

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

(June 12, 2019)

ARTICLE 1. DEFINITIONS AND INTERPRETATION OF CONTRACT DOCUMENTS.

1.1. **Definitions.** The definitions included in this Section are not exhaustive of all definitions used in the Contract Documents. Additional terms may be defined in other Contract Documents. The following terms shall have the meanings specified herein, as follows:

"Applicable Laws" means all laws, codes (including, but not limited to, building codes), ordinances, rules regulations, lawful orders and decrees of governmental authorities having jurisdiction over the Project, Project Site, or the Parties.

"Application for Payment" means the detailed itemized documentation, including all supporting documentation, in a form and substance satisfactory to the City, submitted by the Contractor on a monthly basis in order to obtain the City's approval for payment for Work performed pursuant to the Contract Documents.

"Bid" means an offer or proposal submitted by a bidder in response to this ITB. The terms "Bid" and "Bid Submittal" are used interchangeably.

"Bidder" means any individual or firm submitting a Bid for this Project.

"Change Order" means a written document ordering a change in the Contract Price and/or Contract Time or a material change in the Work (as defined herein). A Change Order must comply with the requirements of the Contract Documents.

"CIP Inspector/PWD Field Observer" means a City employee charged with observing and documenting, for internal City purposes only, general observations and conditions of the Project including, without limitation, the weather conditions, the number of workers present at the time of observation, general type of work being performed and taking photographs regarding same. Contractor expressly waives any right to assert as a defense to any claim regarding the Project including, without limitation, any dispute between the City and Contractor, and Contractor and any third party, the presence or purported approval or consent of any CIP Inspector or other City employee conducting any field observations during the Project. The Contractor expressly acknowledges that the purpose of such City employee is to observe and document for internal purposes only general observations and conditions of the Project, and in no way is intended to, nor shall be treated as, a person with authority to approve or reject the Work on behalf of the City or any other entity, or to direct the Contractor's Work in any way. Contractor expressly agrees to waive the presence of such CIP Inspector or other City employee performing field observations as a defense to any Claims involving the Project.

"City" means the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Project acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body including, but not limited to, its regulatory authority for code inspections and issuance of Building Department permits, Public Works Department permits, or other applicable permits within its jurisdiction, the exercise of such regulatory authority

and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a Party to this Contract.

"City Commission" means the governing and legislative body of the City.

"City Manager" means the Chief Administrative Officer of the City. The City Manager shall be construed to include the Contract Administrator and any duly authorized representatives of the City as the City Manager may designate in writing at any time with respect to any specific matter(s) concerning the Project and/or the Contract Documents (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to the Project and/or the Contract Documents).

"Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract Documents, payment of money, extension of time or other relief with respect to the Contract Documents or Project. The term "Claim" also includes other disputes and matters in question between the City and Contractor arising out of or relating to the Contract Documents. Claims must be initiated by written notice in strict accordance with the Contract Documents. The responsibility for substantiating Claims shall rest with the Party making the Claim. All Claims submitted by Contractor must comply with the requirements of the City's False Claims Ordinance, as set forth in Sections 70-300 et seq., of the City Code, or shall be forfeited in accordance with the terms of the False Claims Ordinance and conclusively waived and released.

"Consultant" means the firm named in the Invitation to Bid Summary as the "Consultant," that has entered into a separate agreement with the City to perform architectural, engineering, or other design and construction administration services for the Project, and who will serve as the "architect of record" and/or "engineer of record" for the Project. Wherever the word "Architect" or "Engineer" or "Consultant" appears in the Contract Documents, it shall be deemed to refer to the Consultant and/or the design professionals engaged by the Consultant. All communications, directives, instructions, interpretations and actions required of Consultant shall be issued or taken only by or through Consultant's authorized representative(s).

"Construction Superintendent" means the individual who is a representative of the Contractor, and who shall be responsible for continuous field supervision, coordination, and completion of the Work, and who shall maintain a full-time on-site, physical presence at the Project Site and satisfy the obligations of Construction Superintendent as provided in the Contract Documents.

"Contract" means the written agreement between the City and the Contractor for the performance of the Work in accordance with the requirements of the Contract Documents, and for the payment of the agreed consideration.

"Contract Administrator" means the City's Contract Administrator shall mean the individual appointed by the City Manager who shall be the City's authorized representative to coordinate, direct, and review on behalf of the City, all matters related to the Project. The initial Contract Administrator for the Project is named in the Invitation to Bid Summary.

"Contract Documents" means all of the documents setting forth bidding information, requirements and contractual obligations for the Project, including this ITB, Contractor's Bid in response thereto, the Contract, and the Plans and Specifications, together with all addenda to any of the foregoing, Change Orders, Work Orders, Field Orders, schedules and shop drawings, and all other documents required by the ITB for the completion of the Project.

“Contract Price” means the amount established in the Contract Documents as the total amount the City is obligated to pay for full and complete performance of all of the Work required by the Contract Documents (including, but not limited to, all labor, equipment and materials to administer, coordinate, provide related certifications, install and otherwise construct and complete the Project within the Contract Time), and as may be amended by Change Order.

“Contract Time” means the number of days allowed for completion of all Work, as stipulated in the Contract Documents, and as may be amended by Change Order.

“Contractor” means the individual or firm whose Bid is accepted and who enters into the Contract with the City to construct the Project pursuant to the Contract Documents and who is liable for the acceptable performance of the Work and payment of all debts pertaining to the Work.

“Days” means all references to numbers of days in the Contract Documents, shall be construed to mean calendar days, unless specifically noted otherwise. The term “business days” means a day other than a Saturday, Sunday, Federal holiday or any day on which the principal commercial banks located in Miami-Dade County, Florida are not open for business during normal hours.

“Field Order” or **“Field Directive”** means a written order which further describes details or provides interpretations necessary to complete the Work of the Contract Documents but which does not involve a change in the Contract Price or Contract Time.

“Final Completion” means the date upon which all conditions and requirements of the Contract Documents, permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by the City; any other documents required to be provided have been received by City; and the Work has been fully completed in accordance with the Contract Documents.

“Notice(s) to Proceed” or **“NTP”** means a written letter or directive issued by the Contract Administrator to Contractor to commence and proceed with portions of the Work as specified therein or a specific task of the Project, and stating any further limitations on the extent to which Contractor may commence and proceed with the Work. Unless otherwise approved by the City at its sole discretion, City’s issuance of a Notice to Proceed for construction or portions thereof shall be contingent upon Contractor obtaining all appropriate permits and satisfying all requirements of agencies having jurisdiction. However, the City is not obligated to immediately issue NTP on the date Contractor obtains all requisite permits and/or satisfies the specified conditions precedent for issuance of NTP. The date of issuance of NTP shall be determined at the City’s sole discretion once Contractor has obtained all required permits and otherwise satisfied all conditions precedent to issuance of NTP.

“Owner’s Contingency” means that separate fund which is available for City’s use at its sole discretion to defray additional expenses relative to the design and construction of the Project, as well as additional expenses expressly chargeable to the City or otherwise deemed the responsibility of the City pursuant to the Contract Documents. The City retains exclusive use and control of the Owner’s Contingency. The Contractor has no right or entitlement whatsoever to the Owner’s Contingency, and use of such funds are subject to the Contract Administrator’s or City Manager’s prior written approval and issuance of a Change Order by the City at its sole and absolute discretion. Any unused City Contingency remaining at the completion of the Project shall accrue solely to the City.

"Parties" means City and Contractor, and "Party" is a reference to either City or Contractor, as the context may indicate or require.

"Plans" means the drawings or reproductions thereof prepared by the Consultant, which show the location, character, dimensions and details of the Work to be done, and which are a part of the Contract Documents.

"Project" means the improvements described in the Contract Documents and all Work that is contemplated thereby or reasonably inferable therefrom.

"Project Initiation Date" means the date upon which the Contract Time commences.

"Project Manager" means the authorized individual which is the representative of Contractor and who will administer and manage the prosecution of all Work on behalf of the Contractor.

"Punch List" means the list or lists prepared by Contractor, incorporating input provided by the City or Consultant, identifying matters that remain to be completed to achieve Substantial Completion and to be completed between achievement of Substantial Completion and Final Completion in order that Final Completion can be declared by City to have occurred.

"Purchase Order" means the written document issued by the City to the Contractor indicating types, quantities, and/or agreed prices for products or services to be provided to the City.

"Responsible Bidder" means an offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance, including, without limitation, the factors identified in Section 2-369 of the City Code.

"Responsive Bidder" means a person or entity who has submitted a bid which conforms in all material respects to a solicitation. A bid or proposal of a Responsive Bidder must be submitted on the required forms, which contain all required information, signatures, notarizations, insurance, bonding, security, or other mandated requirements by the bid documents to be submitted at the time of bid opening.

"Schedule of Values" means a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, material, and taxes of all elements comprising the Contract Price.

"Specifications" means the general term comprising all of the written directions, provisions and requirements contained in the Contract Documents, as amended, describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies, equipment and standards to which such work is to be performed.

"Subcontractor" means any person or entity supplying the Contractor with labor, materials, supplies or equipment used directly or indirectly by the Contractor in the prosecution of the Work.

"Substantial Completion" means the date when the Work, as certified in writing by the Consultant, and determined by the City in its sole discretion, has been developed, designed, engineered and constructed in accordance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the Project is ready for occupancy, utilization and continuous commercial operation for the uses and purposes intended by the City, without material interference from incomplete or improperly completed Work and with only minor punch list items remaining to be completed, all as reasonably determined by the City and evidenced by (1) the issuance of a Certificate of Occupancy or Certificate of

Completion by the authority having jurisdiction; (2) the issuance of a Certificate of Substantial Completion by the Consultant; and (3) acceptance of such Certificate of Substantial Completion by the City pursuant to the Contract Documents.

“Surety” means the surety company or individual which is bound by the bid bond, or by the performance bond or payment bond with and for Contractor who is primarily liable, and which surety company or individual is responsible for Contractor’s satisfactory performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

“Work” means all construction and services required by or reasonably inferable from the Contract Documents for the completion of the Project, including the provision of all labor, materials, equipment, supplies, tools, machinery, utilities, procurement, fabrication, transportation, construction, erection, demolition, installation, insurance, bonds, permits and conditions thereof, building code changes and governmental approvals, testing and inspection services, quality assurance and/or quality control inspections and related certifications, training, surveys, studies, supervision, and administration services to be provided by the Contractor, and other items, work and services that are necessary or appropriate for the total construction, installation, furnishing, equipping, and functioning of the completed Project, together with all additional, collateral and incidental items, work and services required to achieve Final Completion in accordance with the Contract Documents.

1.2. Interpretation of the Contract Documents.

1.2.1. As used in the Contract Documents, (i) the singular shall include the plural, and the masculine shall include the feminine and neutral, as the context requires; (ii) “includes” or “including” shall mean “including, but not limited to” and “including, without limitation;” and (iii) all definitions of agreements shall include all amendments thereto in effect from time to time.

1.2.2. Whenever it shall be provided in the Contract Documents that the Contractor is required to perform a service or obligation “at its sole cost and expense” or words of substantially similar meaning, the Contractor shall not be entitled to reimbursement for such item and the cost of such service or obligation shall not be included in any Application for Payment.

1.2.3. Contract Documents shall be construed in a harmonious manner, whenever possible. The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor.

1.2.4. The Contract Documents shall be taken as a whole and are complementary, and any item of Work called for in any Contract Document shall be as binding as if called for by all, so that any part of the Work shown or described in any of the Contract Documents, though not specifically referred to in other Contract Documents, shall be executed by Contractor and binding as a part of the Contract Documents, as well as any Work which, in the sole opinion of City, may be fairly inferred from the Contract Documents or by normal industry practice.

1.2.5. Detailed plans shall take precedence over general plans for the same part of the Work. Specifications and detailed plans which may be prepared or approved by City after the execution of the Contract and which may be fairly inferred from the original specifications and plans are to be deemed a part of such specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the Contract Price or Project Schedule. With respect to conflicts between large-scale drawings and small-scale drawings, the larger scale drawing shall govern, unless otherwise dictated by Consultant.

1.2.6. Where compliance with two or more requirements is indicated in any of the enumerated Contract Documents and where these requirements within the Contract Documents conflict in quantity or quality, the Contractor shall comply with the most stringent requirement as determined by the City, unless specifically indicated otherwise in the Contract Documents.

1.2.7. As used in the Contract Documents, unless specifically indicated otherwise, references to an Article include all Sections, Subsections, and items within that Article; references to a Section include all Subsections and items within that Section; and references to a Subsection include all items within that Subsection.

1.2.8. Words which have a well-known technical or trade meaning are used herein in accordance with such recognized or well-known meaning, unless the Contract Documents otherwise specifically define such word.

1.2.9. The Recitals, Appendices, Exhibits and Schedules attached hereto are expressly incorporated in and made a part of the Contract Documents as if fully set forth herein.

ARTICLE 2. INTENTION AND PRIORITY OF CONTRACT DOCUMENTS.

2.1. **Intention of City.** It is the intent of City to describe in the Contract Documents a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents and in accordance with all codes and regulations governing construction of the Project. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by Contractor whether or not specifically called for. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

2.2. **Priority of Contract Documents.** In the event of conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of the Contract Documents:

- a. Change Orders or Amendments to this Contract (excluding the Plans and Specifications);
- b. The Contract Documents (excluding the Plans and Specifications);
- c. Modifications or changes to the completed Plans and Specifications, as approved by the City;
- d. The completed Plans and Specifications, as approved by the City; and
- e. The ITB.

In the event of any conflict between the General Terms and Conditions of the ITB (as may be amended by Change Order), and the Specifications, the provisions of the General Terms and Conditions, as amended, shall take precedence and control.

Contractor shall be furnished two (2) copies, free of charge, of the Contract Documents; which shall be preserved and always kept accessible to the City, the Consultant, and their respective authorized representatives. Additional copies of the Contract Documents may be obtained from City at the cost of reproduction.

ARTICLE 3. CONTRACTOR'S DUTIES AND RESPONSIBILITIES.

3.1. Performance of the Work. The Contractor covenants and warrants that it shall be responsible for performing and completing, and for causing all Subcontractors to perform and complete, the Work in accordance with the Contract Documents and all Applicable Laws relating to the Project. Accordingly, Contractor shall furnish all of the labor, materials, equipment services and incidentals necessary to perform all of the Work described in the Contract Documents, and all Work that is contemplated thereby or reasonably inferable therefrom. As part thereof, Contractor shall achieve Substantial Completion within the time period specified in the Invitation to Bid Summary for Substantial Completion, as such date may be extended pursuant to the terms of the Contract Documents, and shall achieve Final Completion of the Project by the date established in the Contract Documents for Final Completion, as such date may be extended pursuant to the terms of the Contract Documents. Unless otherwise provided in the Contract Documents, or as agreed to in writing between City and Contractor, the form and content of all reports, forms and regular submittals by Contractor to City shall be subject to prior approval of the City, and Contractor shall submit such materials to the City for City's approval prior to implementation. City's approval thereof shall not limit City's right to thereafter require reasonable changes or additions to approved systems, reports, forms and regular submittals by Contractor to City.

3.2. Standard of Care. The Work shall be performed in accordance with the professional standards applicable to projects, buildings, or work of complexity, quality and scope comparable to the Work and the Project. More specifically, in the performance of the professional services under this Contract, Contractor shall provide the care and skill ordinarily used by members of its profession practicing under similar conditions for projects of similar type, size and complexity at the same time and locality of the Project. Work shall be performed by the Contractor, Subcontractors, and specific personnel referred to in the in the Contract Documents in accordance with their respective degrees of participation provided and represented to the City by the Contractor from time to time. The Contractor may add Subcontractors as it deems necessary or appropriate in order to carry out its obligations under the Contract Documents, provided such entity shall be suitably qualified and shall be subject to the prior approval of the City. Nothing contained in the Contract Documents shall be construed to create any obligation or contractual liability running from the City to any such persons or entities, including to any Subcontractors.

3.3. Notices to Proceed. Contractor shall be instructed to commence the Work by written instructions in the form of a Purchase Order issued by the City's Procurement Department and a Notice to Proceed issued by the Contract Administrator. At least two (2) Notices to Proceed will be issued for this Contract. Contractor shall commence scheduling activities, permit applications and other preconstruction work within five (5) calendar days after the Project Initiation Date, which shall be the same as the date of the first Notice to Proceed. The first Notice to Proceed and Purchase Order will not be issued until Contractor's submission to City of all required documents, including but not limited to, Payment Bond, Performance Bond, and Insurance Certificate(s), and after execution of the Contract by both parties.

3.4. Conditions Precedent to Notice to Proceed for Construction of the Work. The following are conditions precedent to the issuance of a Notice to Proceed to authorize Contractor to mobilize on the Project Site and commence with physical construction of the Work (typically, the second NTP for a Project): (1) the receipt of all necessary permits by Contractor; (2) City's acceptance of the Contractor's full progress schedule in accordance with the Contract Documents, Contractor's submittal schedule, Contractor's Schedule of Values, and list of Subcontractors; (3) Contractor's Hurricane Preparedness Plan; and (4) Contractor's submission to the City and Consultant of any other documents required by the Contractor Documents. The Contractor shall submit all necessary documents required for issuance of the Notice to Proceed with construction of the Work within **twenty-one (21)** calendar days of the issuance of the first Notice to Proceed.

3.5. Warranty. Contractor warrants to City that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Consultant or City, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provision of the Contract Documents.

3.6. Personnel Requirements.

3.6.1. The orders of City are to be given through Consultant or the Contract Administrator, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time competent English speaking Construction Superintendent and any necessary assistants, all satisfactory to City. The Construction Superintendent shall not be changed except with the written consent of City, unless the Construction Superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The Construction Superintendent shall represent Contractor and all directions given to the Construction Superintendent shall be as binding as if given to Contractor and will be confirmed in writing by City upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using its best skill and attention.

3.6.2. The Construction Superintendent shall be responsible for management of the Project Site and tasks, including, but not limited to, organization and coordination of the Work of Subcontractor employees; exercising control over rate of construction progress to assure completion of the Project within the Project Schedule; inspecting or observing the Work to enforce conformity to the Contract Documents and supervising trades, subcontractors, clerical staff, and other personnel employed in the construction of the Project. On a daily basis, Contractor's Construction Superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of work for the day; the work being performed; materials, labor, personnel, equipment and subcontractors at the Project Site; visitors to the Project Site, including representatives of Consultant; regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. All information shall be recorded in the daily log in ink. The daily log shall be kept on the Project Site and shall be available at all times for inspection and copying by City and Consultant.

3.6.3. The Contract Administrator, Contractor and Consultant shall meet at least weekly or as determined by the Contract Administrator, during the course of the Work to review and agree upon the work performed to date and to establish the critical path activity or Work for the next two weeks. The Consultant shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

3.6.4. If Contractor, in the course of prosecuting the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Contract Documents, it shall be Contractor's duty to immediately inform Consultant, in writing, and Consultant will promptly review the same. Any work done after such discovery, until authorized, will be done at Contractor's sole risk.

3.6.5. Contractor shall supervise and direct the Work competently 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.

3.6.6. The Construction Superintendent must have at least five (5) years of experience in projects of similar design, scope, size and complexity. The Project Manager must have at least five (5) years of experience in projects of similar design, scope, size and complexity.

3.7. Subcontracts.

3.7.1. Contractor shall not employ any subcontractor against whom City or Consultant may have a reasonable objection. Contractor shall not be required to employ any subcontractor against whom Contractor has a reasonable objection.

3.7.2. Contractor shall be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by its subcontractors and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subcontractor and City or any obligation on the part of City to pay or to see the payment of any monies due any subcontractor. City or Consultant may furnish to any subcontractor evidence of amounts paid to Contractor on account of specific work performed.

3.7.3. Contractor agrees to bind specifically every subcontractor to the terms and conditions of the Contract Documents for the benefit of City. All of the Contractor's agreements with the Subcontractors shall contain the following provisions (or shall incorporate the following provisions by reference) and shall state:

a. that the Subcontractor irrevocably submits itself to the original and exclusive jurisdiction and venue in Miami-Dade County, Florida, with regard to any controversy in any way relating to the award, execution or performance of the Contract Documents and/or such Subcontractor's agreement, and whereby the Subcontractor agrees that service of process on it may be made to the person or entity designated in the Subcontract;

b. that the City shall not be in privity of contract with the Subcontractor and shall not be liable to any Subcontractor under the Contract Documents or any such subcontract, except for the payments of amounts due to the Subcontractor under its subcontract in the event that the City exercises its rights under any assignment of the subcontract and requests or directs the Subcontractor to perform the portion of the Work covered by its subcontract;

c. that the City is a third-party beneficiary of the Subcontract, entitled to enforce any rights thereunder for their respective benefits, and that, subject to the terms of the applicable Subcontract, the City shall have the same rights and remedies vis-à-vis such Subcontractors that Contractor shall have, including the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by the City resulting from any breach of such Subcontract by Subcontractor, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and any error, omission or negligence of such Subcontractor in the performance of any of its obligations under such Subcontract;

d. that the Subcontractor shall indemnify and hold harmless the City, its officers, agents, directors, and employees, and instrumentalities to the fullest extent permitted by Section 725.06 of the Florida Statutes;

e. that such subcontract shall be terminable for default or convenience upon ten (10) days prior written notice by Contractor, or, if the Subcontract has been assigned to the City, by the City or its designee;

f. that Subcontractor shall promptly notify the City (with a copy to Contractor) of any default of Contractor under the Subcontract, whether as to payment or otherwise;

g. that Contractor and Subcontractor acknowledge that (i) they are each entering into a contract for the construction of a public facility or public works project as contemplated in Chapter 255, Florida Statutes, and (ii) each have no right to file a construction lien against the Work or the Project, and further agree to include a similar requirement in any purchase order or subcontract entered into by Subcontractor; and (iii) the payment bond provided by Contractor pursuant to this Agreement is a substitute for the right to claim a lien on the Project, and that any claims for nonpayment shall be made against the bond in accordance with Section 255.05, Florida Statutes.

h. that Subcontractor shall comply with all Applicable Laws (including prompt payment) and the City requirements as set forth in the Contract Documents and maintain all files, records, accounts of expenditures for Subcontractor's portion of the Work to the standards set forth in the Contract Documents.

i. that the City may, at reasonable times, contact Subcontractor, after notice to Contractor, to discuss, or obtain a written report of, Subcontractor's services, with Contractor entitled to be present during any such discussions; provided that in no event, prior to any assignment of the Subcontract to the City, shall Subcontractor take instructions directly from the City;

j. that Subcontractor promptly disclose to the City and Contractor any defect, omission, error or deficiency in the Contract Documents or the Work about which it has knowledge no later than ten (10) days following discovery of such defect, omission, error or deficiency;

k. that Subcontractor assign all warranties directly to the City,

l. that the Contract Documents provide a limitation of remedies and NO DAMAGES FOR DELAY as delineated in Article 10 hereof;

m. that in the event of a change in the Work the Subcontractor's Claim for adjustments in the subcontract price shall be limited exclusively to its actual costs for such changes, plus no more than the overhead and profit fees/markups and bond costs to be established as part of the GMP Amendment.

n. Each subcontract shall require the Subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation.

o. Each subcontract shall require that any claims by Subcontractor for delay or additional cost must be submitted to Contractor within the time and in the manner in which the Contractor must submit Claims to the City, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims in the same manner as provided for in the Contract Documents.

3.7.4. Contractor shall perform the Work with its own forces, in an amount not less than the percentage of the Work specified in the Invitation to Bid Summary.

3.8. Plans and Working Drawings.

3.8.1. Contractor to Check Plans, Specifications and Data. Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Consultant, and shall

notify Consultant of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor shall not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished by Consultant. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omission or discrepancy and failed to report it to Consultant, or unless Contractor should have recognized such error, omission or discrepancy upon reasonable investigation.

3.8.2. Supplementary Drawings. When, in the opinion of Consultant, it becomes necessary to explain the Work to be done more fully, or to illustrate the Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by Consultant. The supplementary drawings shall be binding upon Contractor and shall be considered as part of the Contract Documents. Where such supplementary drawings require either less or more than the original quantities of work, appropriate adjustments shall be made by Change Order. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern.

3.8.3. Shop Drawings.

3.8.4.1. Contractor shall submit Shop Drawings as required by the Technical Specifications. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.

3.8.4.2. Within ten (10) calendar days after the Project Initiation Date specified in the Notice to Proceed, Contractor shall submit to Consultant a complete list of preliminary data on items for which Shop Drawings are to be submitted and shall identify the critical items. Submission of such documents is a condition precedent to the issuance of a Notice to Proceed for construction. Approval of this list by Consultant shall in no way relieve Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

3.8.4.3. After the approval of the list of items required herein, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers. Contractor shall include all shop drawings and other submittals in its certification.

3.8.4.4. Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show this approval thereon.

3.8.4.5. If the Shop Drawings show or indicate departures from the Contract requirements, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract Documents.

3.8.4.6. Consultant shall review and approve Shop Drawings within seven (7) calendar days from the date received, unless said Drawings are rejected by Consultant for material reasons. Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents and not indicated on the Drawings. No work called for by Shop Drawings shall be performed until the said Drawings have been approved by Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

3.8.4.7. No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

3.8.4.8. If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

3.8.4.9. Contractor shall submit the number of copies required by Consultant. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

3.8.4.10. Contractor shall keep one set of Shop Drawings marked with Consultant's approval at the job site at all times.

3.8.4. Field Layout of the Work and Record Drawings. The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor.

3.8.5.1. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, maintenance access structures, handholes, fittings and the like and shall prepare record or "as-built" drawings of the same which are sealed by a Professional Surveyor. Contractor shall deliver these records in good order to Consultant as the Work is completed. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be delivered to Consultant prior to Substantial Completion, in accordance with the Contract Documents.

3.8.5.2. Contractor shall maintain in a safe place at the Project Site one record copy of all Drawings, Plans, Specifications, addenda, written amendments, Change Orders, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available at all times to Consultant for reference. Upon Final Completion of the Project and prior to Final Payment, these record documents, samples and Shop Drawings shall be delivered to the Contract Administrator.

3.8.5.3. Prior to, and as a condition precedent to Final Payment, Contractor shall submit to City, Contractor's record drawings or as-built drawings acceptable to Consultant.

3.8.5. Art in Public Places ("AIPP") Coordination. Contractor shall coordinate the implementation of the City's AIPP commissions and installations for the Project, if any, with all such coordination Work covered within the Contract Price, provided, however, that the City shall separately fund the commissioning and installations of all AIPP artworks.

3.8.6. City's Participation. THE CITY HAS NO OBLIGATION TO ASSIST, FACILITATE AND/OR PERFORM IN ANY WAY THE CONTRACTOR'S OBLIGATIONS UNDER THE AGREEMENT OR OTHER CONTRACT DOCUMENTS. THE CITY'S PARTICIPATION, FACILITATION AND/OR ASSISTANCE TO THE CONTRACTOR SHALL BE AT ITS SOLE DISCRETION AND SHALL NOT, IN ANY WAY, BE CONSTRUED, INTERPRETED AND/OR CONSTITUTE AN ASSUMPTION BY THE CITY OF CONTRACTOR'S OBLIGATIONS, A WAIVER OF CONTRACTOR'S OBLIGATIONS AND/OR EXCUSE ANY BREACH BY CONTRACTOR OF ITS OBLIGATIONS UNDER THE CONTRACT DOCUMENTS. THE PARTICIPATION IN THE PERFORMANCE OF ANY OF CONTRACTOR'S OBLIGATIONS SHALL NOT

PRECLUDE THE CITY FROM DECLARING CONTRACTOR IN DEFAULT FOR CONTRACTOR'S FAILURE TO PERFORM SUCH OBLIGATION, NOR SHALL IT LIMIT, IN ANY WAY, THE CITY'S RIGHTS AND REMEDIES IN CONNECTION THEREWITH. THE CONTRACTOR EXPRESSLY ACKNOWLEDGES AND AGREES NOT TO RAISE OR ASSERT AS DEFENSE TO ANY CLAIM, ACTION, SUIT AND/OR OTHER PROCEEDING OF A SIMILAR NATURE, THE CITY'S PARTICIPATION, ASSISTANCE AND/OR FACILITATION IN THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS. INCLUDING, WITHOUT LIMITATION, ASSISTING WITH OBTAINING PERMITS OR WITH COORDINATION WITH UTILITIES, OR OTHER MATTERS RELATED TO THE PROJECT. IN THE EVENT OF ANY CONFLICT BETWEEN THIS SECTION AND/OR ANY OTHER PROVISION OF THIS AGREEMENT OR OTHER CONTRACT DOCUMENTS, THIS SECTION SHALL GOVERN.

3.8.7. City's Information. Except for any tests or studies that the City provides as part of the ITB, any information provided by the City to the Contractor relating to the Project and/or other conditions affecting the Project Site, is provided only for the convenience of the Contractor and does not relieve the Contractor of the due diligence necessary to independently verify local conditions and Site Conditions. The City makes no representation or warranty as to, and assumes no responsibility whatsoever with respect to, the sufficiency, completeness or accuracy of any such test, studies or other information and makes no guarantee, either express or implied, that the conditions indicated in such information or independently found by the Contractor as a result of any examination, exploration or testing, are representative of those existing throughout the performance of the Work or the Project Site, and there is no guarantee against unanticipated or undisclosed conditions.

ARTICLE 4. CONTRACT PRICE.

4.1. If the Invitation to Bid Summary or any other Contract Documents contemplate unit pricing for the Project or any portion thereof, City shall pay to Contractor the amounts determined for the total number of each of the units of work completed at the unit price stated in the schedule of prices bid. The number of units contained in this schedule is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Work covered by the Contract Documents. Payment shall be made at the unit prices applicable to each integral part of the Work. These prices shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of work not covered by a definite Contract unit price shall be included in the Contract unit price or lump sum price to which the item is most applicable.

4.2. If the Invitation to Bid Summary or any other Contract Documents contemplate lump sum pricing for the Project, the Contract Price shall be the amount specified in the Contract, consisting of a base bid, and a separate line item for the Owner's Contingency (to be used solely by the City at its sole discretion for the purposes described in the Contract Documents). The Contract Price, exclusive of the Owner's Contingency, shall be full compensation for all labor, materials, equipment, costs, and expenses, including overhead and profit, associated with completion of all the Work accordance with the requirements of the Contract Documents, including all Work reasonably inferable therefrom, even if such item of Work is not specifically or expressly identified as part of a line item in the ITB Price Form.

4.3. To the extent the Project includes both unit prices and a lump sum price, then all sections of this Article 4 shall apply to the item of Work in question, as applicable.

4.4. No Compensation Prior to Notice to Proceed. Prior to the City's issuance of any Notice to Proceed, Contractor shall not incur any cost to be reimbursed as part of the Project, except as the Contract Administrator may authorize in writing.

4.5. Owner's Contingency. The Owner's Contingency shall be an amount, determined by the City, which will be available to the City to pay for Project costs which are expressly chargeable to the City or determined to be the City's responsibility under the Contract Documents, including, as it relates to the Contractor, the following increased costs of the Project incurred by Contractor:

a. Express written changes in the Work made in the discretion of the City after issuance of a Change Order or Construction Change Directive relating thereto. The decision to make such changes, and to incur the costs that arise there from, shall be in the sole discretion of the City. No costs may be charged to the Owner's Contingency under this subsection without express approval of City.

b. Changes to the Work if ordered by agencies having jurisdiction, provided such Work directly results from City's issuance of a Notice to Proceed prior to obtaining full permits thereon;

c. In the event of Excusable Delay, reasonable acceleration costs to meet milestones, if approved by the City at its sole and absolute discretion;

d. Differing site conditions pursuant to the Contract Documents;

e. Post-hurricane or storm-related Construction Change Directives (to address matters that are in addition to, or not covered by, the Contractor's City-approved Hurricane Preparedness Plan required by the Contract Documents);

f. Increased Costs of the Work resulting from other actions of the City deemed to be City's responsibility and/or compensable under the Contract Documents.

Unless Contractor secures City's written agreement that such costs are City's responsibility, documentation of responsibility for such costs shall be submitted with the Contractor's Claim. When Contractor has reason to anticipate that such costs may be incurred, it shall be the Contractor's responsibility, when feasible, to provide the City with sufficient advance notice, so as to provide the City with a reasonable opportunity to avoid such costs. Such costs shall be deemed the City's responsibility if City subsequently agrees in writing to grant the Claim and accept such responsibility, or if the Claim is granted and responsibility assigned to City pursuant to the dispute resolution process under the Contract Documents and all reviews thereof are exhausted or waived by City. The Contractor has no right or entitlement whatsoever to the Owner's Contingency, and use of such funds are subject to the City's prior written approval and issuance of a Change Order or Construction Change Directive by the City at its sole and absolute discretion. Any unused City Contingency remaining at the completion of the Project shall accrue solely to the City.

ARTICLE 5. APPLICATION FOR PAYMENT.

5.1. Applications for Payment for the Work performed by Contractor shall be made monthly based upon the percent completion of the Work for each particular month and in accordance with the Contract Documents. The percent completion shall be based upon the updated and City-approved Project Schedule as required by the Contract Documents. Contractor's application shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with such supporting evidence as may be required by Consultant or City. Contractor shall include, with each Application for Payment, an updated progress schedule as required by the Contract Documents and a release of liens and consent of surety relative to the Work which is the subject of the Application. Following submission of acceptable supporting documentation along with each Application for Payment, City shall make payment to Contractor after approval by Consultant of an Application for Payment, less retainage as herein provided for and/or

withholding of any other amounts pursuant to the Contract Documents, within twenty-five (25) days in accordance with Section 218.735 of the Florida Statutes.

5.2. The City shall withhold from each progress payment made to Contractor retainage in the amount of ten percent (10%) of each such payment until fifty percent (50%) of the Work has been completed. The Work shall be considered 50% complete at the point at which the City has expended 50% of the approved Cost of the Work together with all costs associated with existing change orders or other additions or modifications to the construction services provided for in the Contract Documents.

Thereafter, the Contract Administrator shall reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment made to the Contractor, until Substantial Completion. Any reduction in retainage shall be in accordance with Section 255.078 of the Florida Statutes, as may be amended, and shall otherwise be at the sole discretion of the Contract Administrator, after considering any recommendation of Consultant with respect thereto. Contractor shall have no entitlement to a release of, or reduction in, retainage, except as may be required herein or by Florida law. Any interest earned on retainage shall accrue to the benefit of City. All requests for retainage reduction shall be in writing in a stand-alone document, separate from monthly applications for payment.

5.3. Notwithstanding any provision hereof to the contrary, the City may withhold payments to the Contractor in the following circumstances:

a. correction or re-execution of Work which is defective or has not been performed in accordance with the Contract Documents and which the Contractor has failed to correct in accordance with the terms of the Contract Documents;

b. past due payments owed to Subcontractors for which City has not been provided an appropriate release of lien/claim (whether or not the Work in question is the subject of any dispute);

c. the City's remedies arising from any failure to perform the Contract Documents' requirements or uncured Default of this Contract by the Contractor;

d. damage to another contractor or third-party (including, without limitation, the property of any resident or business in the area surrounding the Project Site) which has not been remedied or, damage to City property which has not been remedied;

e. liquidated damages;

f. failure of Contractor to provide a Recovery Schedule in accordance with the Contract Documents;

g. failure of Contractor to provide any and all material documents required by the Contract Documents including, without limitation, the failure to maintain as-built drawings in a current and acceptable state; and

h. pending or imminent Claims of the City or others including, without limitation, Claims which are subject to Contractor's indemnity obligation under the Contract Documents, for which the Contractor has not posted bonds or other additional security reasonably satisfactory to the City.

Except as otherwise specifically provided in the Contract Documents, in no event shall any interest be due and payable by the City to the Contractor or any other party on any of the sums retained by the City pursuant to any of the terms or provisions of any of the Contract Documents.

5.4. **No acceptance.** No progress payment made by the City to Contractor shall constitute acceptance of any portion of the Work, any goods or materials provided under this Agreement or any portion thereof. No partial or entire use or occupancy of the Project by the City shall constitute an acceptance of any portion of the Work or the complete Project which is not in accordance with the Contract Documents.

5.5. **Final Bill of Materials.** Upon request by the City, Contractor shall be required to submit to City and Consultant a final bill of materials with unit costs for each bid item for supply of materials in place. This shall be an itemized list of all materials with a unit cost for each material and the total shall agree with unit costs established for each Contract item. A Final Certificate for Payment cannot be issued by Consultant until Contractor submits the final bill of materials and Consultant verifies the accuracy of the units of Work.

5.6. **Payment by City for Tests.** Except when otherwise specified in the Contract Documents, the expense of all tests requested by Consultant shall be borne by City and performed by a testing firm chosen by the City. For road construction projects the procedure for making tests required by Consultant will be in conformance with the most recent edition of the State of Florida, Department of Transportation Standard Specifications for Road and Bridge Construction. The cost of any required test which Contractor fails shall be paid for by Contractor.

5.7. **Form of Application: Projected Payment Schedule.** The Contractor shall make each Application for Payment on AIA Form G702 or other form approved by the City, which incorporates the budget and the Schedule of Values. For each line item, the Contractor shall state the approved cost, the cost to date, and the projected total cost, and retainage held (if any), shall state that the projected total cost shall not exceed the approved cost, as adjusted by Change Order. Each Application for Payment shall also state the actual costs incurred by the Contractor for the payment period covered by such Application for Payment.

ARTICLE 6. PROJECT SCHEDULE AND CONTRACT TIME.

6.1. **Time for Completion.** Time is of the essence throughout this Contract. Contractor shall perform the Work so as to achieve Substantial Completion within the number of days specified for Substantial Completion in the Invitation to Bid Summary, and the Project shall be completed and ready for final payment as set forth herein within the number of days specified for Final Completion in the Invitation to Bid Summary, with such Final Completion date calculated from the date certified by Consultant as the date of Substantial Completion.

6.2. **Project Schedule; Preliminary Matters.** As a condition of issuance of a Notice to Proceed for the construction of the Work (typically, NTP2), Contractor shall submit to Consultant for Consultant's review and acceptance:

6.2.1. A project "Base Line" schedule, one (1) copy on a CD and One (1) hard copy (activities arranged in "waterfall"), in the indicated form for Final review and approval, in accordance with the Project Scheduling Format required in the Invitation to Bid Summary.

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

Contractor shall provide a preliminary man loaded, logic based "Base Line" Project schedule using "Early Start" and "Early Finish" dates for each activity. The Contractor shall include, in addition to normal work activity input, input that encompasses all submittal approvals, delivery durations for important materials and/or equipment, and Logic relationships of activities including physical and site restraints.

The preliminary Base Line project schedule when submitted shall have attached a run of the programs generated error report that states no errors and be acceptable to Consultant and City.

Monthly, Contractor shall submit with each Application for Payment an update of the Project Schedule with an error report stating no errors (that does not revise the base line schedule), showing the progress for the month ("Progress Schedule"). CONTRACTOR SHALL SUBMIT ONE HARD COPY AND ONE ELECTRONIC COPY (including a native version and a pdf). In addition to the Progress Schedule Contractor shall include a narrative report of the months' progress, an explanation of any delays and or additions/deletions to activities. City's acceptance of a Progress Schedule for purposes of City's approval of an Application for Payment shall not constitute or be construed as City's approval of the Progress Schedule itself, or as approval of any change to the Project Schedule. Any changes to the Project Schedule, if agreed to, shall be memorialized in a duly executed Change Order.

It is strongly recommended that Contractor or the professional who performs scheduling have a vast knowledge in the use of the required scheduling software specified in the Invitation to Bid Summary to develop and update the project schedule.

CONTRACTOR agrees to attend weekly progress meetings and provide an two (2) week look ahead schedule for review and discussion and monthly be prepared to discuss any:

- 1) Proposed changes to the Base Line schedule logic;
- 2) Explain and provide a narrative for reasons why logic changes should be made;
- 3) Update to individual subcontractor activities; and
- 4) Integration of changes into the schedule.

The Project Schedule shall be the basis of the Contractor's Work and shall be complied with in all respects.

6.2.2. A preliminary schedule of Shop Drawing submissions; and

6.2.3. In a lump sum contract or in a contract which includes lump sum bid items of Work, a preliminary schedule of values for all of the Work which may 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. If requested by the City, Contractor shall provide additional breakdowns as to any line item, to show labor, equipment, materials and overhead and profit.

6.2.4. After award but prior to the submission of the progress schedule, Consultant, Contract Administrator and Contractor shall meet with all utility owners and secure from them a schedule of utility relocation, provided, however, that by facilitating Contractor's efforts to coordinate with such utilities, City is not assuming the obligation to coordinate any necessary relocations and Contractor shall be solely responsible for such coordination.

6.2.5. At a time specified by Consultant but before Contractor starts the work at the Project Site, a conference attended by Contractor, Consultant and others as deemed appropriate by Contract Administrator will be held to discuss the schedules 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.

6.2.6. Within five (5) days from the Project Initiation Date set forth in the Notice to Proceed, a pre-construction meeting attended by Contractor, Consultant and others, as appropriate, will be held to finalize the schedules submitted. Within ten (10) days after the Project Initiation Date set forth in Notice to Proceed, the Contractor shall revise the original schedule submittal to address all review comments from the CPM review conference and resubmit for Consultant review. The finalized progress schedule will be accepted by Consultant only as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance shall not constitute acceptance by City or Consultant of the means or methods of construction or of the sequencing or scheduling of the Work, and such acceptance will neither impose on Consultant or City responsibility for the progress or scheduling of the Work nor relieve Contractor from full responsibility therefore. The finalized schedule of Shop Drawing submissions must be acceptable to Consultant as providing a workable arrangement for processing the submissions. The finalized schedule of values must be acceptable to Consultant as to form and substance.

6.3. Recovery Schedule.

6.3.1. If Contractor's Work, or any portion of the Work, becomes more than (30) days behind schedule, if the Work on any critical path item or activity delineated in the Project Schedule is delayed for a period which exceeds 5% of the days remaining until a completion deadline for an item in the Project Schedule, or if it reasonably appears that the Contractor will be unable to meet the deadlines of the Project Schedule, the City may notify Contractor of same, and in such case, the Contractor shall submit a proposed recovery plan to regain lost schedule progress and to achieve any Project milestones, Substantial Completion, and Final Completion in accordance with the Contract Documents ("Recovery Schedule"), after taking into account Excusable Delays (as hereinafter defined) and permitted extensions of the Project for review and acceptance within seven (7) days following notification from the City, so as to ensure Contractor makes up lost time.

6.3.2. City shall notify Contractor within five (5) business days after receipt of each Recovery Schedule, whether the Recovery Schedule is deemed accepted or rejected. Within five (5) business days after City's rejection of any Recovery Schedule, Contractor will resubmit a revised Recovery Schedule incorporating City's comments. If the City accepts Contractor's Recovery Schedule, Contractor shall, within five (5) business days after City's acceptance, incorporate and fully include the Recovery Schedule into the Project Schedule and deliver same to City.

6.3.3. If the Contractor fails to provide an acceptable Recovery Schedule, as determined by City in its sole discretion, that demonstrates Contractor's ability to timely follow the Project Schedule, the City may, without prejudice to any other rights and remedies available to the City hereunder or otherwise, declare an Event of Default or order the Contractor to employ such extraordinary measures, including acceleration of the Work, and other measures, including substantially increasing manpower and/or necessary equipment, as may be necessary to bring the Work into conformity with the Project Schedule.

6.4. Substantial Completion. As a condition of Substantial Completion, all of the following must occur:

- 6.4.1. All Work affecting the operability of the Project or safety has been completed in accordance with the Contract Documents;
- 6.4.2. If applicable, all pre-commissioning activities, including alignment, balancing, lubrication and first-fill, have been completed;
- 6.4.3. The Work may be operated within manufacturers' recommended limits (with all installation instructions, operations and maintenance manuals or instructions for equipment furnished by Contractor, catalogs, product data sheets for all materials furnished by Contractor and similar information provided), in compliance with Applicable Laws, and without damage to the Work or to the Project;
- 6.4.4. Contractor has corrected all defects, deficiencies and/or discrepancies to the entire Work as identified by the City or the Consultant, and the Consultant confirms such corrections have been made in writing;
- 6.4.5. The most recent updated set of "as-built" drawings reflecting the progress of the Work through Substantial Completion (in native file format, such as autoCAD);
- 6.4.6. When Contractor believes it has achieved Substantial Completion, Contractor shall request an inspection by the City and the Consultant, and shall provide the City with evidence supporting its assessment of Substantial Completion, including any specific documents or information requested by the City to assist in its evaluation thereof. Contractor shall, prior to said inspection, develop its preliminary Punch List for input and comment by the City and the Consultant. Once the preliminary Punch List is submitted to the City, the City and its representatives shall then schedule a walk-through of the Project with Contractor and the Consultant. Following the walk-through, Contractor shall develop and provide City with the list of all remaining items of Work to be completed or corrected, and which incorporates items and comments identified or provided by the City and Consultant comments and is certified for completeness and accuracy by the Consultant ("Substantial Completion Punch List"), provided, however, that failure to include any items on such Substantial Completion Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents; and
- 6.4.7. Any and all appurtenances, utilities, transportation arteries and any other items required under the Contract Documents and necessary to serve that portion of the Work are sufficiently completed, a temporary certificate of completion or Certificate of Occupancy, as applicable, is issued for the Work for which a Certificate of Substantial Completion is being sought and/or all conditions or requirements of authorities having jurisdiction are complied with, to permit the City to utilize and occupy that portion for its intended use in accordance with the Contract Documents without material interference from any incomplete or improperly completed items of Work;
- 6.4.8. With respect to any Project for which a right-of-way permit is required from the City's Public Works Department or which includes a final lift of asphalt as part of the Work, in no event shall Substantial Completion occur prior to the final lift of asphalt and acceptance thereof by the agencies having jurisdiction (including, without limitation, the City's Public Works Department).
- 6.5. **Certificate of Substantial Completion.** Any determination by the Consultant and the Contractor of Substantial Completion shall not be binding on the City, and the ultimate determination of Substantial Completion shall rest with the City and shall be evidenced by the City's executing and returning to the Contractor its Certificate of Substantial Completion (or Partial Substantial Completion, as applicable).

6.5.1. When the City, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, and when the Contractor has complied with all other conditions precedent to Substantial Completion provided for in the other Contract Documents, the City will then prepare a Certificate of Substantial Completion which shall establish the Substantial Completion Date, shall state the responsibilities of Contractor, if any, for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed in the Substantial Completion Punch List. If the City issues a Certificate of Substantial Completion on the basis of partial completion of the Project, or upon the basis of a partial or temporary certificate of occupancy or certificate of completion, as applicable, City may include such additional conditions, as it deems appropriate to protect its interests pending substantial completion of the entire Project or issuance of a permanent certificate of occupancy or certificate of completion, as applicable.

6.5.2. The City shall not unreasonably withhold or condition acceptance and execution of a Certificate of Substantial Completion (or a Notice of Partial Substantial Completion); provided, however, the Project shall not be deemed Substantially Complete and the City shall not execute a Certificate of Substantial Completion until all of the criteria for achieving Substantial Completion as identified in the Contract Documents have been satisfied, and (2) in the case of a portion of the Project, the conditions set forth this Article 6 relating to Partial Substantial Completion shall have been satisfied.

6.6. Partial Substantial Completion. Partial Substantial Completion of the Work shall occur when the City determines that a portion of the Work, as defined in the Contract Documents and/or otherwise by logical boundaries, is Substantially Complete in accordance with the Contract Documents. The City may (but shall not be obligated to) agree that a portion or component of the Work, acceptable to the City in its sole discretion, may be certified as Substantially Complete provided that:

6.6.1. The requirements provided in this Article 6 for issuance of a Certificate of Substantial Completion are complied with for the portion of the Work for which a Notice of Partial Substantial Completion is being sought;

6.6.2. Such portion and any and all appurtenances, utilities, transportation arteries and any other items required under the Contract Documents and necessary to serve that portion of the Work are sufficiently completed, a temporary certificate of completion or Certificate of Occupancy, as applicable, is issued for the portion of the Work for which a Certificate of Partial Substantial Completion is being sought and/or all conditions or requirements of authorities having jurisdiction are complied with, to permit the City to utilize and occupy that portion for its intended use in accordance with the Contract Documents without material interference from any incomplete or improperly completed items of Work;

6.6.3. The City is fully able to use and occupy the portion of the Work for the purposes intended and the Contractor separates the portion of the Work which is Substantially Complete from non-complete areas of the Project in order to prevent noise, dust and other construction disturbances which would materially interfere with the use of such portion for its intended use in accordance with the Contract Documents and to assure the safety of those entering, exiting and occupying the Substantially Completed portion of the Work;

6.6.4. Partial Substantial Completion shall not constitute Final Completion of the Work or Substantial Completion of the Project, nor shall it relieve the Contractor of any responsibility for the correction of Work (whether or not included in portion of Work Substantially Complete) or for the performance of Work not complete at the time of Partial Substantial Completion.

6.7. Liquidated Damages.

6.7.1. Upon failure of Contractor to achieve Substantial Completion within the time period specified in the Invitation to Bid Summary for Substantial Completion, as such date may be extended pursuant to the terms of the Contract Documents, Contractor shall pay to City the sum specified in the Invitation to Bid Summary for "Liquidated Damages" for each calendar day after the time specified in the Invitation to Bid Summary for Substantial Completion, plus any approved time extensions, for Substantial Completion. Partial Substantial Completion shall not relieve Contractor of any responsibility for Liquidated Damages for failure to timely achieve Substantial Completion.

6.7.2. After Substantial Completion is achieved, should Contractor fail to complete the remaining Work within the time specified in the Invitation to Bid Summary for Final Completion, plus approved time extensions thereof, Contractor shall pay to City the sum set forth in the Invitation to Bid Summary as "Liquidated Damages" for each calendar day after the time specified in the Invitation to Bid Summary for Final Completion, plus any approved extensions.

6.7.3. Contractor agrees that the Liquidated Damages set forth herein are not penalties and have been set based on an evaluation by City of damages to City and the public caused by untimely performance. Such damages may include loss of revenues to the City, and additional costs of administering this Agreement, including Project staff, legal, accounting, consultants and overhead and other administrative costs. Contractor acknowledges that the amounts established for Liquidated Damages are fair and commercially reasonable. Contractor and City have agreed to the Liquidated Damages in order to fix Contractor's costs and to avoid later disputes over which items are properly chargeable to Contractor as a consequence of Contractor's delays.

The above-stated liquidated damages shall apply separately to each portion of the Project for which a time for completion is given. City is authorized to deduct liquidated damages from monies due to Contractor for the Work under this Contract or as much thereof as City may, in its sole discretion, deem just and reasonable. Liquidated Damages shall apply, whether or not the City terminates Contractor for cause and whether or not Surety completes the Project after a Default by Contractor.

Liquidated Damages shall apply solely to claims arising from delay in meeting any milestone for which the right to assess Liquidated Damages is specified, including, without limitation, Substantial Completion, and Final Completion, and shall be the City's sole remedy for delay, and are not intended to, and do not, liquidate Contractor's liability under any other provision of the Contractor Documents for other events not specifically referenced in this Article 6. Liquidated Damages shall not liquidate Contractor's liability under the indemnification provisions of this Agreement.

Contractor, in addition to reimbursing City for Liquidated Damages or other damages for untimely performance as provided herein, shall reimburse City for all costs incurred by City to repair, restore, or complete the Work, as may be provided by the Contract Documents, including, without limitation, any additional design fees that may be due to the Consultant related thereto. All such costs shall be deducted from the monies otherwise due Contractor for performance of Work under this Agreement by means of unilateral credit or deductive Change Orders issued by City.

In the event a court of competent jurisdiction determines that any Liquidated Damages amount herein is unenforceable notwithstanding Contractor's agreement herein that such amounts are fair and reasonable, Contractor shall not be relieved of its obligations to the City for the actual damages resulting from the failure to timely achieve Substantial Completion or Final Completion in accordance with the requirements of the Contract Documents. Without limiting the foregoing, City and Contractor covenant not to bring any action in

a court of competent jurisdiction that would ask the court to rule that the Liquidated Damages amounts are not fair and reasonable.

6.8. Beneficial Occupancy. Beneficial Occupancy shall occur when the City determines that a portion of the Work may be occupied prior to Substantial Completion. City may take Beneficial Occupancy in accordance with the provisions of the Contract Documents.

6.8.1. Prior to the anticipated date of Beneficial Occupancy, Contractor shall separate the portion of the Work to be occupied from non-complete areas of the Project in order to prevent noise, dust and other construction disturbances which would materially interfere with the use of such portion for its intended use in accordance with the Contract Documents and to assure the safety of those entering, exiting and occupying the completed portion to be occupied.

6.8.2. Beneficial Occupancy shall not constitute Substantial Completion or Final Completion of the Work, nor shall it relieve the Contractor of any responsibility for the correction of Work (whether or not included in the portion of Work to be occupied) or for the performance of Work not complete at the time of Beneficial Occupancy.

6.8.3. After Beneficial Occupancy and as conditions of Substantial Completion, the Contractor shall deliver to the City complete as-built drawings, all approved Shop Drawings, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all installed materials, equipment, or machinery, all applicable warranties and guarantees, and the appropriate certificate of occupancy or certificate of completion that are related to the portion of the Work being occupied.

6.8.4. Contractor's insurance on the unoccupied or unused portion or portions of the Project Site shall not be canceled or lapsed on account of such Beneficial Occupancy.

6.8.5. Contractor shall be responsible to maintain all utility services to areas occupied by the City until Final Completion.

6.9. Final Completion. Final Completion of the Project shall be deemed to have occurred if all the following have occurred:

6.9.1. Substantial Completion of the entire Project has occurred;

6.9.2. The Work can be used and operated in accordance with Applicable Laws bearing on the performance of the Work and applicable permits;

6.9.3. All spare parts, special tools and attic stock purchased by Contractor as part of Vendor supplies shall have been delivered to City and clear of all Liens;

6.9.4. All items on the Substantial Completion Punch List shall have been completed by Contractor to City's satisfaction and all final inspections have been performed;

6.9.5. Contractor has satisfied the additional conditions prescribed by the City in conjunction with a Certificate of Substantial Completion issued on the basis of partial completion of the Project, or a partial or temporary Certificate of Occupancy or Certificate of Completion, as applicable;

6.9.6. Contractor has delivered evidence to the City that all permits that are Contractor's responsibilities as specified under the Contract Documents have been satisfied and closed, and that a Certificate of Completion or Certificate of Occupancy (as applicable) has been issued by the authority having jurisdiction, and the Project or designated portion thereof is sufficiently complete in accordance with the Contract Documents and can be used for its intended purpose for uninterrupted operation, including, without limitation, acceptance of completed as-builts, if required by the agency having jurisdiction.

6.9.7. Contractor shall have provided to City final releases and complete and unconditional waivers of liens for all Work performed by Contractor and each Subcontractor or Suppliers, and a Consent of Surety to Final Payment;

6.9.8. Contractor shall have delivered to the City a certification identifying all outstanding Claims (exclusive of any Liens or other such encumbrances which must have been discharged) of Contractor (and of its Subcontractors, Suppliers and any other party against Contractor) with written documentation reasonably sufficient to support and/or substantiate such Claims;

6.9.9. Contractor shall have delivered to the City a written assignment of all warranties or guaranties which Contractor received from Subcontractors or Suppliers to the extent Contractor is obligated to do so;

6.9.10. Contractor shall have delivered to City a complete set of as-built documents and Project Records prepared in accordance with the Contract Documents;

6.9.11. Contractor has delivered to City all other submittals required by the Contract Documents, including all installation instructions, operations and maintenance manuals or instructions for equipment furnished by Contractor, catalogs, product data sheets for all materials furnished by Contractor and similar information;

6.9.12. All rubbish and debris have been removed from the Project Site; and

6.9.13. All Construction aids, equipment and materials have been removed from the Project Site.

6.9.14. Contractor has delivered to the City all executed warranties and guarantees required by the Contract Documents, all of which shall be in the name of the City and run to the benefit of the City;

6.9.15. If applicable, certificates of insurance indicating that any insurance required of the Contractor or Subcontractors by the Contract Documents shall remain in full force and effect for the required period of time;

6.9.16. Any other documentation establishing payment or satisfaction of obligations, including receipts, releases and final waivers of lien from the Contractor and all Subcontractors, to the extent and in such form as may be reasonably required by the City;

6.9.17. Final Completion is a condition precedent to City's final payment to Contractor and issuance of the Final Certificate for Payment. Final payment shall be made only after the City Manager or his designee has reviewed a written evaluation of the performance of Contractor prepared by the Contract Administrator, and approved the final payment.

6.9.18. Waiver of Claims. The release by the City and acceptance of the final payment by Contractor shall operate as and shall be a release to the City from all present and future Claims or liabilities, of whatever kind or nature, arising under, relating to or in connection with this Contract for anything done or furnished or relating to the Work or the Project, or from any act or omission of the City relating to or

connected with the Contract Documents, the Work or the Project, except those Claims or liabilities, if any, for which the Contractor has provided the City with written notice pursuant to and in strict compliance with the "Claims" and notice requirements set forth in the Contract Documents, and containing a detailed reservation of rights that identifies the precise nature of the dispute, all facts in support of Contractor's Claim, the particular scope of Work giving rise to the Claim, and the maximum amount and/or time sought in connection with the Claim.

ARTICLE 7. INSPECTION OF WORK; CORRECTION OF NON-CONFORMING OR DEFECTIVE WORK.

7.1. Consultant, City (and its authorized designees), and representatives of any regulatory agencies having jurisdiction over the Project, shall at all times have access to the Work and the Project Site, and Contractor shall provide proper facilities for such access and for inspecting, measuring and testing. Whenever requested, Contractor shall give the City and any inspectors or representatives appointed by the City free access to its Work during normal working hours either at the Project Site or its shops, factories, or places of business of Contractor and its Subcontractors and suppliers for properly inspecting materials, equipment and Work, and shall furnish them with full information as to the progress of the Work in its various parts.

7.2. Should the Contract Documents, Consultant's instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, Contractor shall give Consultant timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than City, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and, where practicable, at the source of supply. If any of the Work should be covered up without approval or consent of Consultant, it must, if required by Consultant, be uncovered for examination and properly restored at Contractor's expense.

7.3. Reexamination of any of the Work may be ordered by Consultant with prior written approval by the Contract Administrator, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, City shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such cost.

7.4. Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of, the Contract Documents or to delay the Contract by failure to inspect the materials and work with reasonable promptness without the written permission or instruction of Consultant.

7.5. The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by Contractor to any inspector, directly or indirectly, is strictly prohibited, and any such act on the part of Contractor will constitute a breach of this Contract.

7.6. The Contractor shall coordinate all technical inspection and testing provided by professionals designated by the City, the Consultant, permitting authorities, and others. The Contractor shall also schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to the Contract Documents and provide a copy of all inspection and testing reports to the City on the day of inspection or test. The Contractor shall provide reasonable prior notice to appropriate inspectors before the Work is covered up, but in no event less than 24 hours before the Work is covered up. All costs for uncovering Work not inspected and any reconstruction due to lack of reasonable prior notice shall be borne by Contractor at its sole cost and expense. Any time billed by inspectors for inspection where the Work is not ready to be inspected shall be at Contractor's sole cost and expense. If any members of the

Project team are to observe said inspections, tests or approvals required by the Contract Documents, they shall be notified in writing by the Contractor of the dates and times of the inspections, tests or other approvals. The Contractor shall schedule, direct and/or review the services of or the reports and/or findings of surveyors, environmental consultants and testing and inspection agents engaged by the City. All Materials and Equipment furnished by Contractor and Work performed by Contractor shall at all times be subject to inspection and testing by City or inspectors or representatives appointed by City. If any of the Work should be covered up without approval or consent of City's Project Coordinator, or without necessary test and inspection, Contractor shall, if required by City's Project Coordinator or by public authorities, uncover such Work for examination and testing, and shall re-cover same at Contractor's expense.

7.7. Defective or Non-Conforming Work.

7.7.1. Consultant and City shall have the authority to reject or disapprove work which either Consultant or City find to be defective. If required by Consultant or City, Contractor shall promptly either correct all defective work or remove such defective work and replace it with non-defective work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

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

7.7.3. If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from City, shall promptly correct such defective or nonconforming Work within the time specified by City without cost to City, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to, Contractor's warranty obligations hereof and any claim regarding latent defects.

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

7.8. Cleaning Up; City's Right to Clean Up. Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project, Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, City may do so and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up, City may clean up and charge the cost thereof to the contractors responsible therefore as Consultant shall determine to be just.

ARTICLE 8. SAFETY AND PROTECTION OF PROPERTY.

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

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

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

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

8.2. Contractor shall comply with all Applicable Laws for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. City and Contractor shall notify owners of adjacent property and utilities when prosecution of the work may affect them. Contractor shall be responsible for and shall remedy all damage, injury or loss to any property, caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. 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 City and Contractor that the Work is acceptable except as otherwise provided in the Contract Documents.

8.3. Contractor shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be Contractor's Construction Superintendent, unless otherwise designated in writing by Contractor to City.

8.4. **Contractor's Responsibility for Damages and Accidents.**

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

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

8.5. **Occupational Health and Safety.**

8.5.1. In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this bid must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

- a. The chemical name and the common name of the toxic substance.
- b. The hazards or other risks in the use of the toxic substance, including:
 - i. The potential for fire, explosion, corrosion, and reaction;

- ii. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
- iii. The primary routes of entry and symptoms of overexposure.
- c. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- d. The emergency procedure for spills, fire, disposal, and first aid.
- e. A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

8.6. Hurricane and Tropical Storm Precautions.

8.6.1. During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or tropical storm alert, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Project Site in response to all threatened storm events, regardless of whether the City or Consultant has given notice of same.

8.6.2. Contractor's Hurricane Preparedness Plan shall, at a minimum, include the following: (1) monitoring of the real time weather radar and insuring reasonable precautions are taken prior to and during inclement weather conditions, from a severe thunderstorms to a category 5 hurricane, to prevent accidents and to minimize property damage; (2) preparing an emergency phone list showing home phone numbers of all project personnel and subcontractor's supervisors, including all land lines and cell phones, to be used for emergency purposes only; (3) ensuring the project jobsite's equipment and buildings are protected, identifying vulnerable work in progress and determining how to best protect it from damage, and capping all incomplete piping to prevent sand filtration; (4) cleaning the entire project, inside and out, removing trash from the job site, clearing all materials that can become airborne, verifying that all erosion and sediment control devices are in place and meet adequate standards, and removing screening on fences and signs; (5) arranging for the pickup of all dumpsters and portable toilets and secure all materials and equipment, anchoring or restraining everything that could blow away, and removing all non-essential barricades; and (6) the documenting of conditions of the project and the surrounding area before and after the incident (photographs and video).

8.6.3. Contractor shall be solely responsible for all costs of all precautions and Work covered by Contractor's Hurricane Preparedness Plan. Compliance with Contractor's Hurricane Preparedness Plan shall not constitute additional Work.

8.6.4. Any additional Work not covered in the Hurricane Preparedness Plan relating to hurricane warning or tropical storm alert at the Project Site will be addressed by a Change Order in accordance with the Contract Documents.

8.6.5. Suspension of the Work caused by a threatened or actual storm event, regardless of whether the City has directed such suspension, will entitle the Contractor to additional Contract Time as noncompensable, excusable delay, and shall not give rise to a claim for compensable delay.

8.6.6. Within ten (10) calendar days after the Project Initiation Date specified in the Notice to Proceed, Contractor shall submit to the City a Hurricane Preparedness Plan.

8.7. **Location and Damage to Existing Facilities, Equipment or Utilities.**

8.7.1. As far as possible, all existing utility lines in the Project area have been shown on the plans. However, City does not guarantee that all lines are shown, or that, the ones indicated are in their true location. As part of the Contract Price, it shall be the Contractor's responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project, whether or not shown on the plans.

8.7.2. The Contractor shall notify each utility company involved at least ten (10) days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Contractor shall be paid by the Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by the Contractor (for utilities indicated in the Contract Documents). All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved, if indicated in the Contract Documents. No additional payment will be made to the Contractor for utility relocations indicated in the Contract Documents, whether or not said relocation is necessary to avoid conflict with other lines.

8.7.3. If Contractor, as part of its responsibility to identify all utility lines, identifies utility conflicts which materially differ from those indicated in the Contract Documents, such utility conflicts (for items not indicated in the Contract Documents) shall be addressed pursuant to the requirements of "Differing Site Conditions" as set forth in Article 10 shall apply.

8.7.4. The Contractor shall reasonably schedule the Work, and the phasing thereof, in such a manner so that the overall Project Schedule is not impacted and completion of the Work is not delayed by the utility providers relocating or supporting their utilities. The Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to the Contractor for any loss of time or delay, except as provided in Article 10 of the Contract Documents.

8.7.5. All overhead, surface or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. The City reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of the Contractor. All such repairs made by the Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling.

8.8. **Risk of Loss.** The risk of loss to any of the Work and to any goods, materials and equipment provided or to be provided under the Contract Documents, shall remain with the Contractor until Substantial Completion. Should any of the Work, or any such goods, materials and equipment, be destroyed, mutilated, defaced or otherwise damaged prior to the time the risk of loss has shifted to the City, the Contractor shall repair or replace the same at its sole cost. The Performance Bond and Payment

Bond or other security or insurance protection required by the Contract Documents or otherwise provided by the City or the Contractor shall in no way limit the responsibility of the Contractor under this Section.

ARTICLE 9. BONDS, INSURANCE AND INDEMNITY.

9.1. Performance Bond and Payment Bond: The Contractor shall, within ten (10) business days of the Contract Date, furnish and deliver to the City a payment bond and a performance bond, in a form to be provided by the City, issued by sureties licensed and authorized to do business in the State of Florida, covering the faithful performance and completion of the Project pursuant to the Contract Documents, including the performance and completion of those services provided by Subcontractors of any tier and covering the payment of all obligations arising hereunder including but not limited to, the payment for all materials used in the performance of the Project in accordance with the Contract Documents, and for all labor and services performed under the Contract Documents (including materials, labor and/or services provided by Subconsultants and Subcontractors of any tier), whether by Subcontractors or otherwise. Each of the aforesaid bonds (collectively herein referred to as the "Performance Bond and Payment Bond") shall have a penal amount equal to the Contract Price, unless otherwise approved by the City and to the extent permitted by law. Each bond shall be increased in the amount of any change to the Contract Price. Each bond shall continue in effect for one (1) year after Final Completion of the Work.

The Performance Bond and Payment Bond and the sureties issuing such bonds shall meet all the requirements set forth in the Contract Documents and the Performance Bond and Payment Bond shall each be in the form attached hereto or shall otherwise be acceptable to the City in its reasonable discretion. If any of the sureties on the Performance Bond and Payment Bond at any time fails to meet said requirements, or is deemed to be insufficient security for the penalty of said bond, then the City may, on giving thirty (30) days' notice thereof in writing, require the Contractor to furnish a new and/or additional bond(s) in the above amounts with such sureties thereon being licensed and authorized to do business in the State of Florida and as shall be satisfactory to the City. The Contractor shall pay all costs of compliance with this Article as part of the Contract Price.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, Contractor shall ensure that the bond(s) referenced above shall be recorded in the public records of Miami-Dade County and provide City with evidence of such recording.

9.2. Alternate Form of Security: In lieu of a Performance Bond and a Payment Bond, Contractor may furnish alternate forms of security which may be in the form of cash, money order, certified check, cashier's check or unconditional letter of credit in the form attached hereto, which shall be in accordance with Section 255.05, Florida Statutes. Such alternate forms of security shall be subject to the prior approval of City and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by City for one year after completion and acceptance of the Work.

9.3. Qualification of Surety: Bid Bonds, Performance Bonds and Payment Bonds over Five Hundred Thousand Dollars (\$500,000.00):

9.3.1. Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

9.3.2. The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of

the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the surety company shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner.

9.3.3. The City will accept a surety bond from a company with a rating of B+ or better for bonds up to \$2 million, provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the City shall review and either accept or reject the surety company based on the financial information available to the City. A surety company that is rejected by the City may be substituted by the Bidder or proposer with a surety company acceptable to the City, only if the bid amount does not increase. The following sets forth, in general, the acceptable parameters for bonds:

Policy- Financial holder's Size <u>Amount of Bond</u>	<u>Ratings Category</u>	
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

9.3.4. For projects of \$500,000.00 or less, City may accept a Bid Bond, Performance Bond and Payment Bond from a surety company which has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued, if the surety company is otherwise in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. The Certificate and Affidavit so certifying should be submitted with the Bid Bond and also with the Performance Bond and Payment Bond.

9.3.5. Unless more stringent surety requirements of any grantor agency are set forth within the Supplemental Conditions, the provisions of this Article shall apply.

9.4. Insurance Requirements. The Bidder shall furnish to the Procurement Department, City of Miami Beach, 1755 Meridian Avenue, 3rd Floor, Miami, Florida 33139, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements set forth in the Invitation to Bid Summary (and/or exhibits thereto).

9.4.1. Additional Insured Status. The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of the Consultant.

9.4.2. Waiver of Subrogation. Contractor hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of the Contractor may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

9.4.3. Other Insurance Provisions.

- a. For any claims related to this project, the Contractor's coverage shall be primary insurance as respects the City of Miami Beach, its officials, officers, employees, and volunteers. Any insurance or self-insurance maintained by the City of Miami Beach shall be excess of the Contractor's insurance and shall not contribute with it.
- b. Each policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of Miami Beach.
- c. If any excavation work is included in the Contract, it is understood and agreed that Contractor's Liability policy shall not contain exclusion for XCU (Explosion, Collapse and Underground) coverage.

If any coverage required is written on a claims-made form:

- a. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase extended period coverage for a minimum of five (5) years after completion of the contract work.
- d. A copy of the claims reporting requirements must be submitted to the City of Miami Beach Risk Management (or its designee) for review.
- e. If the services involved lead-based paint or asbestos identification/ remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

9.4.4. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

9.4.5. Verification of Coverage. Contractor shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Article. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9.4.6. Special Risks or Circumstances. The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder:

CITY OF MIAMI BEACH
c/o PROCUREMENT DEPARTMENT
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other provision of the Contract Documents.

9.5. Indemnification.

9.5.1. In consideration of the sum of Twenty-Five Dollars (\$25.00) and other good and valuable consideration, the sufficiency of which the Contractor hereby acknowledges, to the fullest extent permitted by law, Contractor shall defend, indemnify and save harmless City, and their respective officers and employees, from liabilities, damages, losses and costs including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract.

9.5.2. Sums otherwise due to Contractor under this Contract may be retained by City until all of City's Claims for indemnification under this Contract have been settled or otherwise resolved. Any amount withheld pursuant to this Article shall not be subject to payment of interest by City.

9.5.3. The execution of this Contract by Contractor shall operate as an express acknowledgment that the indemnification obligation is part of the bid documents and/or Contract Documents for the Project and the monetary limitation on indemnification in this Article bears a reasonable commercial relationship to the Contract.

9.5.4. Nothing in this Article is intended, or should be construed, to negate, abridge or otherwise reduce the other rights and obligations of indemnity that may otherwise exist as to a party described in this Article.

9.5.5. Nothing in this Article is intended to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract, to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

9.5.6. The indemnification obligations set forth herein shall survive the termination and/or expiration of this Contract.

**ARTICLE 10. CHANGES IN THE WORK;
EXTENSIONS TO THE CONTRACT TIME.**

10.1. Changes in the Work or Terms of Contract Documents.

10.1.1. Without invalidating the Contract and without notice to any surety City reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

10.1.2. Any changes to the terms of the Contract Documents must be contained in a Change Order, executed by the Parties hereto, with the same formality and of equal dignity prior to the initiation of any work

reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by City as hereinafter provided.

10.2. Field Orders.

10.2.1. The Contract Administrator, through Consultant, shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Field Order involves no change in the Contract Price or the Contract Time.

10.2.2. Consultant shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such supplemental instructions involve no change in the Contract Price or the Contract Time.

10.3. Change Orders.

10.3.1. Changes in the quantity or character of the Work which are not properly the subject of Field Orders or supplemental instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall only be authorized only by Change Orders approved in advance by the City. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. No Change Order shall take effect until Contractor delivers a Consent of Surety increasing the Performance Bond and Payment Bond by the amount of the Change Order.

10.3.2. All Change Orders which exceed the then-remaining amounts available in the Owner's Contingency shall be approved by the City Commission. All other Change Orders, if funded by then-remaining amounts available in the Owner's Contingency, shall be approved in advance by the City Manager or the City Manager's designee. Notwithstanding the foregoing, the City Manager, at his or her sole discretion, may elect to present any proposed Change Order to the City Commission for its consideration.

10.3.3. If City requests a change in the Work, City shall submit a change request to Contractor, in writing. Within seven (7) business days of Contractor's receipt of such request from the City, Contractor shall provide City with a rough "pencil copy" estimate of the cost and/or time impacts associated with the request. Within twenty-one (21) days of Contractor's receipt of City's initial request, the Contractor shall submit a detailed proposal to the City stating (i) the proposed increase or decrease, if any, in the Cost of the Work which would result from such a change, (ii) the effect, if any, upon the Contract Time by reason of such proposed change, and (iii) supporting data and documentation, including any requested by the City in its change request.

10.3.4. If the Contractor proposes a change in the Work, such proposal must be accompanied by a detailed cost breakdown and sufficient substantiating data to permit evaluation by the City. If the Contractor does submit a proposal within the preceding seven (7) business day time period, the City shall, within twenty-one (21) days following its receipt of such proposal, notify the Contractor as to whether the City agrees with such proposal and wishes to accept the Contractor's proposal. If the City agrees with such proposal and wishes to accept the same, the City and the Contractor shall execute a Change Order which at a minimum specifies: i) the detailed scope associated with the change to the Work; ii) the amount of the adjustment in the Contract Price, if any, and (iii) the extent of the adjustment in the Contract Time, if any. In the event the City disagrees with the Contractor's proposal, the City may either (i) notify the Contractor

that the City has decided to not proceed with or approve the requested change, or (ii) issue a Change Order as provided below.

10.3.5. The increase or decrease in the Contract Price resulting from a change in the Work shall be determined in one or more of the following ways:

- a. by mutual acceptance of a lump sum (inclusive of all overhead and profit) properly itemized and supported by sufficient substantiating data to permit evaluation by the Consultant and City;
- b. by unit prices as may be specified in the Contract Documents or subsequently agreed upon;
- c. by time and materials or "cost of the Work" (as defined herein) and a mutually acceptable fixed or percentage overhead and profit fee for the Contractor.

10.3.6. If none of the methods set forth above are agreed upon, the Contractor, provided it receives a written Change Order signed by the City with respect to all undisputed amounts and Work, shall promptly proceed with the Work involved, subject to Contractor's reservation of rights as to disputed amounts (with such reservation of rights identifying the precise nature of the dispute, the facts in support of the Contractor's position, and the maximum amount and/or time sought by the Contractor). The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change, including a reasonable overhead and profit in accordance with this Article. With respect to any such Change Order Work, the City, with the Consultant, will establish an estimated cost of the Work and the Contractor shall not perform any Work whose cost exceeds that estimate without prior written approval by the City. With respect to all Change Orders, Contractor shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work.

10.3.7. If unit prices are included in the Contract Documents or as part of any Change Order, City shall pay to Contractor the amounts determined for the total number of each of the units of work completed at the unit price associated with such Work as stated in the Contractor's schedule of prices bid, as set forth in Contractor's response to the ITB. The number of units contained in the bid is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Contract Documents, as may be amended by Change Order. If additional unit price work is ordered, then the Contractor shall perform the work as directed and shall be paid for the actual quantity of such item(s) of work performed at the appropriate original schedule of prices bid associated with such Work.

10.3.8. Decreases in the Cost of the Work due to a change in the Project shall result in a decrease to the Contract Price, by way of a deductive Change Order.

10.3.9. The Contractor's overhead and profit fee for all Change Orders shall be the net change in the Contract Price, multiplied by the percentage specified for overhead and profit in the Change Order, provided, that the overhead and profit markup or fee shall be as follows:

(1) if the Change Order Work involves self-performed Work performed by the Contractor's own forces, the overhead and profit markup shall be reasonable, and shall not exceed ten percent (10%) of the net change in the Contract Price; or

(2) if the Change Order involves Work performed by Subcontractors or Suppliers, or both, the overhead and profit markup shall be reasonable, and the overhead and profit markup from Subcontractors

and Suppliers at all tiers shall not exceed ten percent 10% of the net change in the Contract Price, and the Contractor's mark up for such Subcontractor performed Change Order Work shall not exceed seven and one half percent (7.5%) of the net change in the Contract Price.

For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include a proportionate corresponding reduction in the overhead and profit fee, as applicable to the Contractor, Subcontractors or Suppliers.

10.4. Value of Change Order Work/"Costs of the Work". The term "cost of the Work" means the sum of:

10.4.1. All direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by 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 the "cost of work" as defined herein.

10.4.2. Payroll costs for employees in the direct employ of Contractor in the performance of the work described in the Change Order under schedules of job classifications agreed upon by City and Contractor. Payroll costs for employees not employed full time on the work covered by the Change Order 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, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by City. Contractor's fee shall not exceed ten percent (10%).

10.4.3. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to City and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work. Contractor's fee for overhead and profit markup for materials and equipment pursuant to this Section shall not exceed ten percent (10%) of the net change in the Contract Price.

10.4.4. Payments made by Contractor to Subcontractors for work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to City who will then determine, with the advice of Consultant, which bids will be accepted. If the 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 the work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable. Contractor's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%).

10.4.5. Contractor shall not be entitled to an overhead and profit markup or fee for any Change Order involving special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order.

10.4.6. Contractor shall not be entitled to an overhead and profit markup or fee for the following costs or expenses:

- a. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work except for local travel to and from the site of the work.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remains the property of Contractor.
- c. Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.
- d. Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.
- e. The cost of utilities, fuel and sanitary facilities at the Project Site.
- f. Receipted minor expenses such as long distance telephone calls, telephone service at the site, express delivery services (FedEx, UPS or couriers, and the like), internet or other telecommunications services, and similar petty cash items in connection with the Work.
- g. Cost of premiums for additional bonds and insurance required because of changes in the Work.

10.4.7. The term "cost of the Work" shall not include any of the following items, as such items are expressly not to be reimbursed:

- a. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the work and not specifically included in the agreed-upon schedule of job classifications, all of which are to be considered administrative costs covered by Contractor's fee.
- b. Expenses of Contractor's principal and branch offices other than Contractor's office at the Project Site.
- c. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.

- d. 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 additional bonds and insurance required because of changes in the Work.
- e. Losses and expenses sustained by the Contractor or any Subcontractors at any tier, not compensated by insurance or otherwise, if such losses and expenses are due to infidelity on the part of any employee of Contractor, any Subcontractor or Supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, or others to whom the property may be entrusted, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- f. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly approved by the City Manager or City Commission by a Change Order.
- g. Losses and expenses not covered by insurance where the Contractor, or any Subcontractor, failed to obtain and/or maintain in effect the insurance required to be carried by the Contract Documents, or where Contractor, or any Subcontractor or Supplier, failed to obtain and/or maintain such insurance in limits and amounts required by the Contract Documents except to the extent any deductible provided in such required insurance;
- h. Costs and expenses incurred by Contractor upon breach of its warranties or guaranties;
- i. Costs associated with the relocation of employees, and any travel costs not expressly permitted by the Contract Documents (including costs for long-distance travel, costs for travel between the Project Site and the Contractor's office(s), and hotel, car rental and airfare costs);
- j. Any amounts to be paid by the Contractor for federal, state or local income or franchise taxes;
- k. Labor, material, and equipment costs or any other costs incurred which should be back-charged to any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier, or any other party for whom the Contractor is responsible;
- l. Costs or losses resulting from lost, damaged by misuse or stolen tools and equipment;
- m. Costs of bonding or securing liens or defending claims filed by any Subcontractor of any tier, any Supplier, any direct or lower tier supplier or any other party for whom any of such parties or the Contractor is responsible arising from nonpayment, unless such nonpayment is the result of the City's unexcused or wrongful failure to pay the Contractor undisputed amounts as and when due under the Contract Documents;
- n. Costs of self-insured losses (*e.g.*, losses within the deductible limits maintained by the Contractor or any direct or indirect subcontractor), costs covered by any insurance carried by Contractor or a direct or lower tier subcontractor, costs which would have been covered by the insurance required to be carried by a Contractor or a direct or lower tier subcontractor under the Contract Documents, and costs which would have been covered by insurance but for failure of the Contractor or direct or lower tier subcontractor to properly submit, process or give notice to the occurrence or claim;

- o. Costs of employee bonuses and executive bonuses whether or not based in whole or in part on performance related to the Work;
- p. Costs incurred or paid for recruiting employees (whether to third party recruiters or to employees);
- q. Severance or similar payments on account of terminated employees;
- r. Costs incurred after the Contractor's application for final payment;
- s. Any outside legal fees;
- t. Costs of materials and equipment stored off-site, except upon the prior written approval of the Contract Administrator in accordance with the Contract Documents.

10.5. The amount of credit to be allowed by Contractor to City for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.

10.6. Whenever the cost of any work is to be determined as defined herein, Contractor will submit in a form acceptable to Consultant an itemized cost breakdown together with the supporting data.

10.7. Where the quantity of any item of the Work that is covered by a unit price is increased by more than thirty percent (30%) from the quantity of such work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

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

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

10.8.2. Whenever a Change Order involves Contractor and one or more Subcontractors, and the Change Order increases in the Contract Price, the overhead and profit markups for Contractor and each Subcontractor in accordance with this Article shall be itemized separately.

10.8.3. Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

10.9. **No Damages for Delay.** NO CLAIM FOR DAMAGES OR ANY CLAIM, OTHER THAN FOR AN EXTENSION OF TIME, SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS EXCEPT AS PROVIDED HEREIN. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; and irrespective of whether such delay constitutes an Excusable Delay and irrespective of

whether such delay results in an extension of the Contract Time; provided, however, Contractor's hindrances or delays are not due solely to fraud, bad faith or willful or intentional interference by the City in the performance of the Work, and then only where such acts continue after Contractor's written notice to the City of such alleged interference.

10.9.1. Contractor acknowledges and agrees that Excusable Delay shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the Work without clear and convincing proof that they were the result of a deliberate act, without any reasonable and good-faith basis, and were specifically intended to disrupt the Contractor's performance of the Work. The City's attempts to facilitate or assist Contractor in performance of the Work shall in no way be construed, interpreted and/or be deemed to constitute willful or intentional interference with the Contractor's performance of the Work.

Except as provided herein, Contractor hereby waives all other remedies at law or in equity that it might otherwise have against the City on account of any Excusable Delay and any and all other events that may, from time to time, delay the Contractor in the performance of the Work. Contractor acknowledges and agrees that, except as specified herein, all delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the Parties in entering into this Agreement and that Contractor's pricing of the Work and the determination of the Contract Price shall be expressly based on the Contractor's assumption of the risks thereof, and Contractor hereby waives any and all Claims it might have for any of the foregoing losses, costs, damages and expenses.

10.10. Excusable Delay. Contractor's sole remedy for Excusable Delay is an extension of the Contract Time for each day of critical path delay, but only if the pre-requisites and notice requirements set forth below in this Article 10 have been timely and properly satisfied. An excusable delay is one that (i) directly impacts critical path activity delineated in the Project Schedule and extends the time for completion of the Work; (ii) could not reasonably have been mitigated by Contractor, including by re-sequencing, reallocating or redeploying and/or increasing the amount of its forces to other portions of the Work; and (iii) is caused by circumstances beyond the control and due to no fault of Contractor or its Subcontractors, material persons, Suppliers, or Vendors, including, but not limited to, force majeure events such as fires, floods, labor disputes, epidemics, hurricanes, or similar events beyond the control and due to no fault of the Contractor ("Excusable Delay"). If two or more separate events of Excusable Delay are concurrent with each other, Contractor shall only be entitled to an extension of time for each day of such concurrent critical path delay, and Contractor shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Excusable Delay are concurrent for two days, Contractor shall only receive a time extension of a total of two days, and not four days.

10.10.1. Weather. Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to the Contract Documents. These time extensions are justified only when rains or other inclement weather conditions prevent Contractor from productively performing critical path activity delineated in the Project Schedule:

(1) Contractor being unable to work at least fifty percent (50%) of the normal workday on critical path activity delineated in the Project Schedule due to adverse weather conditions; or

(2) Contractor must make major repairs to the Work damaged by weather. Providing the damage was not attributable to a failure to perform or neglect by Contractor, and providing that Contractor was unable to work at least fifty percent (50%) of the normal workday on critical path activity delineated in the Project Schedule.

10.10.2. Compensable Excusable Delay. Notwithstanding the foregoing, Excusable Delay is compensable when (i) the delay extends the Contract Time, (ii) is caused by circumstances beyond the control of the Contractor or its subcontractors, suppliers or vendors, and (iii) is caused solely by fraud, bad faith or active interference on the part of City or its agents, provided, however, that in no event shall Contractor be compensated for (x) interim delays which do not extend the Contract Time, or (y) for Excusable Delay if caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the City or Consultant, in which case then Contractor shall be entitled only to a time extension and no further compensation for the Excusable Delay.

10.10.3. Unexcusable Delays. "Unexcusable Delay" shall mean any delays not included within the definition of Excusable Delay as set forth above including any delay which extends the completion of the Work or portion of the Work beyond the time specified in the Project Schedule, including, without limitation, the date for Substantial Completion or Final Completion, and which is caused by the act, fault, inaction or omission of the Contractor or any Subcontractor, Supplier or other party for whom the Contractor is responsible; any delay that could have been limited or avoided by Contractor's timely notice to the City of such delay; or any delay in obtaining licenses, permits or inspections caused by the actions or omissions of the Contractor or its Subcontractors, Suppliers or any other party for whom the Contractor is responsible. An Unexcusable Delay shall not be cause for granting an extension of time to complete any Work or any compensation whatsoever, and shall subject the Contractor to damages in accordance with the Contract Documents. In no event shall the Contractor be excused for interim delays which do not extend the Project Schedule, including the date for Substantial Completion or Final Completion.

10.11. Prerequisites and Notice Requirements for Extensions of Time. Except as provided in the Contract Documents with respect to Changes in the Work, an extension of the Contract Time will only be granted by the City under the following circumstances: (a) if a delay occurs as a result of an Excusable Delay, and (b) the Contractor has complied with each of the following requirements below to the reasonable satisfaction of the City:

a. Contractor shall provide written notice to the City of any event of delay or potential delay within five (5) days of the commencement of the event giving rise to the request. The Contractor, within ten (10) days of the date upon which the Contractor has knowledge of the delay, shall notify the City, in writing, of the cause of the delay stating the approximate number of days the Contractor expects to be delayed, and must make a request for an extension of time, if applicable, to the City, in writing, within ten (10) days after the cessation of the event causing the delay specifying the number of days the Contractor believes that its activities were in fact delayed by the cause(s) described in its initial notice.

b. The Contractor must show to the reasonable satisfaction of the City that the activity claimed to have been delayed was in fact delayed by the stated cause of delay, that the critical path of the Work was materially affected by the delay, that the delay in such activity was not concurrent with any Unexcusable Delay, the delay was not the result of the performance of unit price Work, and that the delay in such activity will result in a delay of the date for Substantial Completion in the Project Schedule or Final Completion.

c. The initial notice provided by the Contractor under Subsection (a) above shall provide an estimated number of days the Contractor believes it will be delayed, and describe the efforts of the Contractor that have been or are going to be undertaken to overcome or remove the Excusable Delay and to minimize the potential adverse effect on the cost and time for performance of the Work resulting from such Excusable Delay. The mere written notice of an event of delay or potential delay, without all of the aforementioned required information, is insufficient and will not toll the time period in which the Contractor must provide proper written notice under this Article.

CONTRACTOR'S STRICT COMPLIANCE WITH THIS ARTICLE 10 IS A CONDITION PRECEDENT TO RECEIPT OF AN EXTENSION OF THE CONTRACT TIME. FAILURE OF THE CONTRACTOR TO COMPLY WITH ALL REQUIREMENTS AS TO ANY PARTICULAR EVENT OF DELAY, INCLUDING THE REQUIREMENTS OF THIS SECTION, SHALL BE DEEMED CONCLUSIVELY TO CONSTITUTE A WAIVER, ABANDONMENT OR RELINQUISHMENT OF ANY ENTITLEMENT TO AN EXTENSION OF TIME AND ALL CLAIMS RESULTING FROM THAT PARTICULAR EVENT OF PROJECT DELAY. Once the Parties have mutually agreed as to the adjustment in the Contract Time due to an Excusable Delay, they shall enter into a Change Order documenting the same.

If the City and Contractor cannot resolve a request for time extension made properly and timely under this Section within sixty (60) days following Contractor's initial notice of the events giving rise to the request for a time extension, the Contractor may re-submit the request as a Claim in accordance with the Contract Documents.

10.12. Contractor's Duty. Notwithstanding the provisions of this Agreement allowing the Contractor to claim delay due to Excusable Delay, whenever an Excusable Delay shall occur, the Contractor shall use all reasonable efforts to overcome or remove any such Excusable Delay, and shall provide the City with written notice of the Contractor's recommendations on how best to minimize any adverse effect on the time and cost of performing the Work resulting from such Excusable Delay. In furtherance of the foregoing, whenever there shall be any Excusable Delay, the Contractor shall use all reasonable efforts to adjust the Project scheduling and the sequencing and timing of the performance of the Work in a manner that will avoid, to the extent reasonably practicable, any Excusable Delay giving rise to an actual extension in the time for performance of the Work.

If there are corresponding costs associated with any of the measures which the Contractor deems necessary or desirable to minimize any adverse effects resulting from any Excusable Delay, the Contractor shall advise the City of such anticipated associated costs and shall not proceed with such measures absent the City's executing a Change Order in connection therewith. Nothing in this Section shall, however, be deemed to entitle the Contractor to any adjustment in the Contract Price or any other damages, losses or expenses resulting from an Excusable Delay; nor shall it be deemed to obligate the City to agree to undertake any recommendations suggested by the Contractor as a means of minimizing the adverse effects of any Excusable Delay.

10.13. Differing Site Conditions. In the event that during the course of the Work Contractor encounters subsurface or concealed conditions at the Project Site which could not have reasonably been identified by Contractor upon prior investigation, and materially differ from those indicated in the Contract Documents, or if unknown physical conditions of an unusual nature are encountered on the Project Site and differ materially from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, then Contractor shall promptly notify the City within two (2) business days of the specific materially differing site conditions, before the Contractor disturbs the conditions or performs the affected Work.

10.13.1. Consultant and City shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Consultant, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, Consultant shall recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If City and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Consultant for determination in accordance with

the provisions of Contract Documents. Should Consultant determine that the conditions of the Project Site are not so materially different to justify a change in the terms of the Contract, Consultant shall so notify City and Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

10.13.2. An adjustment for differing site conditions shall not be allowed, and any Claim relating thereto shall be deemed conclusively waived, if the Contractor has not provided the required written notice within two (2) business days of discovery of the site conditions, or has disturbed the site conditions prior to City's examination thereof. If a differing site condition qualifies for an equitable adjustment pursuant to the Contract Documents, and the Contractor's costs cannot reasonably be established at the time of notice to the City thereof, the Contractor shall submit its proposed pricing and/or request for extension of time within ten (10) days after the proposed solution is identified to the differing site condition described in the Contractor's initial notice to the City.

10.13.3. For purposes of this Section, a "materially differing" site condition is one that (1) is not identified in the Contract Documents and is not reasonably inferable therefrom; and (2) could not have reasonably been identified by Contractor upon prior investigation, provided Contractor reasonably undertook such prior site investigation; and (3) requires a change to the Work that increases Contractor's costs and/or impacts the critical path for completion of the Work.

10.13.4. Where Site Conditions delay the Project, and said delay could have been avoided by reasonable investigations of the Project Site at any time prior to commencement of the Work in question, such delay shall not be considered to be an Excusable Delay beyond the control of the Contractor, and no time extension shall be granted. No request for an equitable adjustment or change to the Contract Time for differing Site Conditions shall be allowed if made after the date certified as the Substantial Completion date.

ARTICLE 11. CLAIMS AND RESOLUTION OF DISPUTES.

11.1 Claims must be initiated by written notice and, unless otherwise specified in the Contract Documents, submitted to the other Party within ten (10) days of the event giving rise to such Claim or within ten (10) days after the claimant reasonably should have recognized the event or condition giving rise to the Claim, whichever is later. Such Claim shall include sufficient information to advise the other party of the circumstances giving rise to the Claim, the specific contractual adjustment or relief requested including, without limitation, the amounts and number of days of delay sought, and the basis of such request. The Claim must include all job records and other documentation supporting entitlement, the amounts and time sought. In the event additional time is sought, the Contractor shall include a time impact analysis to support such Claim. The City shall be entitled to request additional job records or documentation to evaluate the Claim. The Claim shall also include the Contractor's written notarized certification of the Claim in accordance with the False Claims Ordinance, Sections 70-300 et seq., of the City Code.

11.2 Claims not timely made or otherwise not submitted in strict accordance with the requirements of this Article or other Contract Documents shall be deemed conclusively waived, the satisfaction of which shall be conditions precedent to entitlement.

11.3 Contractor assumes all risks for the following items, none of which shall be the subject of any Change Order or Claim and none of which shall be compensated for except as they may have been included in the Contractor's Contract Price as provided in the Contract Documents: Loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a

quote for a change in the Work, costs to prepare, negotiate or prosecute Claims, and loss of projects not bid upon, or any other indirect and consequential costs not listed herein. No compensation shall be made for loss of anticipated profits from any deleted Work.

11.4 Continuing the Work During Disputes. Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Price or Contract Time. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements. Contractor's failure to comply with this Section shall constitute an Event of Default.

ARTICLE 12. PERMITS, LICENSES, FEES, TAXES.

12.1 Except as otherwise provided within the Contract Documents, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to this Contract shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

12.2 Impact fees levied by the City and/or Miami-Dade County shall be paid by Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the municipality or Miami-Dade County as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to Contractor in no event shall include profit or overhead of Contractor.

12.3 All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in Construction Documents for said work.

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

ARTICLE 13. TERMINATION.

13.1. Termination for Convenience. In addition to other rights the City may have at law and pursuant to the Contract Documents with respect to cancellation and termination of the Contract, the City may, in its sole discretion, terminate for the City's convenience the performance of Work under this Contract, in whole or in part, at any time upon written notice to the Contractor. The City shall effectuate such Termination for Convenience by delivering to the Contractor a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from the City required. Such Termination for Convenience shall not be deemed a breach of the Contract, and may be issued by the City with or without cause.

a. Upon receipt of such Notice of Termination for Convenience from the City, and except as otherwise directed by the City, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

i. Stop the Work specified as terminated in the Notice of Termination for Convenience;

- ii. Promptly notify all Subcontractors of such termination, cancel all contracts and purchase orders to the extent they relate to the Work terminated to the fullest extent possible and take such other actions as are necessary to minimize demobilization and termination costs for such cancellations;
 - iii. Immediately deliver to the City all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;
 - iv. If specifically directed by the City in writing, assign to the City all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the City shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;
 - v. Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the portion of the Work not terminated (if any) under the Notice of Termination for Convenience;
 - vi. As directed by the City, transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the City;
 - vii. Settle all outstanding liabilities and termination settlement proposals from the termination of any subcontracts or purchase orders, with the prior approval or ratification to the extent required by the City (if any);
 - viii. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project Site, including life safety and any property related to this Contract that is in the Contractor's possession and in which the City has or may acquire an interest; and
 - ix. Complete performance of the Work not terminated (if any).
- b. Upon issuance of such Notice of Termination for Convenience, the Contractor shall only be entitled to payment for the Work satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the Work satisfactorily performed shall be determined by the City in good faith, in accordance with the percent completion of the Work, less all amounts previously paid to the Contractor in approved Applications for Payment, the reasonable costs of demobilization and reasonable costs, if any, for canceling contracts and purchase orders with Subcontractors to the extent such costs are not reasonably avoidable by the Contractor.

Contractor shall submit, for the City's review and consideration, a final termination payment proposal with substantiating documentation, including an updated Schedule of Values, within 30 days of the effective date of termination, unless extended in writing by the City upon request. Such termination amount shall be mutually agreed upon by the City and the Contractor and absent such agreement, the City shall, no less than fifteen (15) days prior to making final payment, provide the Contractor with written notice of the amount the City intends to pay to the Contractor. Such final payment so made to the Contractor shall be in full and final settlement for Work performed under this Contract, except to the extent the Contractor disputes such amount in a written notice delivered to and received by the City prior to the City's tendering such final payment.

13.2. Event of Default. The following shall each be considered an item of Default. If, after delivery of written notice from the City to Contractor specifying such Default, the Contractor fails to promptly commence and thereafter complete the curing of such Default within a reasonable period of time, not to exceed twenty-one (21) days, after the delivery of such Notice of Default, it shall be deemed an Event of Default, which constitutes sufficient grounds for the City to terminate Contractor for cause:

- a. Failing to perform any portion of the Work in a manner consistent with the requirements of the Contract Documents or within the time required therein; or failing to use the Subcontractors, entities and personnel as identified and to the degree specified, in the Contract Documents, subject to substitutions approved by the City in accordance with this Contract and the other Contract Documents;
- b. Failing, for reasons other than an Excusable Delay, to begin the Work required promptly following the issuance of a Notice to Proceed;
- c. Failing to perform the Work with sufficient manpower, workmen and equipment or with sufficient materials, with the effect of delaying the prosecution of the Work in accordance with the Project Schedule and/or delaying completion of any of the Project within the specified time;
- d. Failing, for reasons other than an Excusable Delay, to timely complete the Project within the specified time;
- e. Failing and/or refusing to remove, repair and/or replace any portion of the Work as may be rejected as defective or nonconforming with the terms and conditions of the Contract Documents;
- f. Discontinuing the prosecution of the Work, except in the event of: 1) the issuance of a stop-work order by the City; or 2) the inability of the Contractor to prosecute the Work because of an event giving rise to an Excusable Delay as set forth in this Contract for which Contractor has provided written notice of same in accordance with the Contract Documents;
- g. Failing to provide sufficient evidence upon request that, in the City's sole opinion, demonstrates the Contractor's financial ability to complete the Project;
- h. An indictment is issued against the Contractor;
- i. Failing to make payments to for materials or labor in accordance with the respective agreements;
- j. Failing to provide the City with a Recovery Schedule in accordance with the Contract Documents;
- k. Persistently disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- l. Fraud, misrepresentation or material misstatement by Contractor in the course of obtaining this Contract;
- m. Failing to comply in any material respect with any of the terms of this Contract or the Contract Documents.

In no event shall the time period for curing a Default constitute an extension of the time for achieving Substantial Completion or a waiver of any of the City's rights or remedies hereunder for a Default which is not cured as aforesaid.

13.3. Termination of Contract for Cause.

- a. The City may terminate the Contractor for cause upon the occurrence of an Event of Default as defined herein, or for any other breach of the Contract or other Contract Documents by the Contractor that the City, in its sole opinion, deems substantial and material, following written notice to the Contractor and the failure to timely and properly cure to the satisfaction of the City in the time period set forth herein, or as otherwise specified in the Notice of Default.
- b. Upon the occurrence of an Event of Default, and without any prejudice to any other rights or remedies of the City, whether provided by this Contract, the other Contract Documents or as otherwise provided at law or in equity, the City may issue a Notice of Termination for Cause to Contractor, copied to the Surety, rendering termination effective immediately, and may take any of the following actions, subject to any prior rights of the Surety:
 - i. Take possession of the Project Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor;
 - ii. Accept assignments of subcontracts;

- iii. Direct Contractor to transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Contract had been completed, would be required to be furnished to the City; and
 - iv. Finish the Work by whatever reasonable method the City may deem expedient.
- c. Upon the issuance of a Notice of Termination for Cause, the Contractor shall:
 - i. Immediately deliver to the City all Project records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished or partially completed documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;
 - ii. If specifically directed by the City in writing, assign to the City all right, title and interest of Contractor under any contract, subcontract and/or purchase order, in which case the City shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;
 - iii. As directed by the City, transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and
 - iv. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project Site, including life safety and property related to this Contract that is in the Contractor's possession and in which the City has or may acquire an interest.
- d. All rights and remedies of the City's Termination rights herein shall apply to all Defaults that are non-curable in nature, or that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the City shall not be obligated to accept such late cure.

13.4. Recourse to Performance and Payment Bond; Other Remedies.

a. Upon the occurrence of an Event of Default, and irrespective of whether the City has terminated the Contractor, the City may (i) make demand upon the Surety to perform its obligations under the Performance Bond and Payment Bond, including completion of the Work, without requiring any further agreement (including, without limitation, not requiring any takeover agreement) or mandating termination of Contractor as a condition precedent to assuming the bond obligations; or (ii) in the alternative, the City may take over and complete the Work of the Project, or any portion thereof, by its own devices, by entering into a new contract or contracts for the completion of the Work, or using such other methods as in the City's sole opinion shall be required for the proper completion of the Work, including succeeding to the rights of the Contractor under all subcontracts.

b. The City may also charge against the Performance and Payment Bond all fees and expenses for services incidental to ascertaining and collecting losses under the Performance and Payment Bond including, without limitation, accounting, engineering, and legal fees, together with any and all costs incurred in connection with renegotiation of the Contract.

13.5. Costs and Expenses.

a. All damages, costs and expenses, including reasonable attorney's fees, incurred by the City as a result of an uncured Default or a Default cured beyond the time limits stated herein (except to the extent the City has expressly consented, in writing, to the Contractor's late cure of such Default), together with the

costs of completing the Work, shall be deducted from any monies due or to become due to the Contractor under this Contract, irrespective of whether the City ultimately terminates Contractor.

b. Upon issuing a Notice of Termination for Cause, the City shall have no obligation to pay Contractor, and the Contractor shall not be entitled to receive, any money until such time as the Project has been completed and the costs to make repairs and/or complete the Project have been ascertained by the City. In case such cost and expense is greater than the sum which would have been due and payable to the Contractor under this Contract for any portion of the Work satisfactorily performed, the Contractor and the Surety shall be jointly and severally liable and shall pay the difference to the City upon demand.

13.6. Termination If No Default or Erroneous Default. If, after a Notice of Termination for Cause is issued by the City, it is thereafter determined that the Contractor was not in default under the provisions of this Contract, or that any delay hereunder was an Excusable Delay, the termination shall be converted to a Termination for Convenience and the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause contained herein. The Contractor shall have no further recourse of any nature for wrongful termination.

13.7. Remedies Not Exclusive. Except as otherwise provided in the Contract Documents, no remedy under the terms of this Contract is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

13.8. Materiality and Non-Waiver of Breach. Each requirement, duty, and obligation in the Contract Documents is material. The City's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or Amendment of this Contract. A waiver shall not be effective unless it is in writing and approved by the City. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and the failure of the City to exercise its rights and remedies under this Article at any time shall not constitute a waiver of such rights and remedies.

13.9. Contractor Right to Terminate Contract or Stop Work. If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) days due to no act or fault of Contractor or persons or entities within its control, or if the City should fail to pay the Contractor any material amount owing pursuant to an Approved Application for Payment in accordance with the Contract Documents and after receipt of all supporting documentation required by the Contract Documents, and if the City fails to make such payment within ninety (90) days after receipt of written notice from the Contractor identifying the Approved Application for Payment for which payment is outstanding, then, unless the City is withholding such payment pursuant to any provision of this Contract which entitles the City to so withhold such payment, the Contractor shall have the right upon the expiration of the aforesaid ninety (90) day period to stop its performance of the Work, provided that Contractor has sent a Notice to Cure to the City via certified mail, allowing for a 7 day cure period. In such event, Contractor may terminate this Contract and recover from City payment for all Work executed and reasonable expense sustained (but excluding compensation for any item prohibited by any provisions of the Contract Documents). In the alternative to termination, Contractor shall not be obligated to recommence the Work until such time as the City shall have made payment to the Contractor in respect of such Approved Application for Payment, plus any actual and reasonable related demobilization and start-up costs evidenced by documentation reasonably satisfactory to the City. No act, event, circumstance or omission shall excuse or relieve the Contractor from the full and faithful performance of its obligations hereunder and the completion of the Work as herein provided for.

ARTICLE 14. MISCELLANEOUS.

14.1. Separate Contracts.

14.1.1. The City reserves the right to perform construction or operations related to the Project with the City's own forces, to award separate contracts to other contractors or subcontractors, and to permit third parties to perform construction or operations in connection with other portions of the Project or other construction or operations on the Project Site or adjacent to the Project Site. City reserves the right to let other contracts in connection with this Project. Contractor shall afford other persons reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this Work with theirs.

14.1.2. If any part of Contractor's Work depends for proper execution or results upon the work of any other persons, Contractor shall inspect and promptly report to Consultant any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other contractor's work after the execution of Contractor's Work.

14.1.3. Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractors, including the City's own forces, on the site. Should such interference or impact occur, Contractor shall be liable to the affected contractor for the cost of such interference or impact. Coordination with other contractors shall not be grounds for an extension of time or any adjustment in the Contract Price. Contractor agrees that its pricing of the Work and the determination of the Contract Price were expressly based upon the Contractor's assumption of the foregoing cost risks

14.1.4. Contractor shall afford other contractors reasonable access to the Project Site for the execution of their work. Following the request of the City or Consultant, the Contractor shall prepare a plan in order to integrate the work to be performed by the City or by the other contractors with the performance of the Work, and shall submit such plan to the City for approval. The Contractor shall arrange the performance of the Work so that the Work and the work of the City and the other contractors are, to the extent applicable, properly integrated, joined in an acceptable manner and performed in the proper sequence, so that any disruption or damage to the Work or to any work of the City or of other contractors is avoided. To insure the proper execution of subsequent work, Contractor shall inspect the work already in place and shall at once report to Consultant any discrepancy between the executed work and the requirements of the Contract Documents.

14.2. Lands for Work.

14.2.1. City shall provide, as may be indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by City or the use of Contractor.

14.2.2. Contractor shall provide, at Contractor's own expense and without liability to City, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to City copies of written permission obtained by Contractor from the owners of such facilities.

14.3. Assignment. Neither the City nor the Contractor shall assign its interest in this Contract without the written consent of the other, except as to the assignment of proceeds. Notwithstanding the foregoing, City may assign its interest in this Contract or any portion thereof to any local or state governmental body, special taxing district, or any person authorized by law to construct or own the Project. Such assignee shall be bound to comply with the terms of this Contract.

14.4. Rights of Various Interests. Whenever work being done by City's forces or by separate contractors is contiguous to or within the area where the Contractor will perform any of the Work pursuant to the Contract Documents, , the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the work in general harmony.

14.5. Legal Restrictions and Traffic Provisions. Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of work and Contractor's general operations. Contractor shall conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on railway, highways, or water, without the prior written consent of the proper authorities.

14.6. Value Engineering. Contractor may request substitution of materials, articles, pieces of equipment or any changes that reduce the Contract Price by making such request to Consultant in writing after award of contract. Consultant will be the sole judge of acceptability, and no substitute will be ordered, installed, used or initiated without Consultant's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. However, any substitution accepted by Consultant shall not result in any increase in the Contract Price or Contract Time. By making a request for substitution, Contractor agrees to pay directly to Consultant all Consultant's fees and charges related to Consultant's review of the request for substitution, whether or not the request for substitution is accepted by Consultant. Any substitution submitted by Contractor must meet the form, fit, function and life cycle criteria of the item proposed to be replaced and there must be a net dollar savings including Consultant review fees and charges. If a substitution is approved, the net dollar savings shall be shared equally between Contractor and City and shall be processed as a deductive Change Order. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of the Contract.

ANY REQUESTS FOR SUBSTITUTION MUST BE MADE TO THE CITY'S PROCUREMENT DIRECTOR, WHO SHALL FORWARD SAME TO CONSULTANT.

14.7. No Interest. Any monies not paid by City when claimed to be due to Contractor under this Contract, including, but not limited to, any and all claims for contract damages of any type, shall not be subject to interest including, but not limited to prejudgment interest. However, the provisions of City's prompt payment ordinance, as such relates to timeliness of payment, and the provisions of Section 218.74(4), Florida Statutes as such relates to the payment of interest, shall apply to valid and proper invoices.

14.8. Project Sign. Any requirements for a project sign shall be paid by the Contractor as specified by City Guidelines.

14.9. Availability of Project Site; Removal of Equipment.

14.9.1. Use of the Project Site or any other City-owned property or right-of-way for the purpose of storage of equipment or materials, lay-down facilities, pre-cast material fabrication, batch plants for the production of asphalt, concrete or other construction-related materials, or other similar activities, shall require advance written approval by the Contract Administrator. The City may, at any time, in its sole and absolute discretion,

revoke or rescind such approval for any reason. Upon notice of such rescission, Contractor shall, within twenty-four (24) hours, remove and relocate any such materials and equipment to a suitable, approved location. Notwithstanding any other provision in the Contract Documents to the contrary, the conditions or requirements of right-of-way permits established by the authorities having jurisdiction including, without limitation any regulatory authorities of the City, shall take precedence over any provision in the Contract Documents that may provide any right whatsoever to use of the Project Site for staging, material and equipment storage, lay-down or other similar activities.

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

14.10. Nondiscrimination. In connection with the performance of the Services, the Contractor shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Contractor shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

14.11. Project Records. City shall have the right to inspect and copy, at City's expense, the books and records and accounts of Contractor which relate in any way to the Project, and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to the Project and to any claim for additional compensation made by Contractor. Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following Final Completion of the Project. During the Project and the three (3) year period following Final Completion of the Project, Contractor shall provide City access to its books and records upon seventy-two (72) hours written notice.

14.12. Performance Evaluations. An interim performance evaluation of the successful Contractor may be submitted by the Contract Administrator during construction of the Project. A final performance evaluation shall be submitted when the Request for Final Payment to the construction contractor is forwarded for approval. In either situation, the completed evaluation(s) shall be forwarded to the City's Procurement Director who shall provide a copy to the successful Contractor. Said evaluation(s) may be used by the City as a factor in considering the responsibility of the successful Contractor for future bids with the City.

14.13. Public Entity Crimes. In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, 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 the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed

on the convicted vendor list. Violation of this Section by Contractor shall result in cancellation of the City purchase and may result in Contractor debarment.

14.14. Independent Contractor. Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of the City. This Contract shall not constitute or make the parties a partnership or joint venture. Contractor hereby accepts complete responsibility as a principal for its agents, Subcontractors, vendors, materialmen, suppliers, their respective employees, agents and persons acting for or on their behalf, and all others Contractor hires to perform or to assist in performing the Work.

14.15. Third Party Beneficiaries. Neither Contractor nor City intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract.

14.16. Severability. In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Contractor elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.