S acceptance of a Supplier

of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work.

14.5. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction **shall** be performed by organizations acceptable to the CITY (or by CONSULTANT if so specified).

14.6. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for observation. Such uncovering **shall** be at CONTRACTOR'S expense unless CONTRACTOR has given CONSULTANT timely notice of CONTRACTOR'S intention to cover the same and CONSULTANT has not acted with reasonable promptness in response to such notice.

14.7. Neither observations by CONSULTANT nor inspections, tests or approvals by others **shall** relieve CONTRACTOR from CONTRACTOR'S obligation's to perform the Work in accordance with the Contract Documents.

UNCOVERING WORK:

14.8. If any Work is covered contrary to the request of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for CONSULTANT'S observation and replaced, at CONTRACTOR'S expense.

14.9. If CONSULTANT considers it necessary or advisable that covered Work be observed by CONSULTANT or inspected or tested by others, CONTRACTOR, at CONSULTANT'S request **shall** uncover, expose or otherwise make available for observation, inspection or testing as CONSULTANT may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR **shall** bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY **shall** be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 12. If, however, such Work is not found to be defective, CONTRACTOR **shall** be allowed an increase in the Contract Price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof. CONTRACTOR may make a claim therefore as provided in Article 12 and 13.

CITY MAY STOP THE WORK:

14.10. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the Work **shall** not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

CORRECTION OR REMOVAL OF DEFECTIVE WORK:

14.11. If required by CONSULTANT, CONTRACTOR **shall** promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CONSULTANT, remove it from the site and replace it with non-defective Work. CONTRACTOR **shall** bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

ONE YEAR CORRECTION PERIOD:

14.12. If within **one (1) year** after the date of final acceptance of the Work by the City or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR **shall** promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such defective Work, or, if it has been rejected by the CITY, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment. Nothing herein **shall** be deemed a waiver of the statute of limitations as provided in Florida Law.

14.13. If instead of requiring correction or removal and replacement of defective Work, the CITY (and prior to CONSULTANT'S recommendation of final payment) prefers to accept it, the CITY may do so. CONTRACTOR **shall** bear all direct, indirect and consequential costs attributable to the CITY'S evaluation of and determination to accept such defective Work (such costs to be approved by CONSULTANT as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to CONSULTANT'S recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY **shall** be entitled to an appropriate decrease in the Contract Price to be determined by the CONSULTANT. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to the CITY.

CITY MAY CORRECT DEFECTIVE WORK:

14.14. If CONTRACTOR fails within thirty days (30) after written notice of CONSULTANT to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by CONSULTANT in accordance with paragraph 14.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven (7) days written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the CITY **shall** proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incomplete in the Work all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR **shall** allow the CITY, the CITY'S representative, agents and employees, such access to the site as may be necessary to enable the CITY to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the CITY in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by CONSULTANT, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY **shall** be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 12. Such direct, indirect and consequential costs will include but not be limited to fees and charges

of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of other destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR **shall** not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the CITY of the CITY'S rights and remedies hereunder.

ARTICLE 15 – PAYMENTS TO CONTRACTOR AND COMPLETION

15.1. The schedule of values established as provided in paragraph 3.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CONSULTANT. The schedule of values **shall** be presented with such detail, and supported with whatever information the CITY or CONSULTANT reasonably requests. The CONTRACTOR **shall** not imbalance its schedule of values or artificially inflate any element thereof. Progress payments on account of Unit Price Work will be based on the number of units completed.

APPLICATION FOR PROGRESS PAYMENTS:

15.2 Unless otherwise prescribed by law, at the end of each month, the CONTRACTOR **shall** submit to the Consultant for review, an Application for Progress Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and accomplished by such supporting documentation as is required by the Contract Documents.

The Application for Progress Payment **shall** identify, as a subtotal, the amount of the CONTRACTOR'S Total Earnings to Date, plus the Value of Materials Stored which have not yet been incorporated in the Work, less a deductive adjustment for materials stored which have been installed which were not previously incorporated in the Work, but for which payment was allowed.

The Net Payment Due to the CONTRACTOR **shall** be the above- mentioned subtotal from which **shall** be deducted the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by the CONTRACTOR. Retainage **shall** be calculated based upon the above-mentioned subtotal.

The above calculation in tabular form is as follows:

Total Earnings to Date	\$ _____
Value of Materials Stored	\$ _____
Less Value of Materials Stored for which payment was allowed and which have been installed	(\$ _____)
SUBTOTAL	\$ _____
Less Retainage (based on sub total)	(\$ _____)
Less total of all previous approved Applications for Progress Payment	(\$ _____)
NET PAYMENT DUE:	\$ _____

The Value of Materials Stored **shall** be an amount equal to the specified percent of the value of same as set forth in the Agreement or Schedule of Values. Said amount **shall** be based upon the value of all acceptable materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the Work and is planned for installation within the following thirty (30) days. The Application for Progress Payment **shall** also be accompanied by a Bill of Sale, paid invoice, or other documentation warranting that the CONTRACTOR has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter

in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY'S interest therein, all of which **shall** be satisfactory to the CITY. CONTRACTOR warrants and represents that, upon payment of the pay request submitted, title to all work included in such payment **shall** be vested in the CITY.

CONTRACTOR'S WARRANTY OF TITLE:

15.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the CITY no later than the time of payment free and clear of Liens.

REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

15.4. The CONSULTANT identified within Article 6 of the **payment procedures** must review the payment request or invoice. Payment is due twenty-five (25) business days after the date on which the payment request or invoice is stamped as received. The City may reject the payment request or invoice within twenty (20) business days after the date on which the payment request or invoice is stamped as received. The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. If a payment request or an invoice is rejected and the contractor resubmits a corrected payment request or invoice which corrects the deficiency specified in writing by the City, the corrected payment request or invoice must be paid or rejected on the later of:

- Ten (10) business days after the date the corrected payment request or invoice is stamped as received

Or

- The first business day after the next regularly scheduled meeting of the governing body held after the corrected payment request or invoice is stamped as received.

If a dispute between the City and the contractor cannot be resolved, the dispute must be resolved in accordance with the provisions of the Florida Prompt Payment Act Florida Statue 218.70.

When the Contractor receives payment from the City for labor, services, or materials furnished by subcontractors and suppliers hired by the Contractor, the Contractor **shall** remit payment due to those subcontractors and suppliers within ten (10) days after the Contractor's receipt of payment.

When a subcontractor receives payment from the Contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor **shall** remit payment due to those subcontractors and suppliers within seven (7) days after the subcontractor's receipt of payment.

Nothing herein **shall** prohibit the Contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the Contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. Any disputes regarding payment **shall** be raised via a formal Claim pursuant to Article 10. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

CONSULTANT will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CONSULTANT'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Twenty (20) business days after receipt of the Application for Payment by the City with CONSULTANT'S recommendation, the amount recommended will (subject to the provisions of section 15.4 and the last sentence of paragraph 15.7) become due and when due will be paid by the CITY to CONTRACTOR.

15.5. CONSULTANT'S recommendation of any payment requested in the application for payment **shall** not prohibit the City from withholding payment or prohibit the City from paying additionally sums regarding

other matters or issues between the parties. In addition, payment precludes contractor from requesting additional compensation for work for which it has been paid.

15.6. CONSULTANT'S recommendation of final payment will constitute an additional representation by CONSULTANT to the CITY that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 15.13 have been fulfilled.

15.7. CONSULTANT may refuse to recommend the whole or any part of any payment if, in CONSULTANT'S opinion, it would be incorrect to make such representations to the CITY. The CONSULTANT may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CONSULTANT'S opinion to protect the CITY from loss, including but not limited to:

15.7.1. The Work is defective, or completed Work has been damaged requiring correction or replacement.

15.7.2. The Contract Price has been reduced by Written Amendment or Change Order.

15.7.3. The CITY has been required to correct defective Work or complete Work in accordance with paragraph 14.14, or

15.7.4. Of CONSULTANT'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 16.2.1 through 16.2.9 inclusive.

15.7.5 for liquidated damages that have accrued against the CONTRACTOR;

15.7.6 for claims filed by Subcontractors, suppliers or other third parties;

15.7.7 CONTRACTOR'S failure to carry out any of its obligations under the Contract Documents;

15.7.8 CONTRACTOR'S failure to make proper payments to Subcontractors or other third parties;

15.7.9 Damage to the CITY or another CONTRACTOR;

15.7.10 Punch list items unremedied;

15.7.11 Failure to comply with any and all insurance requirements;

15.7.12 Reasonable evidence that the Work will not be completed on or before the Substantial Completion or Final Completion date.

The CITY may refuse to make payment of the full amount recommended by the CONSULTANT because claims have been made against the CITY on account of CONTRACTOR'S performance or furnishing of the Work, or there are other items entitling the CITY to credit against the amount recommended, but the CITY must give CONTRACTOR written notice (with a copy to CONSULTANT) stating the reasons for such action.

SUBSTANTIAL COMPLETION:

15.8. When the CONTRACTOR considers the entire Work ready for its intended use, the CONTRACTOR **shall** notify the CITY and the CONSULTANT in writing that the Work is substantially complete and request that the CONSULTANT prepare a Certificate of Substantial Completion. Within a reasonable time thereafter, the CITY, the CONSULTANT and the CONTRACTOR **shall** make an inspection of the Work to determine the status of completion. If the CONSULTANT does not consider the Work substantially complete, the CONSULTANT **shall** notify the CONTRACTOR in writing giving the reasons therefor. If the

CONSULTANT considers the Work to be substantially complete, the CONSULTANT will prepare and deliver to the CITY for its execution and recordation the Certificate of Substantial Completion signed by the CONSULTANT and CONTRACTOR, which **shall** fix the Date of Substantial Completion. Before requesting an inspection for certification of Substantial Completion, the Contractor must have completed the following:

15.8.1 All air conditioning, ventilation, security systems, fire alarms, fire sprinklers and other life safety systems must be completed, tested, approved and demonstrated.

15.8.2 Air Conditioning systems must be completed, tested and approved by the Consultant.

15.8.3 Landscaping must be installed and in the event of ball fields, the grass must have grown to such an extent to be useable. Landscape irrigation systems must be completed, tested, approved and demonstrated.

15.8.4 In the Application for Payment that coincides with, or first follows, the date Substantial Completion is claimed, show 100 percent completion for the Work. Include supporting documentation for completion as indicated in these Contract Documents and a statement showing an accounting of changes to the Contract Sum.

15.8.5 Advise CITY of pending insurance changeover requirements.

15.8.6 Prepare specific warranties, workmanship bonds, maintenance agreements, final certifications and all required closeout submittals.

15.8.7 Obtain and submit releases enabling the CITY unrestricted use of the Work and access to services and utilities; include occupancy permits, operating certificates and similar releases.

15.8.8 Submit record drawings, maintenance manuals, final project photographs, damage or settlement surveys, property surveys and similar final record information.

15.8.9 Make final changeover of permanent locks and transmit master and grand master keys to the CITY.

15.8.10 Advise the CITY'S personnel of pending changeover in security provisions.

15.8.11 Discontinue or change over and remove temporary facilities from the site, along with construction tools, mock-ups and similar elements.

15.8.12 Complete final cleanup requirements, including touch-up painting.

15.8.13 Touch-up and otherwise repair and restore marred exposed finishes.

PUNCHLIST ITEMS:

15.9.1 The City **shall** develop a single "punch list" within thirty (30) days of the Contractor reaching substantial completion. The "punch list" **shall** cover the entire project and **shall** be released to the contractor within five (5) days of the development of said punch-list. The contractor **shall** have a minimum of thirty (30) days after the delivery of the list of items to complete the punch list.

Upon completion of the "punch list" items the Contractor may submit a request for all retainage held by the City. If there is a dispute as to the completion of a "punch list" item the City **shall** be allowed to retain 150% of the cost for the item until such dispute is resolved.

15.9.2 The CITY **shall** have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but the CITY **shall** allow CONTRACTOR reasonable access to complete or correct items on

the "punch list". All items of work must be installed and completed per the contract documents. If the City fails to comply with its responsibilities to develop the list required as defined in the contract, within the time limitations provided the contractor may submit a payment request for all remaining retainage withheld by the City pursuant to this section. The City need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the City in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the punch list. If the punch list is not provided to the contractor by the agreed upon date for delivery of the list, the contract time for completion must be extended by the number of days the City exceeded the delivery date. Damages may not be assessed against a contractor for failing to complete a project within the time required by the contract, unless the contractor failed to complete the project within the contract period as extended under this paragraph.

The failure to include any corrective work or pending items not yet completed on the punch List does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract. Payment of any remaining undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within twenty (20) business days after receipt of a proper invoice or payment request. If the City has provided written notice to the contractor specifying the failure of the contractor to meet contract requirements in the development of the list of items to be completed, the City need not pay for or process any payment request for retainage if the contractor has, in whole or part, failed to cooperate with the City in the development of the list or to perform its contractual responsibilities, if any, with regards to the punch list.

PARTIAL UTILIZATION:

15.10. Use by the CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which the CITY, CONSULTANT and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all Work subject to the following:

15.10.1. The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the Work which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to the CITY and CONSULTANT that said part of the Work is substantially complete and request CONSULTANT to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify the CITY and CONSULTANT in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request CONSULTANT to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the CITY, CONTRACTOR and CONSULTANT **shall** make an inspection of that part of Work to determine its status of completion. If CONSULTANT does not consider that part of the Work to be substantially complete, CONSULTANT will notify the CITY and CONTRACTOR in writing giving the reasons therefor. If CONSULTANT considers that part of the Work to be substantially complete, the provisions of paragraphs 15.8 and 15.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

15.10.2 The CITY may at any time request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to CONSULTANT and within a reasonable time thereafter the CITY, CONTRACTOR and CONSULTANT **shall** make an inspection of that part of the Work to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY and CONSULTANT that such part of the Work is not ready for separate operation by the CITY, CONSULTANT will finalize the list of items to be completed or corrected and will deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon the CITY and CONTRACTOR at the time when the CITY takes over such operation (unless they **shall** have otherwise agreed in writing and so informed

CONSULTANT). During such operation and prior to Substantial Completion of such part of the Work, the CITY **shall** allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

15.10.3 If the CONSULTANT'S inspection discloses any item, whether or not included on the CONTRACTOR'S list, which is not in accordance with the Contract Documents and which would preclude beneficial occupancy and would render the Work not Substantially Complete, the CONTRACTOR **shall** immediately correct such item at no additional cost to the City.

15.10.4 The CITY, upon notification from the CONSULTANT that the Work, or a portion thereof, may be substantially complete, and all project closeout submittals pertaining to the Work have been approved and forwarded to the CITY, will direct the CITY to schedule and coordinate the CITY'S Substantial Completion Inspection. If the CONSULTANT finds that the work is substantially complete, it **shall** issue the CONTRACTOR a Certificate of Substantial Completion. Should the CONSULTANT deny substantial completion, CONTRACTOR **shall** promptly correct all deficiencies noted which caused the denial of substantial completion. Upon the correction of such deficiencies, the CONTRACTOR **shall** notify the CONSULTANT that such deficiencies are ready for reinspection at which time the CONSULTANT **shall** re-conduct a substantial completion inspection.

FINAL INSPECTION:

15.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CONSULTANT will make a final inspection with the CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete, defective, or not in accordance with the Contract Documents. CONTRACTOR **shall** immediately take such measures as are necessary to remedy such deficiencies at no additional cost to the CITY.

FINAL APPLICATION FOR PAYMENT:

15.12. After CONTRACTOR has completed in writing all such corrections to the satisfaction of CONSULTANT and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 7.18) and other documents--all as required by the Contract Documents, and after CONSULTANT has indicated in writing that the Work is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment **shall** be accompanied by all documentation called for in the Contract Documents.

FINAL PAYMENT AND ACCEPTANCE:

15.13. Upon receipt of written notice from the Contractor that the Work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment and accompanying documentation, the CITY'S CONSULTANT **shall** promptly examine the Work and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed Work by a properly qualified and experienced Professional CONSULTANT, **shall** satisfy himself that the CONTRACTOR'S statement appears to be correct and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled. He **shall** then inform the CITY in writing that he has examined the Work and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the Work for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY'S CONSULTANT does not in any way relieve the CONTRACTOR from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CONSULTANT or the CITY liable for any faulty Work done or defective materials or equipment used by the CONTRACTOR. In addition, payment to the CONTRACTOR by the CITY does not constitute acceptance of the

CONTRACTOR'S defective Work or release the CONTRACTOR from its obligation to repair or replace all defective and deficient work.

The CONSULTANT will then make a final estimate of the value of all Work done and will deduct there from all previous payments which have been made. The CONSULTANT will report such estimate to the CITY together with his recommendation as to the acceptance of the Work or his findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CONSULTANT'S estimate and recommendation to the CITY, the CITY will make final payment to the CONTRACTOR of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including, but not limited to, Liquidated Damages, as applicable.

All prior estimates are subject to correction in the final estimate. Thirty (30) days after approval by the CITY of the application for final payment, the amount recommended by CONSULTANT **shall** become due and will be paid to Contractor.

CONTRACTOR'S CONTINUING OBLIGATION:

15.14. CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents **shall** be absolute. Neither recommendation of any progress or final payment by CONSULTANT, nor the issuance of a Certificate of Substantial Completion, nor any payment by the CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the CITY, nor any act of acceptance by the CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by CONSULTANT pursuant to paragraph 15.13, nor any correction of defective Work by the CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

CITY MAY SUSPEND WORK:

16.1. The CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and CONSULTANT which will fix the date on which Work will be resumed. CONTRACTOR **shall** resume the Work on the date so fixed. In the event of a suspension of the Work, CONTRACTOR is expressly limited to seeking an extension of time in accordance with Article 13 of the Contract General Conditions and is expressly precluded from seeking any additional compensation in such circumstance.

CITY MAY TERMINATE FOR CAUSE:

16.2. Upon the occurrence of any one or more of the following events:

16.2.1. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to the bankruptcy or insolvency;

16.2.2. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

16.2.3. If CONTRACTOR makes a general assignment for the benefit of creditors;

16.2.4. If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

16.2.5. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

16.2.6. If CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 3.9 as revised from time to time);

16.2.7. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

16.2.8. If CONTRACTOR disregards the authority of CONSULTANT; or

16.2.9. If CONTRACTOR otherwise violates any provisions of the Contract Documents; the CITY may, after giving CONTRACTOR and Surety seven (7) days written notice of any default and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as the CITY may deem expedient. In such case CONTRACTOR **shall** not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the expense of completing the work including compensation for additional managerial and administrative services, plus the CITY'S direct, indirect and consequential losses, damages and costs because of the CONTRACTOR'S default (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) such excess will be paid to CONTRACTOR. If such expenses and costs plus the CITY'S losses and damages exceed such unpaid balance, CONTRACTOR **shall** pay the difference to the CITY promptly on demand. Such costs incurred by the CITY will be approved as to reasonableness by CONSULTANT and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the CITY **shall** not be required to obtain the lowest price for the work performed. In addition, failure of the CITY to comply with the seven (7) days' notice provision to the surety does not render the termination improper, render the termination one for convenience or in any way release surety from liability under its performance bond.

16.3. Where CONTRACTOR'S services have been so terminated by the CITY, the termination will not affect any rights or remedies of the CITY against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by the CITY will not release CONTRACTOR from liability.

16.4. The CITY may terminate this Contract without cause and for its convenience by giving seven (7) days prior written notice to the Contractor, and in such event, the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the Date of Termination, plus reasonable termination expenses. The CITY also will reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of the Work and paid directly by the CONTRACTOR, not including overhead, general expenses or profit. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to subcontractors or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY **shall** reimburse the CONTRACTOR for major materials or equipment purchased before termination if the CONTRACTOR can show proof of said purchases prior to notice of termination) inasmuch as the CONTRACTOR **shall** make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR

promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR **shall** promptly execute and deliver to the CITY written assignments of the same.

CONTRACTOR MAY STOP WORK OR TERMINATE:

16.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) consecutive days by the CITY or under an order of court or other public authority, or CONSULTANT fails to act on any Application for Payment within thirty (30) days after it is submitted, or the CITY fails for ninety (90) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to the CITY and CONSULTANT, terminate the Agreement and the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the work completed as of the Date of Termination plus reasonable termination expenses. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments in as much as the CONTRACTOR **shall** make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR **shall** promptly execute and deliver to the CITY written assignments of the same. In addition, and in lieu of terminating the Agreement, if CONSULTANT has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven (7) days written notice to the CITY and CONSULTANT stop the Work until payment of all amounts then due. The provisions of this paragraph **shall** not relieve CONTRACTOR of the obligations under paragraph 7.27 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

ARTICLE 17 – MISCELLANEOUS

GIVING NOTICE:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

COMPUTATION OF TIME:

17.2. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

NO LIMITATION OF RIGHTS AND REMEDIES:

17.3. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 7.28, 14.1, 14.12, 14.14, 15.3 and 16.2 and all of the rights and remedies available to the CITY and CONSULTANT thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy to which they apply. All representations warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

ACCIDENT AND PREVENTION:

17.4. The safety provisions of applicable laws and building and construction codes **shall** be observed and the Contractor **shall** take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards **shall** be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General Contractors of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The Contractor **shall** maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on Work under the Contract. The Contractor **shall** promptly furnish the Local Public Agency with reports concerning these matters.

17.5. In the event the CITY is prevented from proceeding with any or all of this Work as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, City, Town, or County regulations, orders, restrictions, or due to circumstances beyond the CITY'S control, then the CITY herein reserves the right to either suspend the Work to be done for an indefinite period of time or to cancel this Agreement outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the Work herein has already been commenced, then the CITY herein **shall** be liable for only the cancellation or suspension without the addition of prospective profits or other changes whatsoever.

FLORIDA PRODUCTS AND LABOR:

17.6. The CONTRACTOR'S attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor **shall** be used wherever price and quality are equal.

EMPLOYEES:

17.7. All labor described in these specifications or indicated on the Drawings and the Work specified or indicated **shall** be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.8. Any person employed on the Work who fails, refuses or neglects to obey the instructions of the CONTRACTOR in anything relating to this Work or who appears to the CITY to be disorderly, intoxicated, insubordinate, or incompetent, **shall** upon the order of the CITY, be at once discharged and not again employed in any part of the Work. Any interference with, or abuse or threatening conduct toward the CITY, CONSULTANT or their inspectors by the CONTRACTOR or his employees or agents, **shall** be authority for the CITY to annul the Contract and re-let the Work. No intoxicating substance **shall** be allowed on the Work site.

NON-DISCRIMINATION:

17.9 The CONTRACTOR **shall** not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The CONTRACTOR will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, or national origin. Such action **shall** include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all subcontractors, and it is the responsibility of the subcontractor compliance.

DRUG-FREE WORKPLACE:

17.10. The CONTRACTOR **shall** comply with Florida Statutes Section 287.087 which gives preference to businesses with drug-free workplace programs.

ASSIGNMENT:

17.11. This Agreement, nor any monies due hereunder, or any part thereof, **shall** not be assigned, or transferred, by CONTRACTOR, nor **shall** the CITY be liable to any assignee or transferee, without the written consent of the CITY, to the assignment, or transfer. The CITY **shall** not release or discharge CONTRACTOR from any obligation hereunder. The CITY **shall** not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

GOVERNING LAW AND VENUE:

17.12. This Agreement **shall** be governed by the laws of the State of Florida as now and hereafter in force, without regard to conflicts of law provisions. The venue for actions arising out of this Agreement is fixed in Palm Beach County, Florida.

ASBESTOS:

17.13. If the CONTRACTOR during the course of the Work observes the existence of asbestos in any structure, building or facility, the CONTRACTOR **shall** promptly notify the CITY and the CONSULTANT. The CITY **shall** consult with the CONSULTANT regarding removal or encapsulation of the asbestos material and the CONTRACTOR **shall** not perform any Work pertinent to the asbestos material prior to receipt of special instructions from the CITY through the CONSULTANT.

RIGHT TO AUDIT:

17.14. If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY **shall** have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR'S books to the extent they are relevant. This right **shall** include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit **shall** include the right to inspect the CONTRACTOR'S plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all subcontractors. The rights to examine and inspect herein provided for **shall** be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR'S normal business hours at the office of the CONTRACTOR. The accounting records and documents, and other financial data, and upon request, **shall** submit true copies of requested records to the CITY.

LITIGATION:

17.15 Litigation of Claims, disputes or other matters in question between the City and Contractor arising out of or relating to this Agreement or breach thereof **shall** be subject to and decided by litigation exclusively in the Florida state courts of Palm Beach County. Contractor and the City consent to the venue of the Florida state courts Palm Beach County, and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

17.16 It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party **shall** pay their own attorney's fees and costs, including appellate fees and costs.

CONTRACTOR'S WAIVER OF CONSEQUENTIAL DAMAGES:

17.18 The Contractor waives Claims against the City for consequential damages arising out of or relating to the Contract Documents. This waiver includes damages due to the City's Termination, damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, loss of management or labor productivity, for losses of financing, business and reputation, all or any part of the profit, except anticipated profit arising directly from the Work performed; and for loss of profit on any Work not performed by Contractor.

END OF SECTION 5

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SECTION 6: SOLICITATION SUMMARY



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING AND CONTRACT ADMINISTRATION DIVISION

IMPORTANT NOTICE

The information you provide on this page will be read aloud at the **PUBLIC OPENING** for this Solicitation. It is **VERY IMPORTANT** that the summary information you provide below is exactly the same information contained in your Bid. If subsequent to the opening of Bids, the City determines that the information contained in the electronic version of your Bid is different from the information on this Solicitation Summary, the City reserves the right to deem your Bid **NON-RESPONSIVE** and remove your Bid from further evaluation and consideration for contract award.

BID INFORMATION

Bid Number: ITBC No. 2025-025

Title: Atlantic Avenue Pavilion Repair

Project Number: 24-010

Due Date and Time: March 19, 2025 @ 2:00 P.M., (LOCAL TIME)

Name of Bidder: _____

Address: _____

Contact Person: _____

Total Bid Amount: \$ _____

Authorized Signature: _____

Date: _____

By signing and submitting this Solicitation Summary, the Bidder affirms that the information provided above is an exact and correct summary of the information contained in the electronic version of the Bidder's Bid to the City of Delray Beach.

END OF SECTION 6



CITY OF DELRAY BEACH
100 N.W. 1st AVENUE, DELRAY BEACH, FL 33444

Solicitation Addendum

Addendum No.: 1
Solicitation No.: ITBC NO. 2025-025
Solicitation Title: ATLANTIC AVENUE PAVILION REPAIR
PROJECT NO.: 24-010
Addendum Date: February 19, 2025
Purchasing Contact: Ketlyne Descollines, Descollinesk@mydelraybeach.com

THIS ITBC IS HEREBY AMENDED AS SET FORTH HEREIN BELOW. THIS ADDENDUM NO. 1 IS HEREBY INCORPORATED IN AND MADE A PART OF ITBC NO. 2025-025.

Words in ~~striketrough~~-type are deletions from existing text. Words in **bold** and underlined type are additions to existing text. The following changes and clarifications are as follows:

Addendum No. 1

Legal Advertisement – paragraph 5

The City will hold a **Non-Mandatory** Virtual Pre-Bid Conference on **February 27, 2025 @ 2:00 P.M., (LOCAL TIME)** online via Microsoft Team meeting via the link provided below:

Microsoft Teams Meeting

Join the meeting now

~~Meeting ID: 295 846 750 835~~

~~Passcode: aE9gH3Dz~~

~~Dial in by phone~~

~~+1 352-448-9762,,685762888# United States,~~

~~Phone conference ID: 685 762 888#~~

Microsoft Teams Meeting

Join the meeting now

Meeting ID: 231 478 758 682

Passcode: 9fH2ar7m

Dial in by phone

+1 352-448-9762,,552589493# United States

Phone conference ID: 552 589 493#

End of Addendum

INSTRUCTIONS:

Receipt of this addendum must be acknowledged as instructed in the solicitation document. Failure to acknowledge receipt of this Addendum may result in the disqualification of Respondent's response.