

MIAMIBEACH

MASTER TERMS AND CONDITIONS FOR ALL STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM (SHIP) PROGRAM PROJECTS

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, or as otherwise agreed to in writing, in order to obtain the City’s approval for payment for Work performed pursuant to the Contract Documents.

“Bid” means the offer, quote or proposal submitted by a bidder in response to the a request by the City. The terms “Bid” and “Bid Submittal” are used interchangeably.

“Bidder” means any individual or firm submitting a Bid for a 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.

“Inspector/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 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 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

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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 selected by 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).

“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 or request for quote, Contractor’s Bid in response thereto, the Contract, the Task Order, 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 or request for quote 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.

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“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.

“Master Terms and Conditions” means this document that sets forth the terms and conditions for all work and task orders issued pursuant to the City’s State Housing Initiatives Partnership Program (SHIP) Program. Contractor agrees that no other terms or conditions shall apply to any work or task order unless previously approved by the City.

“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.

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“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.

“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.

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“**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.

“**Task Order**” means an authorization or specific project awarded to a Contractor under the State Housing Initiatives Partnership Program (SHIP) Program. Task Orders are invalid unless an Owner-Contractor Agreement has been executed. When authorized by the City, a purchase order for a specific may represent a Task Order. The Contractor's commencement of work on any task order or purchase order shall indicate its full acceptance of the work requirements and pricing for the project.

“**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

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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.

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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. All work requires the issuance of a project specific Task Order.

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 and Task Order (excluding the Plans and Specifications);
- b. The Contract Documents and Task Order (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 or request for quote.

In the event of any conflict between the General Terms and Conditions set forth in this Section 0400 of the ITB or request for quote (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.

2.3. Contractor shall be furnished three (3) copies, free of charge, of the Contract Documents; two of which shall be preserved and always kept accessible to Consultant and Consultant's authorized representatives. Additional copies of the Contract Documents may be obtained from City at the cost of reproduction.

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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 Contractor furnish all 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.

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 a Subcontractor 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. 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, 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.

3.4. Personnel Requirements.

3.4.1. 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 superintendent and any necessary assistants, all satisfactory to Consultant. The superintendent shall not be changed except with the written consent of Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor and all directions given to the superintendent shall be as binding as if given to Contractor and will be confirmed in writing by Consultant upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using its best skill and attention.

3.4.2. 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 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;

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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.

3.4.3. 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 controlling items of work for the next two weeks. The Consultant shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

3.4.4. 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.

3.4.5. 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.

3.4.6. The Project Manager must have at least two (2) years of experience in projects of similar design, scope, size and complexity.

3.4.7. The Contractor shall be responsible for conducting background checks on all employees of the contractor and subcontractor. Contractor agrees to indemnify the City for any negligence or criminal act perpetrated by its employees or subcontractor employees.

3.5. Subcontracts.

3.5.1. 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.

3.5.2. 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.

3.5.3. 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:

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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;

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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.

3.6. Plans and Working Drawings.

3.6.1. 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 will 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 knowingly failed to report it to Consultant.

3.6.2. 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 with the same force as 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.

3.6.3. City, through Consultant, shall have the right to modify the details of the Plans and Specifications, and to supplement the Plans and Specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern

3.6.4. Shop Drawings.

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3.6.4.1. 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.

3.6.4.2. 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. 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.

3.6.4.3. 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.

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

3.6.4.5. 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.

3.6.4.6. 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.

3.6.4.7. 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.

3.6.4.8. 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.

3.6.4.9. 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.

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

3.6.5. Field Layout of the Work and Record Drawings.

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3.6.5.1. The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. 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 made on reproducible paper and shall be delivered to Consultant prior to, and as a condition of, final payment.

3.6.5.2. 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.

3.6.5.3. 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.

3.6.6. 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.

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ARTICLE 4. CONTRACT PRICE.

4.1. If the **ITB or request for quote** 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 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 or request for quote 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.

ARTICLE 5. APPLICATION FOR PAYMENT.

5.1. Contractor may make Application for Payment for work completed during the Project at intervals of not more than once a month. Contractor's application shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with such supporting evidence as may be required by Consultant. Contractor shall include, but same shall be limited to, at Consultant's discretion, with each Application for Payment, an updated progress schedule acceptable to Consultant 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 an acceptable updated progress schedule and the other documents required herein a log with the 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 may 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

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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 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

g. 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. 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.

ARTICLE 6. PROJECT SCHEDULE AND CONTRACT TIME.

6.1. Time for Completion. Time is of the essence for any project assigned 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. Liquidated Damages.

6.2.1. 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.

6.2.2. 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.

6.2.3. 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.

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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.

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

6.3.1 All Work affecting the operability of the Project or safety has been completed in accordance with the Contract Documents;

6.3.2 If applicable, all pre-commissioning activities, including alignment, balancing, lubrication and first-fill, have been completed;

6.3.3 The Work may be operated within manufacturers' recommended limits, in compliance with Applicable Laws, and without damage to the Work or to the Project;

6.3.4 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;

6.3.5 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

6.3.6 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

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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;

6.3.7 With respect to any Project for which a right-of-way permit is required from the City of Miami Beach's Public Works Department, 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).

6.4. 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).

6.4.1 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.

6.4.2 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.

6.5. 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:

6.5.1 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;

6.5.2 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

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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;

6.5.3 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;

6.5.4 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; and

6.6. 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.

6.6.1 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.

6.6.2 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.

6.6.3 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.

6.6.4 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.

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

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

6.7.1 Substantial Completion of the entire Project has occurred;

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- 6.7.2 The Work can be used and operated in accordance with Applicable Laws bearing on the performance of the Work and applicable permits;
- 6.7.3 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;
- 6.7.4 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;
- 6.7.5 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;
- 6.7.6 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 if completed as-builts, if required by the agency having jurisdiction.
- 6.7.7 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;
- 6.7.8 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;
- 6.7.9 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;
- 6.7.10 Contractor shall have delivered to City a complete set of as-built documents and Project Records prepared in accordance with the Contract Documents;
- 6.7.11 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;
- 6.7.12 All rubbish and debris have been removed from the Project Site; and
- 6.7.13 All Construction aids, equipment and materials have been removed from the Project Site.
- 6.7.14 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;

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6.7.15 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;

6.7.16 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;

6.7.17 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.

6.7.18 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.

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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 shall have the authority to reject or disapprove work which Consultant finds to be defective. If required by Consultant, 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

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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, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the work may affect them. 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 superintendent unless otherwise designated in writing by Contractor to City.

8.4. Contractor's Responsibility for Damages and Accidents.

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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 Precautions.

8.6.1. During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or 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. Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

8.6.3. Additional work relating to hurricane warning or alert at the Project Site will be addressed by a Change Order in accordance with the Contract Documents

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8.6.4. 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.

8.6.5. 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. 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.

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. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

8.7.3. The Contractor shall schedule the work in such a manner that 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.

8.7.4. 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. INSURANCE AND INDEMNITY.

9.1. 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

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Insurance which indicate that insurance coverage has been obtained which meets the requirements set forth in 9.2.

9.2. Limits Required. This document sets forth the minimum levels of insurance that the contractor is required to maintain throughout the term of the contract and any renewal periods. The following shall apply.

- a. Workers' Compensation and Employer's Liability per the Statutory limits of the state of Florida.
- b. Comprehensive General Liability (occurrence form), limits of liability \$ 1,000,000.00 per occurrence for bodily injury property damage to include Premises/ Operations; Products, Completed Operations and Contractual Liability. Contractual Liability and Contractual Indemnity (Hold harmless endorsement exactly as written in "insurance requirements" of specifications).
- c. Automobile Liability - \$1,000,000 each occurrence - owned/non-owned/hired automobiles included.
- d. The City must be named as and additional insured on the liability policies; and it must be stated on the certificate.
- e. Thirty (30) days written cancellation notice required.
- f. Best's guide rating B+:VI or better, latest edition.
- g. The certificate must state the bid number and title
- h. The City of Miami Beach is self-insured. Any and all claim payments made from self-insurance are subject to the limits and provisions of Florida Statute 768.28, the Florida Constitution, and any other applicable Statutes.

9.3 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 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.

9.5 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

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- 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.

9.6 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.

9.7 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.

9.8 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.

9.3. Indemnification.

- 9.3.1 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.
- 9.3.2 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.

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- 9.3.4 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.
- 9.3.5 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.
- 9.3.6 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.
- 9.3.7 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

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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.

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 thirty (30) 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,

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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 or request for quote. 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 for Contractor, its Subcontractors, and Suppliers, shall be reasonable, and that the aggregate total amount of overhead and profit for Change Order Work (inclusive of all Subcontractors and Suppliers at all tiers) shall not exceed ten percent 10%, unless prior otherwise approved, in writing, by the City. 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%), unless otherwise approved in writing by the City.

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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 shall not exceed ten percent (10%), unless otherwise approved in writing by the City

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%), unless otherwise approved in writing by the City.

10.4.5. Cost of 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. Contractor shall not be entitled to a Contractor's fee.

10.4.6. Miscellaneous, or supplemental costs, including the following:

- 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 site.
- f. Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.

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- g. Cost of premiums for additional bonds and insurance required because of changes in the work.
- h. Contractor shall not be entitled to a Contractor's fee for the "Supplemental costs" herein.

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 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

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- 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.

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10.7. Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) 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 involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.

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.

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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 or related adverse soil conditions prevent Contractor from productively performing controlling items of work identified on the accepted schedule or updates resulting in:

(1) Contractor being unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions; or

(2) 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 controlling items of work identified on the accepted schedule or updates.

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

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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 submission, the Contractor may re-submit the request as a Claim in accordance with the procedures set forth in Article 15 of this Agreement.

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

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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 9.4 shall, however, be deemed to entitle the Contractor to any adjustment in the Contract Price or the Guaranteed Maximum 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.

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

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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.

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ARTICLE 11. CLAIMS AND RESOLUTION OF DISPUTES.

11.1 Claims must be initiated by written notice and, unless otherwise specified in the Construction Documents, submitted to the other Party within twenty-one (21) days of the event giving rise to such Claim or within 21 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.

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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 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.

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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

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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 thirty (30) 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;

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- 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. Persistently disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- k. Fraud, misrepresentation or material misstatement by Contractor in the course of obtaining this Contract;
- l. 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;

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- 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.

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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.

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ARTICLE 14. MISCELLANEOUS.

14.1. 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.

14.2. 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.

14.3. 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.

14.4. 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.

14.5. 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.

14.6. 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.

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This Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce (1993 revision), Publication No. 500 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

ARTICLE 15. INSPECTOR GENERAL AUDIT RIGHTS.

- 15.1** Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- 15.2** The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- 15.3** Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- 15.4** The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- 15.5** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

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- i. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- 15.6** The provisions in this section shall apply to the Contractor, its officers, agents, employees, subcontractors and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor in connection with the performance of this contract.
- 15.7** Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Contractor or third parties.

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