

## SECTION 3: STANDARD GENERAL CONDITIONS

### STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT CITY OF DELRAY BEACH, FLORIDA TABLE OF CONTENTS OF GENERAL CONDITIONS

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## **GENERAL CONDITIONS**

### **ARTICLE I - DEFINITIONS**

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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 contract. The Agreement is also referred to as the Contract.

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.

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 Environmental Services Dept., 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 Tentative 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 TENTATIVE 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 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**

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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.

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**

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### **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 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.

3.6 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 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**

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#### **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 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** so 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**

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 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.

### **ARTICLE 6 - BONDS AND INSURANCE**

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#### **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 until one year after the date when final payment becomes due, 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 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 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. 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:

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 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 coverage shall be \$1,000,000.00 \$1,000,000.00 per occurrence 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 \$1,000,000.00 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 three (3) 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. 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.

## **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 contract is vested wholly in the CONTRACTOR.

7.2. 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:**

7.3. 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.

7.4. 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.

7.5. 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:**

7.6. 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 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.
- 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.
- 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**

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 reasonable 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.

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.

#### **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

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, 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 t 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 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. 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.

#### **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 an 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 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 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.

#### **INDEMNIFICATION:**

7.28. 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 to defend at his own expense or to provide for such defense, at the CITY'S option, 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.**

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.

#### **ARTICLE 8 - OTHER WORK**

##### **RELATED WORK AT SITE:**

8.1. 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 not be

entitled to any additional compensation under such circumstances and is limited to making a claim for an extension of time. If the performance of additional Work by other CONTRACTOR 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 other 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 other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and other contractors.

8.3. If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other 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.

### **ARTICLE 9 - THE CITY'S RESPONSIBILITIES**

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

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 promptly 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 where it determines that such is in the CITY'S best interests.

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:**

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### **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 log book, 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. CONTRACTOR expressly agrees that CONSULTANT is the sole judge of the requirements of the Contract Documents and the judge of CONTRACTOR'S performance there under 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 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 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 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 a reasonable time. 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 (but in no event later than ten (10) days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to CONSULTANT and the other party within thirty (30) days after such occurrence unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim.

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.

#### **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**

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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 Article 12 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 effect 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**

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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 promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within thirty (30) 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 and consequential) to which the claimant 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 paragraph 10.11 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.

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 negligence or intentional acts 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 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 CASH 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

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**

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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.

13.4 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) 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 Contract 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:**

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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 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 year after the date of Substantial Completion 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 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**

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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	(\$ )
Sub Total	\$
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 agent identified within Article 6 of the **payment procedures** must review the payment request or invoice. Payment is due 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 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 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.

The contractor may send the City an overdue notice. If the payment request or invoice is not rejected within 4 business days after delivery of the overdue notice, the payment request or invoice shall be deemed accepted, except for any portion of the payment request or invoice that is fraudulent or misleading.

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 Statute 218.70.

15.4 continued:

When a 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 10 days after the contractor's receipt of payment.

When a subcontractor receives payment from a 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 7 days after the subcontractor's receipt of payment.

Nothing herein shall prohibit a 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. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

CONSULTANT will, within ten 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 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. CONSULTANTS 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 30 days of the Contractor reaching substantial completion. The "punch list" shall cover the entire project and shall be released to the contractor within 5 days of the development of said punch-list. The contractor shall have a minimum of 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 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 precluded 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 CONTRACTORS 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 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**

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#### **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 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:**

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 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 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 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) 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 inasmuch 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 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**

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##### **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.

**VENUE:**

17.12. This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. 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.

**APPRENTICES:**

In the event this Contract is in excess of \$25,000.00, the apprentice employment requirements of Chapter 446.011(3), Florida statutes are hereby incorporated:

17.15 The CONTRACTOR agrees:

17.15.1. That he will make a diligent effort to hire for the performance of the Contract a number of apprentices in each occupation which bears to the average number of the journeyman in that occupation to be employed in the performance of the Contract, the ratio of at least one apprentice to every five journeymen.

17.15.2. That he will, when feasible, assure that 25 percent of such apprentices are in their first year of training, except when the number of apprentices to be hired is fewer than four. Feasibility here involves a consideration of the availability of training opportunities for first-year apprentices, the hazardous nature of the work for beginning workers and excessive unemployment of the apprentices in their second and subsequent years of training.

17.15.3. That, during the performance of the Contract, he will make diligent efforts to employ the number of apprentices necessary to meet requirements of subparagraphs 1 and 2.

17.16. The CONTRACTOR agrees to return records of employment by trade of the number of apprentices and apprentices by first year of training and of journeymen and the wages paid and hours of work of such apprentices and journeymen, on a form as prescribed by the Bureau of Apprenticeship of the Division of Labor and Employment Opportunities at three-month intervals. Submission of duplicate copies of forms submitted to the United States Department of Labor shall be sufficient compliance with the provisions of this section.

17.17. The CONTRACTOR agrees to supply to the Bureau of Apprenticeship of the Division of Labor and Employment Opportunities, at three-month intervals, a statement describing steps taken toward making a diligent effort and containing a breakdown by craft of hours worked and wages paid for first-year apprentices, other apprentices and journeymen.

17.18. The CONTRACTOR agrees to insert in any subcontract under this Contract the requirements contained in this section. The term "Contractor", as used in such clauses and any subcontract, shall mean the subcontractor."

#### **FLORIDA TRENCH SAFETY ACT - COMPLIANCE:**

17.19. In the event this contract requires trench excavation, the requirement of Florida Statutes 553.60, et seq., shall be adhered to the CONTRACTOR.

#### **PUBLIC ENTITY CRIMES:**

17.20. 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.

#### **CONE OF SILENCE:**

17.21 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 RFP, which provides as follows:

Sec. 2-355. Cone of silence.

(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) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. 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 pre-bid 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 which 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.

#### **INSPECTOR GENERAL:**

17.22 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.

#### **PUBLIC RECORDS:**

17.23 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.

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.

**CONFLICT OF INTEREST:**

17.24

17.24.1 Bidder declares and certifies that no officer, employee or person whose salary is payable in whole or part from the City of Delray Beach is directly or indirectly interested in this bid or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; or

17.24.2 The award is subject to provisions of State Statutes and City Ordinances. All bidders must disclose with their bid the name of any officer, director or agent who is also an employee of the City of Delray Beach. Further, all bidders must disclose the name of any City employee who owns, directly or indirectly, any interest in the bidder's firm or any of its' branches.

**PROTEST PROCEDURES:**

17.25 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.

17.26 Procedure.

17.26.1 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 Purchasing Manager 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.

17.26.2 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 Purchasing Manager 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.

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

17.26.4 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 Purchasing Manager. The time stamp clock located in the Finance/Purchasing office shall govern.

17.26.5 Protest Bond. Any bidder, proposer or responder filing a protest shall simultaneously provide a Protest Bond to the City in the amount of five thousand dollars (\$5,000.00). The protest bond shall be in the form of a cashier's check addressed to City of Delray Beach Purchasing Manager 100 NW 1st Avenue Delray Beach, FL 33444. 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.

17.26.6 Protest Committee. The Protest Committee shall review all protests. The City Manager shall appoint the members of the Protest Committee. No member of the City Commission shall serve on the Protest Committee. The City Attorney or designee shall serve as counsel to the Committee. The meeting of the Protest Committee shall be opened to the public and all of the actual bidders, responders or proposers shall be notified of the date, time and place of the meeting. If the Protest Committee determines that the protest has merit, the City Manager shall direct that all appropriate steps be taken. If the Protest Committee denies the protest, the protester may appeal to the City Commission. All of the actual bidders, responders or proposers shall be notified of the determination by the Protest Committee. The Protest Committee shall terminate upon the award of the contract, or such other time as determined by the City Commission.

#### **LOCAL PREFERENCE:**

In accordance with the City of Delray Beach Code of Ordinances Sec. 36.14, the City shall give preference to a Local Business if the Local Business' bid is determined to be within five percent (5%) or five thousand dollars (\$5,000.00), whichever is less, of the lowest responsible and responsive bidder.