

## BID COVER PAGE



**Procurement Division**  
**200 E University Avenue, Rm 339**  
**Gainesville, FL 32601**  
 (352) 334-5021(main)  
 Issue Date: May 3, 2022

# INVITATION TO BID: # WSPP-220067-DM

Albert "Ray" Massey (Westside) Park Playground

**PRE-BID MEETING:** ☒ Non-Mandatory ☐ Mandatory ☐ N/A ☒ Includes Site Visit

**DATE:** May 17, 2022 **TIME:** 10:00 A.M.

**LOCATION:** 1001 NW 34<sup>th</sup> St, Gainesville FL 32609 (meet at the playground pavilions)

**QUESTION SUBMITTAL DUE DATE:** May 24, 2022 5:00P.M.

**DUE DATE FOR UPLOADING BID RESPONSE:** June 3, 2022 3:00PM

## SUMMARY OF SCOPE OF WORK:

The City is seeking a contractor to construct a new playground at Albert "Ray" Massey (Westside) Park, located at 1001 NW 34<sup>th</sup>.

For questions relating to this bid, contact: [McPhallDT@cityofgainesville.org](mailto:McPhallDT@cityofgainesville.org)

Bidder is not in arrears to City upon any debt, fee, tax or contract: ☐ Bidder is NOT in arrears ☐ Bidder IS in arrears  
 Bidder is not a defaulter, as surety or otherwise, upon any obligation to City: ☐ Bidder is NOT in default ☐ Bidder IS in default

Bidders who receive this bid from sources other than City of Gainesville Procurement Division or DemandStar MUST contact the Procurement Division prior to the due date to ensure any addenda are received in order to submit a responsible and responsive offer. Uploading an incomplete document may deem the offer non-responsive, causing rejection.

**ADDENDA ACKNOWLEDGMENT:** Prior to submitting my offer, I have verified that all addenda issued to date are considered as part of my offer: Addenda received (list all) # \_\_\_\_\_

Legal Name of Bidder: \_\_\_\_\_

DBA: \_\_\_\_\_

Authorized Representative Name/Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_ FEIN: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

By signing this form, I acknowledge I have read and understand, and my firm complies with the Standard Conditions of the Construction Contract and requirements set forth herein; and,

☐ Proposal is in full compliance with the Specifications.

☐ Proposal is in full compliance with the Specifications except as specifically stated and attached hereto.

**SIGNATURE OF AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_

**SIGNER'S PRINTED NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## INSTRUCTIONS TO BIDDERS

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## ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office* - The office from which the Bidding Documents are to be issued, City of Gainesville Purchasing Department. 200 East University Ave, Room 339, Gainesville FL 32601
  - B. *Local business* - The vendor has a valid business tax receipt, issued by the City of Gainesville, to do business in said locality that authorizes the business to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, in the Bid or RFP evaluation, the vendor must provide a copy of the business tax receipt and Zoning Compliance Permit - see Sections 2-620 through 2-624 Gainesville Code of Ordinances. The business tax receipt must be issued at least six months prior to bid or proposal opening date.
  - C. *Local Small or Service-Disabled Veteran's Business Enterprise* - A Small Business or a Service-Disabled Veteran's Business, which is duly licensed and authorized to engage in business and maintains a permanent principal place of operation with full time personnel within the corporate limits of the City of Gainesville and possess a current City business tax receipt, and is so certified by the Local Small Business and Service-Disabled Veteran's business Enterprise Program Procurement Coordinator.

## ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents may be obtained from DemandStar ([www.demandstar.com](http://www.demandstar.com)) in the number and format stated in the advertisement or invitation to bid.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Consultant assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Issuing Office, in making copies of Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids for the Work and does not authorize or confer a license for any other use.
- 2.04 All reports of existing site conditions will be made available to Bidders on DemandStar.

## ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 Owner will award the bid to the lowest, responsive and responsible bidder. To demonstrate Bidder's responsibility to perform the Work, Bidder should submit with its Bid:
- A. Bidder Qualifications Statement (with evidence of relevant experience)
  - B. Evidence of authority for individuals listed in Section 6 of the Qualifications Statement to bind organization to an agreement
  - C. General Contractor's License OR Building Contractor's License
  - D. Evidence of Bidder's authority to do business in the state where the Project is located

- E. Letter from Bonding Company; Evidence that Bidder can obtain a Payment and Performance Bond on the project if it is awarded the bid **(Applies to contracts over \$200,000)**
  - F. Drug Free Workplace Form
  - G. Affidavit of Non-Collusion
  - H. Certification of Compliance with Living Wage
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.04 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

**ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE**

4.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 *Existing Site Conditions*

- A. Subsurface and Physical Conditions; Hazardous Environmental Conditions
  - 1. These Instructions to Bidders identify:
    - a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
    - b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
    - c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
    - d. Technical Data contained in such reports and drawings.
- B. Issuing Office will make copies of reports and drawings referenced above available on DemandStar. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in these Instructions to Bidders. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Consultant by owners of such Underground Facilities, including Owner, or others.

- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

#### 4.03 *Site Visit and Testing by Bidders*

- A. Bidder shall conduct a required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.
- B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

#### 4.04 This section intentionally left blank

#### 4.05 *Other Work at the Site*

- A. Reference is made to Article 8 of the General Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

### **ARTICLE 5 – BIDDER'S REPRESENTATIONS**

#### 5.01 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

- C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in these Instructions To Bidders, especially with respect to Technical Data in such reports and drawings,
- E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;
- F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Project Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Project Manager is acceptable to Bidder;
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 6 – PRE-BID CONFERENCE**

- 6.01 A pre-Bid conference will be held at the time and location stated in the invitation or advertisement to bid. Project Manager will be present to discuss the Project. Bidders **are not** required to attend or participate in the conference. The Issuing Office will transmit to all prospective Bidders of record such Addenda as Issuing Office considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

#### **ARTICLE 7 – INTERPRETATIONS AND ADDENDA**

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Issuing Office in writing. Interpretations or clarifications considered necessary by Issuing Office in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

#### **ARTICLE 8 – INTENTIONALLY LEFT BLANK**

#### **ARTICLE 9 – CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which the Work is to be substantially completed, and completed and ready for final payment, are set forth in the Agreement.

#### **ARTICLE 10 – LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

#### **ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS**

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute or materials and equipment subsequently approved by Project Manager prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Project Manager as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received by Project Manager at least 15 days prior to the date for receipt of Bids. Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Project Manager’s decision of approval or disapproval of a proposed item will be final. If Project Manager approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.
- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

#### **ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- 12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.
- 12.03 The apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Issuing Office a list of the Subcontractors or Suppliers proposed for the following portions of the Work including but not limited to: Porous Concrete Trail installation
- If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Project Manager, after due



investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

- 12.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Project Manager makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Project Manager subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

### **ARTICLE 13 – PREPARATION OF BID**

- 13.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form should be completed in ink and the Bid Form signed in ink. Erasures or alterations should be initialed in ink by the person signing the Bid Form.
  - B. In addition to the Bid Form, Bidders should complete and sign in ink the following additional forms:
    - 1. Drug Free Workplace Form
    - 2. Affidavit of Non-Collusion
    - 3. Certification of Compliance with Living Wage
- 13.02 A Bid by a corporation should be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation should be shown.
- 13.03 A Bid by a partnership should be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices should be shown.
- 13.04 A Bid by a limited liability company should be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices should be shown.
- 13.05 A Bid by an individual should show the Bidder's name and address for receiving notices.
- 13.06 A Bid by a joint venture should be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices should be shown.
- 13.07 All names should be printed in ink below the signatures.
- 13.08 The Bid should contain an acknowledgment of receipt of all Addenda, the numbers of which should be filled in on the Bid Form.
- 13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid should be shown.

- 13.10 The Bid should contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder should covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, should also be shown on the Bid Form.
- 13.11 Only one bid from any individual, firm, corporation, organization or agency under the same or different name shall be considered. Should it appear to the City that any Bidder is interested in more than one bid, all bids in which such Bidder has interest will be rejected.
- 13.12 Any deviation from General Terms and Conditions or the Agreement must be explained in detail. Otherwise, it will be considered that bidder agrees to the General Terms and Conditions and Agreement. Any exceptions or clarifications to any section of the General Terms and Conditions or Agreement shall be clearly indicated on a separate sheet(s) attached to the Bid Form and shall specifically refer to the applicable specification paragraph and page.

#### **ARTICLE 14 – BASIS OF BID**

14.01 *Lump Sum*

- A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

#### **ARTICLE 15 – SUBMITTAL OF BID**

- 15.01 The City posts and distributes information pertaining to its procurement solicitations on DemandStar ([www.demandstar.com](http://www.demandstar.com)). **The City has transitioned from accepting hard copy (paper) copy submittals to accepting submittals through "E-Bidding" on DemandStar.com. In order to submit a bid response to this solicitation, the bidder must be registered with DemandStar. The bid response, containing all required documents, with authorized signatures, must be received by 3:00 p.m. on the due date indicated on the Bid Cover Page for this project.** The bidder's complete pdf response must be uploaded into DemandStar.com prior to the 3:00 p.m. deadline. This platform will not accept late submittals.
- 15.02 It is the responsibility of the vendor to monitor DemandStar. Properly registered vendors can expect to receive automatic notification of solicitation for bids and proposals, by participating purchasing entities. Bidders' failure to retrieve available, required procurement information from DemandStar and include the appropriate documentation and information in solicitation responses may result in disqualification.
- 15.03 Upload bid response as a pdf formatted document only, unless the solicitation states otherwise. The pdf document should be titled with bidder's name, bid number, and, if the response is submitted in parts, include "Part # of x".

#### **ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID**

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 Modifications to or withdrawal of a bidder's submittal can be made up to the deadline date. Modifications and withdrawals must be documented in DemandStar.com in order to be recognized by the City. Any bid not withdrawn will constitute an irrevocable offer, for a period of one hundred twenty (120) days, to provide the City adequate time to award the Contract for the services specified in this solicitation.

## **ARTICLE 17 – OPENING OF BIDS**

- 17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, read aloud publicly. A bid record with the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

## **ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid prior to the end of this period.

## **ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible, as set forth in Article 3. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.
- 19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.
- 19.03 Evaluation of Bids
- A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
  - B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purposes of comparison, Owner shall announce to all bidders a “Base Bid plus alternates” budget after receiving all Bids, but prior to opening them. For comparison purposes alternates will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded. After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of its additive alternate Bids for which Owner determines funds will be available at the time of award.
- 19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
- 19.06 In the event of a tie bid, whenever two or more bids which are equal with respect to responsiveness, responsibility, and price are received, preference shall be given in the following order: (1) Bidders submitting the attached Drug-free Workplace form with their bid certifying they have a drug free workplace in accordance with Section 287.087, Florida Statutes; (2) Coin toss.

## **ARTICLE 20 – BONDS AND INSURANCE**

- 20.01 Article 6 of the General Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. Successful Bidder must provide a Public Construction Bond in the form as contained in these bid documents. Public Construction Bond must be recorded in the Public Records for Alachua County. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation. Bid Bond is not required for this project.

## **ARTICLE 21 – SIGNING OF AGREEMENT**

- 21.01 Prior to City Commission approval of Notice of Intended Award of the bid to the Successful Bidder, Issuing Officer shall issue forward the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Once City Commission approves the award, Project Manager will notify Successful Bidder. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within twenty days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.
- 21.02 Failure on the part of the successful Bidder to execute the Agreement and provide payment and performance bonds and certificate of insurance within fifteen (15) days after the notice of acceptance shall be just cause for annulment of award. The City may then accept the bid of the next best evaluated bid or re-advertise for bid.
- 21.03 If the bid of the next best Bidder is accepted, this acceptance shall bind such Bidder as though he were the original successful Bidder.

## **ARTICLE 22 – TAXES**

- 22.01 The bids include Florida sales taxes on items required by Bidder to manufacture or supply items to be provided or obtain items needed to perform the work, but should not include Florida sales taxes on the bid price for equipment, materials or services to be provided to the City. The City of Gainesville is exempt from Florida sales taxes for certain purchases made by the City and will provide a tax exempt certificate upon request.

## **ARTICLE 23 – LOCAL PREFERENCE**

- 23.01 In bidding of or letting contracts for procurement of supplies, materials, equipment and services, the City Commission or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, and in any event the cost differential should not exceed \$25,000.00.

## **ARTICLE 24 – LOBBYING OF PROCUREMENT PROHIBITED**

- 24.01 To ensure fair consideration and consistent and accurate dissemination of information for all proposers, the City prohibits communication to or with any department, employee, or agent evaluating or considering the proposals during the submission process, except as authorized by the contact person.
- 24.02 During the blackout period, as defined below, except as pursuant to an authorized appeal, no person may lobby, as defined below, on behalf of a competing party in a particular procurement

process, City Officials or employees except the Issuing Office. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

- 24.03 The blackout period means the period between the issue date which allows for immediate submittals to the Issuing Office for an invitation for bid, or the request for proposal, or qualifications, or information, or the invitation to negotiate, as applicable, and the time the City Commission or Owner's representative, awards the contract. Lobbying means when any natural person, for compensation, seeks to influence the governmental decision-making, to encourage the passage, defeat or modification of any proposal, recommendation or decision by City officials and employees, except as authorized by procurement documents.

#### **ARTICLE 25 – LIVING WAGE POLICY**

- 25.01 The bidder must comply with city's living wage requirements set forth in Chapter 2, Article IX, Division 2, Section 2-619 of the City's Code of Ordinances.

#### **ARTICLE 26 – COLLUSION**

- 26.01 The bid shall be made without any previous understanding, agreement, or connections with any persons, firms or corporations making a bid on the same items and shall be in all respects fair and in good faith without any outside control, collusion, or fraud.
- 26.02 No City Commissioner, other City officer, or City employee shall directly or indirectly own more than five (5) percent of the total assets or capital stock of the bidding entity, nor shall such person directly or indirectly benefit by more than five (5) percent from the profits or emoluments of this contract. For purposes of this section, indirect ownership or benefit does not include ownership or benefit by a spouse or minor child.
- 26.03 Bidder shall complete and submit the Affidavit of Non-collusion with its bid documents.

#### **ARTICLE 27 – PUBLIC ENTITY CRIME INFORMATION STATEMENT**

- 27.01 For your information, Section 287.133(2)(a), Florida Statutes, contains the following provisions: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

#### **ARTICLE 28 – DRUG FREE WORKPLACE**

- 28.01 Bidder, if awarded the contract, must comply with Section 287.087, Florida Statutes, to make a good faith effort to maintain a drug-free workplace. Bidder must submit the Drug Free Work Place form when submitting its bid.

#### **ARTICLE 29 – DISCRIMINATION PROHIBITION**

- 29.01 No person shall, on the grounds of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, and gender identity, be refused the benefits of, or be otherwise subjected to, discrimination under any activities resulting from this invitation to bid.

## **ARTICLE 30 – DEBARRED AND SUSPENDED BIDDERS**

### **30.01 Scope.**

This policy prescribes policies and procedures relating to:

- A. the debarment of bidders for cause;
- B. the suspension of bidders for cause under prescribed conditions; and,
- C. the rejection of bids, revocation of acceptance and termination of contracts for cause.

It is directly applicable to the advertised and negotiated purchases and contracts, for equipment and services of the City.

### **30.02 General.**

Debarment and suspension are measures which may be invoked by the City either to exclude or to disqualify bidders and contractors from participation in City contracting or subcontracting. These measures should be used for the purpose of protecting the interests of the City and not for punishment. To assure the City the benefits to be derived from the full and free competition of interested bidders, these measures should not be instituted for any time longer than deemed necessary to protect the interests of the City, and should preclude awards only for the duration of the period of non-responsibility.

### **30.03 Definitions.**

- A. "Debarment" means, in general, an exclusion from City contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, improper conduct or the inadequacy of performance.
- B. "Suspension" means a disqualification from City contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence (See Section 6) of engaging in criminal, fraudulent, improper conduct or inadequate performance.
- C. A "debarment list" or "debarred bidders list" means a list of names of concerns or individuals against whom any or all of the measures referred to in this policy have been invoked.
- D. "Bidders" means, wherever the term is used in this policy, offerors bidding pursuant to an invitation for bids or a request for proposals.
- E. "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.
- F. "Business operations" means commercial or industrial activity engaged in regularly and continuously over a period of time for the purpose of receiving pecuniary benefit or otherwise accomplishing an objective. "Business operations" constitute and are equivalent to "carrying on business", "engaged in business", "doing business".

### **30.04 Establishment and Maintenance of a List of Concerns or Individuals Debarred or Suspended.**

- A. The Issuing Office shall establish and maintain a consolidated list of concerns and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited.
- B. The list shall show as a minimum the following information:

1. the names of those concerns or individuals debarred or suspended (in alphabetical order) with appropriate cross-reference where more than one name is involved in a single action;
2. the basis of authority for each action;
3. the extent of restrictions imposed; and,
4. the termination date for each debarred or suspended listing.

C. The list shall be kept current by issuance of notices of additions and deletions.

### 30.05 Treatment to be Accorded Firms or Individuals Debarred or Suspended

Firms or individuals listed by the Issuing Office as debarred or suspended shall be treated as follows.

- A. Total restrictions. A contract shall not be awarded to a concern or individual that is listed on the basis of a Section 5(a)(1), (2) or (3) felony "conviction", or to any concern, corporation, partnership, or association in which the listed concern or individual has actual control or a material interest; nor shall bids or proposals be solicited therefrom. However, when it is determined essential in the public interest by the City Commission, an exception may be made with respect to a particular procurement action where the individual or concern is effectively the sole source of supply or it is an emergency purchase.
- B. Restrictions on subcontracting. If a concern or individual listed on the debarred and suspended bidders list is proposed as a subcontractor, the Issuing Office shall decline to approve subcontracting with that firm or individual in any instance in which consent is required of the City before the subcontract is made, unless it is determined by the City to grant approval City Commission essential to public interest and the individual or concern is effectively the sole source of supply or it is an emergency purchase.

### 30.06 Causes and Conditions Applicable to Determination of Debarment.

Subject to the following conditions, the Issuing Office is authorized to debar a firm or individual in the public interest for any of the following causes occurring within ten (10) years of debarment.

#### A. Causes

1. "Conviction" for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.
2. "Convictions" of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification or destruction of records, perjury, or receiving stolen property where the conviction is based upon conduct which arose out of, or was related to, business operations of the bidder.
3. "Conviction" for bid-rigging activities arising out of the submission of bids or proposals.
4. Violation of contract provisions, as set forth below, of a character which is regarded by the City to be so serious as to justify debarment action:
  - a. willful failure to perform in accordance with the specifications or within the time limit provided in the contract;
  - b. a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts. Failure to perform or unsatisfactory

performance caused by acts beyond the control of the firm or individual as a contractor shall not be considered to be a basis for debarment.

5. Debarment by any other governmental agency.

B. Conditions.

1. Debarment for any of the causes set forth in this section shall be made only upon approval of the Issuing Office.
2. The existence of any of the causes set forth in Section 30.06.A of this Article does not necessarily require that a firm or individual be debarred except as provided in 30.06.A.4.a. In each instance, whether the offense or failure, or inadequacy of performance, be of criminal, fraudulent, or serious nature, the decision to debar shall only be made if supported by a preponderance of the credible evidence available. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, in deciding whether debarment is warranted. The actual or apparent authority of an involved individual, the present relationship of involved individuals with the bidder, the past performance of the individual or concern, and the relationship of the violation to the services or materials involved shall be considered.
3. The existence of a cause set forth in Section 30.06. A.(1), (2), and (3) of this section shall be established by criminal "conviction" by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in reversal of the "conviction", the debarment shall be removed upon the request of the bidder (unless other causes for debarment exists). For the purposes of this policy, the following shall have the same effect as a "conviction": pleading guilty or nolo contendere, or being found guilty by a jury or court of, the offense in question, regardless of whether probation is imposed and adjudication withheld.
4. The existence of a cause set forth in 30.06 A.(4) and (5) of this section shall be established by a preponderance of credible evidence by the Issuing Office.
5. Debarment for the cause set forth in 30.06 A.(5) of this section (debarment by another agency) shall be proper if one of the causes for debarment set forth in A(1) through (4) of this section was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

30.07 Period of Debarment.

- A. Debarment of a firm or individual shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense or the failure or inadequacy or performance. As a general rule, a period of debarment shall not exceed five (5) years. However, when partial or total debarment for an additional period is deemed necessary, notice of the proposed additional debarment shall be furnished to that concern or individual in accordance with Section 30.12.
- B. A debarment may be removed or the period thereof may be reduced by the City Manager upon the submission of an application supported by documentary evidence, setting forth appropriate grounds for the granting of relief; such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed. The City Manager may request additional information, shall consider all relevant facts, and shall render a decision within



twenty (20) days of receipt of the application unless a longer period is warranted under the circumstances.

**30.08 Suspension of Bidders.**

- A. Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation. In assessing whether evidence exists for invoking a suspension, consideration should be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. In making a determination to suspend, the Issuing Office shall consider the factors set forth in Section 5(b)(2). A suspension may be modified by the City Manager as described in Section 5.1(b).

**30.09 Causes and Conditions Under Which the City May Suspend Contractors**

- A. The Issuing Office may, in the interest of the City, suspend a firm or individual when the firm or individual is suspected, upon credible evidence, of having committed one or more the following act(s) within three (3) years of the date of suspension:
  - 1. Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;
  - 2. Violation of statutes concerning bid-rigging activities out of the submission of bids and proposals; and,
  - 3. Commission of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification, or destruction of records, perjury, receiving stolen property. Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a City contractor.

**30.10 Period of Suspension.**

- A. All suspension shall be for temporary period pending the completion of an investigation and such legal proceedings as may ensue. In the event that prosecution has not been initiated within twelve (12) months from the date of the suspension, the suspension shall be terminated. Upon removal of suspension, consideration may be given to debarment in accordance with Section 5 of this policy.

**30.11 Scope of Debarment or Suspension.**

- A. A debarment or suspension may include all known affiliates of a business concern or individual.
- B. Each decision to include a known affiliate within the scope of a proposed debarment or suspension is to be made on a case-by-case basis, after giving due regard to actual or apparent authority of the controlling concern or individual and similarity of the services provided by the affiliate to those provided by the debarred individual or concern.
- C. The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the business concern with which he is connected, where such impropriety was accomplished within the course of his official duty or apparent authority, or was affected by him with the knowledge and approval of that concern. When the individual was an officer of the concern, knowledge and approval may be presumed. Likewise, where a concern is involved in criminal, fraudulent, or seriously improper conduct, any individual who was involved in the commission of the impropriety may be debarred or suspended.

30.12 Notice of Debarment of Suspension.

- A. When the Issuing Office seeks to debar or suspend a concern or individual (or any affiliate thereof) for cause, it shall furnish that party with a written notice:
  - 1. stating that debarment or suspension is being considered;
  - 2. setting forth the reasons for the proposed action;
  - 3. indicating that such party will be afforded an opportunity for a hearing if he so requests one within ten (10) days; and,
  - 4. indicating that such party may make a written response in accordance with Section 9(a). below

30.13 Response to Notice of Debarment or Suspension.

- A. In lieu of requesting a hearing within the prescribed ten (10) day period, the party may, within said ten (10) day period, notify the City of its intent to provide a written reply and submit written evidence to contest the debarment or suspension. Such written evidence must be submitted within twenty (20) days after receipt of the notice of proposed debarment or suspension in order for it to be considered.
- B. Whatever response is received to the notice of intent to debar or suspend, such will be considered in determining whether debarment or suspension action will be made. Where a reply is received to the notice of intent to debar or to suspend, and evidence to refute such action is furnished but no hearing is requested, the information furnished will be considered in determining the action to be taken.
- C. If a hearing is requested, it shall be conducted by the City Manager. The hearing will be held at a location convenient to the City as determined by the City Manager and on a date and at a time stated. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred or suspended. The proceeding shall be of an informal nature as determined by the City Manager. After consideration of the facts, the City Manager shall notify the firm or individual of the final decision.
- D. If no response is made to the notice of debarment or suspension within the first ten (10) day period, the decision of the Issuing Office shall be deemed final and the party so notified.

30.14 Rejection of Bids, Breach of Contract.

- A. Previously solicited and/or accepted bids may be rejected or acceptance revoked prior to beginning of performance upon discovery by the City that the bidder or its affiliates have committed any act which would have been cause for debarment.
- B. If after a contract is awarded and performance has been begun the City discovers that the bidder or its affiliates have committed any act prior to award or acceptance which would have been cause for debarment had it been discovered prior to solicitation or acceptance, the City may consider such to be a material breach of the contract and such shall constitute cause for termination of the contract.
- C. If after bids have been solicited and/or accepted or after a contract is awarded and performance begun, the City discovers that the bidder or its affiliates committed any act prior to award or acceptance which would have been cause for debarment or suspension had it been discovered prior to solicitation or acceptance, the City may require additional satisfactory assurances that such act(s) have not occurred and that the contract can and will be faithfully performed. If additional assurances are requested and are not satisfactory or if

the bidder or its affiliates fail to immediately cooperate with all reasonable requests, including requests for information reasonably calculated to lead to the discovery of relevant evidence, then such may be considered a material breach of the contract and such shall constitute cause for termination of the contract.

#### **ARTICLE 31 – RIGHTS OF APPEAL**

31.01 Participants in this Invitation to Bid solicitation may protest Invitation to Bid specifications or award in accordance with Section 41-580 of the City of Gainesville's Financial Procedures Manual.

#### **ARTICLE 32 – TRADE SECRET AND/OR CONFIDENTIAL AND/OR PROPRIETARY INFORMATION**

All proposals (including all documentation and materials attached to proposals or provided in connection with this ITB) submitted to the City are subject to Florida's public records laws (i.e., Chapter 119, Florida Statutes), which requires disclosure of public records, unless exempt, if a public records request is made. Proposals (including all documentation and materials attached to proposals or provided in connection with this ITB (even if in a separate envelope)) submitted to the City cannot be returned. The City will not consider proposals if the entire proposal is labeled a Trade Secret and/or Confidential and/or Proprietary.

If proposer believes that its proposal contains information that is a trade secret (as defined by Florida law) and/or information that is confidential and/or proprietary and therefore exempt from disclosure then such information must be submitted in a separate envelope and comply with the following requirements. In addition to submitting the information in a separate envelope, proposer must include a general description of the information designated as a trade secret and/or confidential and/or proprietary and provide reference to the Florida statute or other law which exempts such designated information from disclosure in the event a public records request.

The City does not warrant or guarantee that information designated by proposer as a trade secret and/or confidential and/or proprietary is a trade secret and/or confidential and/or proprietary and exempt from disclosure. The City offers no opinion as to whether the reference to the Florida statute or other law by proposer is/are correct and/or accurate. The City will notify proposer if a public records request is received and proposer, at its own expense, will have forty-eight (48) hours after receipt of such notice (email notice is acceptable notice) to file the necessary court documents to obtain a protective order.

Please be aware that the designation of information as a trade secret and/or confidential and/or proprietary may be challenged in court by any person or entity. By designation of information as a trade secret and/or confidential and/or proprietary proposer agrees to defend the City, its employees, agents and elected and appointed officials ("Indemnified Parties") against all claims and actions (whether or not a lawsuit is commenced) related to its designation of information as a trade secret and/or confidential and/or proprietary and to hold harmless the Indemnified Parties for any award to a plaintiff for damages, costs and attorneys' fees, and for costs and attorneys' fees (including those of the City Attorney's office) incurred by the City by reason of any claim or action arising out of or related to bidder's designation of information as a trade secret and/or confidential and/or proprietary.

Failure to comply with the requirements above shall be deemed as a waiver by bidder to claim that all additional information in its bid is a trade secret and/or confidential and/or proprietary regardless if such information is labeled trade secret and/or confidential and/or proprietary. Bidder acknowledges and agrees that all information in bidder's bid will be disclosed, without any notice to bidder, if a public records request is made for such information.

Please be advised that bidder's bid, including the information submitted in a separate envelope in accordance with the requirements set forth herein, will be distributed to the Evaluation Committee

members, City staff and City Consultants to allow bidder's entire bid, including the information submitted in a separate envelope, to be evaluated and considered for award of this Contract. The entire contents of Bidder's bid, including the information submitted in a separate envelope, may be discussed at meetings that are open to the public, subject to the requirements set forth in Chapter 286, Florida Statutes. In the event a public records request is received the City will notify Bidder and Bidder, at its own expense, will have forty-eight (48) hours after receipt of such notice (e-mail notice is acceptable notice) to file the necessary court documents to obtain a protective order.

## **BID FORM**

**Albert "Ray" Massey (Westside) Park Playground, Located at 1001 NW 34th Street, Gainesville, FL  
32605**

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## ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted electronically through “E-Bidding” on DemandStar.com to:

**City of Gainesville**

**200 East University Avenue, Room 339 – Gainesville, Florida 32601**

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

## ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 120 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

## ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Instructions to Bidders, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2)

the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Project Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Project Manager acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### **4.01 Bidder certifies that:**

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.



## ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

<b>Bid Total:</b>	\$
-------------------	----

Total number of calendar days to substantially complete the Work: 180 days.

Liquidated Damages Rate (from Agreement): \$ 250.00 /day.

Bonds required under Paragraph 6.01 of the General Conditions will be based on the Contract Price.

## ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete within 180 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 210 calendar days after the date when the Contract Times commence to run.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

## ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Bidder Qualifications Statement
  - B. Evidence of authority for individuals listed in Section 6 of the Qualifications Statement to bind organization to an agreement
  - C. General Contractor's License OR Building Contractor's License
  - D. Evidence of Bidder's authority to do business in the state where the Project is located
  - E. Letter from Bonding Company; Evidence that Bidder can obtain a Payment and Performance Bond on the project if it is awarded the bid
  - F. Drug Free Workplace Form
  - G. Affidavit of Non-Collusion
  - H. Certification of Compliance with Living Wage

## ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, and the General Conditions.

## ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

---

By:

[Signature] \_\_\_\_\_

[Printed name] \_\_\_\_\_

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature] \_\_\_\_\_

[Printed name] \_\_\_\_\_

Title: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Contact Name and e-mail address: \_\_\_\_\_

\_\_\_\_\_

Bidder's License No.: \_\_\_\_\_

(where applicable)

DRUG FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that

\_\_\_\_\_ does:  
(Name of Business)

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

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

\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Date

CITY OF GAINESVILLE

**AFFIDAVIT OF NON-COLLUSION**

*I hereby swear (or affirm) under the penalty of perjury:*

- (1) That I am the bidder (if the bidder is an individual), a partner of the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation with authority to sign on its behalf (if the bidder is a corporation);*
- (2) That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.*
- (3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids; and*
- (4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.*

*Signed:* \_\_\_\_\_

*Firm Name:* \_\_\_\_\_

*Subscribed and sworn to before me this* \_\_\_\_\_ *day of* \_\_\_\_\_ *20* \_\_\_\_\_

\_\_\_\_\_  
*Notary Public*

*My Commission expires* \_\_\_\_\_, *20* \_\_\_\_\_.

*Proposer's E.I. Number:* \_\_\_\_\_

*(Number used on Employer's Quarterly Federal tax return)*

CITY OF GAINESVILLE

**CERTIFICATION OF COMPLIANCE WITH LIVING WAGE**

**The undersigned** hereby agrees to comply with the terms of the Living Wage Ordinance and to pay all covered employees, set forth in Chapter 2, Article IX, Division 2, Section 2-619 of the City's Code of Ordinances (Living Wage Ordinance), during the time they are directly involved in providing covered services under the contract with the City of Gainesville for **Albert "Ray" Massey (Westside) Park Playground** a living wage of \$ **12.3798** per hour to covered employees who receive Health Benefits from the undersigned employer and \$ **13.6298** per hour to covered employees not offered health care benefits by the undersigned employer.

Name of Service Contractor/Subcontractor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Name of Local Contact Person \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

\$ \_\_\_\_\_

(Amount of Contract)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## QUALIFICATIONS STATEMENT

### 1. SUBMITTED BY:

Official Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

2. SUBMITTED TO: City of Gainesville, Florida

### 3. SUBMITTED FOR:

Owner: City of Gainesville, Florida

Project Name: Albert "Ray" Massey (Westside) Park Playground

TYPE OF WORK: Construction of a new playground at Albert "Ray" Massey (Westside) Park

### 4. CONTRACTOR'S CONTACT INFORMATION:

Contact Person/Title: \_\_\_\_\_

Phone/Email: \_\_\_\_\_

### 5. AFFILIATED COMPANIES:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

### 6. TYPE OF ORGANIZATION:

☐ SOLE PROPRIETORSHIP

Name of Owner: \_\_\_\_\_

Doing Business As: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

☐ PARTNERSHIP

Date of Organization: \_\_\_\_\_

Type of Partnership: \_\_\_\_\_

Name of General Partner(s): \_\_\_\_\_

☐ CORPORATION

State of Organization: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

Executive Officers:

- President: \_\_\_\_\_

- Vice President(s): \_\_\_\_\_

- Treasurer: \_\_\_\_\_

- Secretary: \_\_\_\_\_

☐ LIMITED LIABILITY COMPANY

State of Organization: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

Members: \_\_\_\_\_

☐ JOINT VENTURE

Sate of Organization: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

Form of Organization: \_\_\_\_\_

Joint Venture Managing Partner

- Name: \_\_\_\_\_

- Address: \_\_\_\_\_

Joint Venture Managing Partner

- Name: \_\_\_\_\_

- Address: \_\_\_\_\_

Joint Venture Managing Partner

- Name: \_\_\_\_\_

- Address: \_\_\_\_\_

## 7. LICENSING / CERTIFICATIONS

In order to perform this work the bidder must have a General Contractor's License **OR** Building Contractor's License

## 8. RELEVANT EXPERIENCE

The bidder must demonstrate that they've **worked on three projects similar in both size and scope in the past 5 years**. Please use the space below to communicate such experience.

**Project 1**, Narrative description of project: \_\_\_\_\_

Explanation of relevance/similarity to the new playground at Westside Park: \_\_\_\_\_

Final Contract Value: \_\_\_\_\_ Project Address: \_\_\_\_\_

Construction Start (NTP Date): \_\_\_\_\_ Construction Completion Date: \_\_\_\_\_

Project Owner/Client Contact (Name/Number): \_\_\_\_\_

**Project 2**, Narrative description of project: \_\_\_\_\_

Explanation of relevance/similarity to the new playground at Westside Park: \_\_\_\_\_

Final Contract Value: \_\_\_\_\_ Project Address: \_\_\_\_\_

Construction Start (NTP Date): \_\_\_\_\_ Construction Completion Date: \_\_\_\_\_

Project Owner/Client Contact (Name/Number): \_\_\_\_\_

**Project 3**, Narrative description of project: \_\_\_\_\_

Explanation of relevance/similarity to the new playground at Westside Park: \_\_\_\_\_

Final Contract Value: \_\_\_\_\_ Project Address: \_\_\_\_\_

Construction Start (NTP Date): \_\_\_\_\_ Construction Completion Date: \_\_\_\_\_

Project Owner/Client Contact (Name/Number): \_\_\_\_\_



## 9. BONDING INFORMATION

Bonding Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Bonding Agent: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Aggregate Bonding Capacity: \_\_\_\_\_

Available Bonding Capacity as of date of this submittal: \_\_\_\_\_

## 10. INTENTIONALLY LEFT BLANK

## 11. CONSTRUCTION EXPERIENCE

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

## 12. INTENTIONALLY LEFT BLANK

## 13. INTENTIONALLY LEFT BLANK

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HEREWITH, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC - STATE OF \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

#### **ATTACHMENT CHECKLIST**

- ☐ Evidence of authority for individuals listed in Section 6 to bind organization to an agreement
- ☐ General Contractor's License ***OR*** Building Contractor's License
- ☐ Evidence of Bidder's authority to do business in the state where the Project is located
- ☐ Letter from Bonding Company; Evidence that Bidder can obtain a Payment and Performance Bond on the project if it is awarded the bid
- ☐ Drug Free Workplace Form
- ☐ Affidavit of Non-Collusion
- ☐ Certification of Compliance with Living Wage

#### **IF APPLICABLE**

- ☐ Additional information on failure to complete a construction contract
- ☐ Additional information on any judgments, claims, disputes or litigation pending or outstanding

**SAMPLE AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Gainesville ("Owner") and \_\_\_\_\_  
("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**ARTICLE 2 – THE PROJECT**

The City is seeking a contractor to construct a new playground at Albert "Ray" Massey (Westside) Park, located at 1001 NW 34th Street.

The Bidder will be responsible for the construction of the Work in accordance with the Contract Documents.

The City will execute owner-direct purchases for the specified restroom building from CXT, a wholly owned subsidiary of L.B. Foster Company, as well as the playground equipment from Top Line Recreation, Inc., dba BCI Burke, and Playcore Wisconsin, Inc., dba GameTime. The bidder should not include the cost of the restroom structure or the playground equipment in their bid. The bidder will be responsible for coordinating the delivery and offloading of the restroom structure and playground equipment. The Bidder will be responsible for the installation of the playground equipment and the utility connections to the restroom building. The Bidder must include these costs in their bid. The City will pay for and obtain building and sitework permits which will be transferred to the Bidder upon execution of the contract.

**ARTICLE 3 – PROJECT MANAGER/CONSULTANT**

3.01 The part of the Project that pertains to the Work has been designed by Manley Design, LLC, ("Consultant").

3.02 The Owner has assigned Betsy Waite, P.E., ("Project Manager") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Project Manager in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 180 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 210 days after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$250.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$250.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

---

### ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: \$\_\_\_\_\_.
- B. Owner's Contingency, is \$50,000.00.

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Project Manager as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
  - a. 95 percent of Work completed (with the balance being retainage). Once the project reaches 50% or more completion of construction services (payment will result in expenditure of over 50% of the total cost of construction services, as identified in the contract, including additions or deletions approved up to and including this pay request), and upon Contractor's request, City will disburse 50% of previously withheld retainage.; and
  - b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Project Manager's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

#### **6.03 Final Payment**

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Project Manager as provided in said Paragraph 15.06.

### **ARTICLE 7 – INTEREST**

- 7.01 All amounts not paid when due shall bear interest at the rate of one (1) percent per annum.

### **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Instructions to Bidders, especially with respect to Technical Data in such reports and drawings,
  - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the

Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Project Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Project Manager is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01    *Contents***

- A. The Contract Documents consist of the following:
  - 1. This Agreement.
  - 2. Statutory Payment and Performance Bond.
  - 3. Other bonds.
    - a. Warranty Bond.
  - 4. General Conditions.
  - 5. Specifications as listed within the Construction Drawings.
  - 6. Drawings (not attached but incorporated by reference) consisting of the Drawings listed on the attached sheet index.
  - 7. Addenda (numbers \_\_\_\_ to \_\_\_\_, inclusive).
  - 8. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid.
    - b. Living Wage Ordinance.
    - c. Application for Payment.
    - d. Drawings sheet index.
  - 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.

- d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions.

### **10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **10.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through "track changes" (redline/strikeout).
- B. Records and Right to Audit. Contractor shall maintain records sufficient to document completion of the scope of services established by the Contract Documents. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of five (5) years after termination of the Contract. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims.
- C. The Contractor shall (1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- D. Living Wage: The definitions, terms and conditions of the city's living wage requirements set forth in Chapter 2, Article IX, Division 2, Section 2-619 of the City's Code of Ordinances shall apply to this agreement. These requirements include that the service contractor/subcontractor: shall pay a living wage to each covered employee during the term of this agreement, including any extension(s) to this agreement; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any city audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. Failure to comply with the City's living wage requirements shall be a material breach of this agreement, enforceable by the city through all rights and remedies at law and equity.
- E. Apprentice and Disadvantaged Worker Requirements: Contractor shall comply with the requirements of the Apprentice and Disadvantaged Worker Ordinance, Chapter 2, Article XI, Section 2-631, Gainesville Code of Ordinances. Failure of the contractor to comply with the ordinance may result in termination of the contract. **(Applies to construction contracts over \$300,000 and electrical work over \$75,000)**
- F. Anti-Discrimination: Contractor shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the performance of this Contract. Contractor understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of the Contract. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.



G. **WAIVER OF JURY TRIAL. OWNER AND CONTRACTOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT, LEGAL ACTION, LITIGATION OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OWNER AND CONTRACTOR TO ENTER INTO THIS AGREEMENT.**

H. Public Records.

1. Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the City, Contractor must:
  - a. Keep and maintain public records required by the public agency to perform the service.
  - b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
  - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
  - d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-393-8187, waiteed@cityofgainesville.org, 306 NE 6<sup>th</sup> Ave, Box 24, Gainesville, FL 32601.**

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

Approved as to form and legality:

\_\_\_\_\_  
City Attorney

*PUBLIC CONSTRUCTION BOND*

Bond No. (enter bond number)

BY THIS BOND, We \_\_\_\_, as Principal and \_\_\_\_, a corporation, as Surety, are bound to \_\_\_\_, herein called Owner, in the sum of \$\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated \_\_\_\_, \_\_\_\_, between Principal and Owner for construction of \_\_\_\_, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

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

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON \_\_\_\_, \_\_\_\_.

(Name of Principal)

By (As Attorney in Fact)

(Name of Surety)

These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the EngineerProject Manager, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The form acceptable to Owner [and Engineer]Project Manager which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents. A copy of the acceptable form for Application for Payment is included in the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The advertisement and/or invitation to b~~id~~, Instructions to Bidders, Bid security form, Bid Form, Price Sheet, and any supplements and required forms. ~~Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.~~
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract. The work covered by a Change Order shall be within the scope of the Contract Documents.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by ~~Engineer or~~ Project Manager concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*—~~(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract.; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a~~

~~contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a~~ A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting ~~Engineer's Project Manager's~~ decision regarding a Change Proposal; or seeking resolution of a contractual issue that ~~Engineer-Project Manager~~ has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

~~11.12.~~ 12. *Consultant* – shall mean the engineering or architectural firm or individual employed by the Owner to prepare construction plans and technical specifications and/or to consult with and advise Owner in the construction of the project.

~~12.13.~~ 13. *Contract*—The entire and integrated written contract between ~~the~~ Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

~~13.14.~~ 14. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract. Approved shop drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

~~14.15.~~ 15. *Contract Price*—~~The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.2 in the case of Unit Price Work).~~

~~15.16.~~ 16. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

~~16.17.~~ 17. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

~~17.18.~~ 18. *Cost of the Work*—See Paragraph 13.01 for definition.

~~18.19.~~ 19. *Drawings*—The part of the Contract prepared or approved by the design professional or eEngineerConsultant or Project Manager that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not drawings as so defined.

~~19.20.~~ 20. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

- ~~21.~~ Engineer-Project Manager—The Project Manager is a ~~Public-Works~~City employee responsible for all decisions as indicated in these Contract Documents.~~individual or entity named as such in the Agreement.~~
- ~~20-22.~~ Field Order—A written order issued by ~~[Engineer]~~Project Manager which requires minor changes in the Work but does not ~~involve a~~ change ~~in~~ the Contract Price or the Contract Times.
- ~~21-23.~~ Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
- ~~22-24.~~ Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- ~~23-25.~~ Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
- ~~24-26.~~ Milestone—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
- ~~25-27.~~ Notice of Intended Award—The written notice by ~~Owner~~Issuing Office to ~~at the Successful Bidder of Owner's acceptance of the Bid stating that upon timely compliance by Successful Bidder with the condition precedent listed therein and upon approval of City Commission, if applicable, Owner, if Owner decides to proceed with the Work, will sign and deliver the Agreement to the Successful Bidder. However, the Notice of Intended Award shall not be construed as an agreement, meeting of the minds, contract, or any other legal obligation between Owner and Contractor.~~
- ~~26-28.~~ Notice to Proceed—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- ~~27-29.~~ Owner—~~The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract. The City of Gainesville, Florida, by and through its City Commission. The Owner designates the Wild Spaces & Public Places Director, or his/her designee, as its authorized representative under this Contract. Provided, however, the Wild Spaces & Public Places Director, may not increase the Contract Price or Contract Times in excess of 10% of the total Contract Price without prior approval of the City Commission.~~
- ~~28-30.~~ Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times. The Progress Schedule shall include a detailed and comprehensive construction schedule utilizing a critical path method arrow diagram network that (i) shows all major design, procurement and construction elements and phases of the Project;. (ii) breaks down each element or phase by trade; (iii) shows early and late start dates so that all "float" time will be accurately identified; (iv) clearly identifies critical path activities; (v) discloses relationship in number of days

and types of linkage between all linked activities; (vi) identifies, coordinates and integrates design and construction schedules, Owner's responsibilities, governmental approvals, early access dates for certain portions of the Project by Owner, and other activities necessary for the timely completion of the Project in accordance with the scheduled dates of Substantial and Final Completion; and (vii) otherwise is in a form satisfactory to Owner. Owner's acceptance is expressly limited to Owner's acknowledgment that based upon Owner's limited review, the dates of Substantial Completion and milestone dates are acceptable and the latest dates of Owner-provided information, materials, approvals and the like identified in the Project Schedule are reasonable.

~~29-31.~~ 31. *Project*—The total undertaking to be accomplished for Owner by design professionals, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

~~30-32.~~ 32. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.

~~31-33.~~ 33. *Resident Project Representative* ~~Technical Support Specialist~~—The authorized representative of ~~{Engineer}{Owner}~~ who may be assigned to the site or any part thereof, assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.

~~32-34.~~ 34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

~~33-35.~~ 35. *Schedule of Submittals*—A schedule, ~~prepared and maintained by Contractor, of required submittals and the time requirements for~~ Engineer's review ~~Manager's review~~ of the submittals and the performance of related construction activities.

~~34-36.~~ 36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

~~35-37.~~ 37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

~~36-38.~~ 38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

~~37-39.~~ 39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

- ~~38-40.~~ *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- ~~39-41.~~ *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ~~Engineer~~Project Manager, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
- ~~40-42.~~ *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
- ~~41-43.~~ *Supplementary Conditions*—~~The part of the Contract that amends or supplements these General Conditions.~~
- ~~42-44.~~ *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- ~~43-45.~~ *Technical Data*—Those items expressly identified as Technical Data in the ~~Supplementary Conditions~~Instructions to Bidders, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
- ~~44-46.~~ *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- ~~45-47.~~ *Unit Price Work*—Work to be paid for on the basis of unit prices.
- ~~46-48.~~ *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- ~~47-49.~~ *Work Change Directive*—A written directive statement to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by EngineerProject Manager, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Times or Contract Price but is evidence that the parties expect that the

change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order.

## 1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by EngineerProject Manager. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of EngineerProject Manager as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to EngineerProject Manager any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not conform to the Contract Documents; or
    - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
    - c. has been damaged prior to EngineerProject Manager’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04) or
    - d. fails to provide the level of service for which it was intended or
    - e. is not in compliance with: the applicable building code, applicable manufacturers’ instructions; applicable industry standards; or applicable laws and regulations.
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.



3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such fully executed and recorded bonds in accordance with Section 255.05, Florida Statutes as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified ~~in the Supplementary Conditions or~~ elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- ~~C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.~~

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor ~~four printed copies of the Contract (including one fully executed counterpart of the Agreement), and~~ one copy of the Contract in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed-digital record version of the Contract, including Drawings and Specifications signed and sealed by Engineer Consultant and other design professionals. Owner shall make such original printed-digital record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to EngineerProject Manager.

### 2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to EngineerProject Manager for timely review:
  1. a preliminary Progress Schedule (Critical Path Method as described in the Definition of Progress Schedule) indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;



2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by ~~Owner~~, Contractor, and EngineerProject Manager, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference ~~Owner and Contractor~~ each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Unless otherwise delineated in these General Conditions the Project Manager is the Owner's authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, EngineerProject Manager, and others as appropriate, will be held to review for acceptability to EngineerProject Manager as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to EngineerProject Manager.
  1. The Progress Schedule will be acceptable to EngineerProject Manager if it is a Critical Path Method as described in the Definition of Progress Schedule and provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on EngineerProject Manager responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to EngineerProject Manager if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to EngineerProject Manager as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, EngineerProject Manager, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, EngineerProject Manager, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. EngineerProject Manager ~~will~~may issue clarifications and interpretations of the Contract Documents as provided herein.

#### 3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or EngineerProject Manager, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for EngineerProject Manager. No such provision or instruction shall be effective to assign to Owner, EngineerProject Manager, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for EngineerProject Manager.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to EngineerProject Manager any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by EngineerProject Manager, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to EngineerProject Manager in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by EngineerProject Manager, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or EngineerProject Manager for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for EngineerProject Manager shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the EngineerProject Manager all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. EngineerProject Manager will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. EngineerProject Manager will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement

to the Contract Documents. ~~Engineer~~Project Manager's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, ~~and on Owner, unless it appeals by filing a Claim.~~

- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then ~~Engineer~~Project Manager will promptly give written notice to Owner (Wild Spaces & Public Places Director) and Contractor that ~~Engineer~~Project Manager is unable to provide a decision or interpretation. If Owner (Wild Spaces & Public Places Director) and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ~~Engineer-Project Manager~~ or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner, ~~and Engineer-Project Manager, or Consultant~~ and specific written verification or adaptation by ~~Engineer-Project Manager, or Consultant~~; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Amending and Supplementing Contract Documents*

- A. The Contract Documents can only be amended to provide for additions, deletions, and revision in the Work or to modify the terms and conditions thereof by either a Written Change Order signed by both parties or a Written Change Directive issued by the Project Manager.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized by one or more of the following ways:
1. A Field Order;
  2. Project Manager's written interpretation or clarification.
- C. Any variations and deviations in the Work arising from any of the methods set forth in Paragraph 3.06.B will not authorize any Amendment to the Contract Price or Contract Times. The sole method to amend the Contract Price or Contract Times is pursuant to Paragraph 3.06.A.

## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. ~~In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.~~

### 4.02 Starting the Work

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

### 4.03 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in EngineerProject Manager's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OwnerProject Manager. Contractor shall report to EngineerProject Manager whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

- B. Upon Final Completion of the Project, Contractor shall provide Owner with a complete set of certified as-built plans and record drawings. As-built plans should show the constructed conditions of the City-owned or maintained area and be performed by a Florida Licensed Professional Surveyor and Mapper. The coordinate system shall be Florida State Plane Coordinates; NAS 83 Zone North US Survey feet. Vertical Coordinates shall be referred to the NAVD 88 datum with elevations given in US Survey Feet.

As-built plans shall be submitted to the **Wild Spaces & Public Places Program** as signed and sealed plans and an electronic drawing file.

Record drawings shall be legibly marked to document actual construction. All changes to final utility locations including horizontal and vertical locations shall be clearly shown and referenced to permanent surface improvements and include all manholes, hydrants, valves, valve boxes, and structures. Record drawings shall also document actual installed materials. Record drawings shall clearly show and document all field changes of dimension and detail. Record drawings shall include all details not on the original drawings, but constructed.

### 4.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to EngineerProject Manager for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

**B.** Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

**A.** ~~If the critical path of the Project progress schedule is delayed by~~ Owner, Engineer, Project Manager, or anyone for whom Owner is responsible ~~(except Gainesville Regional Utilities), delays, disrupts, or interferes with the performance or progress of the Work,~~ then Contractor shall be entitled to an equitable adjustment in the Contract Times ~~and Contract Price, but Contractor shall only be entitled to an extension of the Contract Time for the number of days of delay to the critical path. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.~~

**B.** NO DAMAGES FOR DELAY. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delay") whether or not such Delay is foreseeable, unless the Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damage in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

~~Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.~~

**A.C.** Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

**B.D.** ~~If the critical path of the Project progress schedule Contractor's performance or progress is~~ delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times, but only if the critical path of the Project progress schedule is impacted. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to



complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. The only causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. abnormal weather conditions as described in the technical specifications;
3. acts or failures to act of utility owners, including Gainesville Regional Utilities (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
4. acts of war or terrorism.

~~C.E.~~ Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

~~D.F.~~ Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

~~E.G.~~ Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

H. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this ~~paragraph section~~ within 30 days of the commencement of the delaying, disrupting, or interfering event. Any Change Proposal seeking an adjustment in Contract Price or Contract Times under this section not submitted within 30 days shall be deemed waived.

I. Any Change Proposal seeking an adjustment in Contract Times under this section must demonstrate to the reasonable satisfaction of the Project Manager that the critical path of the Project was delayed. Contractor must compare the critical path of the Project Schedule to the actual critical path of the work, identifying the specific impact of the event giving rise to the Change Proposal seeking an adjustment in Contract Times and adjusting for any concurrent delay, disruption, or interference caused by or within the control of Contractor. Contractor shall submit to Project Manager a written time impact analysis illustrating the influence of each delay and the also demonstrating the impact on the on the date of Substantial Completion and critical path of the Project.

## **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. ~~Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Contractor shall provide proof of access as set forth in Section 2.03 of the General Conditions.-

## 5.02 Use of Site and Other Areas

### A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of ~~other actions or conduct~~ negligent, reckless, or intentional wrongful misconduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) ~~to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and EngineerProject Manager, and the officers, directors, members, partners, and employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible. 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 the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.~~
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.



- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

#### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in ~~the Supplementary Conditions~~Instructions to Bidders with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer/Project Manager, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
  - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  - 2. is of such a nature as to require a change in the Drawings or Specifications; or
  - 3. differs materially from that shown or indicated in the Contract Documents; or
  - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify ~~Owner and Engineer~~Project Manager in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. ~~Engineer's Project Manager's~~ Review: After receipt of written notice as required by the preceding paragraph, ~~Engineer Project Manager~~ will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of ~~Engineer's Project Manager's~~ findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of ~~Project Manager's Engineer's~~ written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (~~with a copy to Engineer~~) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting ~~Project Manager's Engineer's~~ written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible ~~Price and~~ Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in ~~Contract Price or~~ Contract Times, ~~or both~~, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's ~~cost of, or~~ time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. ~~with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,~~
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times, and a demonstrated impact on the critical path.
    - d. Contractor shall not be entitled to an adjustment in Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
    - e. Contractor must submit any Change Proposal seeking an adjustment in Contract Times under this section within 30 days of the commencement of the delaying, disrupting, or interfering event. Any Change Proposal seeking an adjustment in Contract Price or Contract Times under this section not submitted within 30 days shall be deemed waived.
    - f. Any Change Proposal seeking an adjustment in Contract Times under this section must demonstrate to the reasonable satisfaction of the Project Manager that the

critical path of the Project was delayed. Contractor must compare the critical path of the Project Schedule to the actual critical path of the work, identifying the specific impact of the event giving rise to the Change Proposal seeking an adjustment in Contract Times and adjusting for any concurrent delay, disruption, or interference caused by or within the control of Contractor. Contractor shall submit to Project Manager a written time impact analysis illustrating the influence of each delay and the also demonstrating the impact on the date of Substantial Completion and critical path of the Project.

2. Contractor shall not be entitled to any adjustment in the ~~Contract Price or~~ Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect ~~to Contract Price and to~~ Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the ~~Contract Price or Contract Times, or both, then~~ Times then any such adjustment shall be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the ~~Contract Price or Contract Times, or both,~~ no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- E. **NO DAMAGES FOR DELAY. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delay") whether or not such Delay is foreseeable, unless the Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damage in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.**

## 5.05 Underground Facilities

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner ~~or Engineer~~ by the owners of such Underground Facilities, including Owner Gainesville Regional Utilities, or by others. ~~Unless it is otherwise expressly provided in the Supplementary Conditions:~~
1. Owner ~~and Engineer do~~ does not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site, including locating all subsurface utilities in accordance with Chapter 556, Florida Statutes;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - ~~a-c.~~ verifying the depth of each Underground Facility;
    - ~~b-d.~~ coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - e. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
    - ~~e-f.~~ Any conflict between Contractor and the owners of Underground Facilities (including Gainesville Regional Utilities) shall be the responsibility of the Contractor to resolve with the Owner of the Underground Facility.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, and could not have been located by Contractor prior to award of bid by contacting the Sunshine State One-Call of Florida, Inc. in accordance with Chapter 556, Florida Statutes, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and ~~Engineer~~ Project Manager.
- C. ~~Engineer's Project Manager's Review:~~ Engineer-Project Manager will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, and could not have been located by Contractor prior to award of bid if Contractor had contacted the Sunshine State One-Call of Florida, Inc.; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of ~~Engineer's Project Manager's~~ findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of ~~Engineer's~~Project Manager's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to ~~Engineer~~Project Manager) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting ~~Engineer's~~Project Manager's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible ~~Price and~~ Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in the ~~Contract Price or~~ Contract Times, ~~or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or for~~ any related delay, disruption, or interference, which causes an increase or decrease in Contractor's ~~cost of, or~~ time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;  
  
~~With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;~~
    - b. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - c. Contractor gave the notice required in Paragraph 5.05.B.
  2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the ~~Contract Price or~~ Contract Times, ~~or both~~, then any such adjustment shall be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the ~~Contract Price or~~ Contract Times, ~~or both~~, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question. If Contractor fails to submit a Change Proposal within 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question, Contractor waives any right to make a claim for change in Contract Price or Contract Time for that event.
- F. **NO DAMAGES FOR DELAY. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delay") whether or not such Delay is foreseeable, unless the Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damage in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes**

in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions-Instructions to Bidders with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph



- 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8. Contractor shall not be entitled to any loss of anticipated profits as a result of the removal of the portion of the Work from the Contract Documents
- H.I. Owner's liability for any claim, cost, loss or damage to Contractor, Subcontractor, or agents or employees of the same are limited by Owner's sovereign immunity as set forth in Section 768.28, Florida Statutes.
- ~~I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- J. Contractor shall indemnify and hold harmless Owner and its 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 the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.
- ~~J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,~~

~~architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 Performance, Payment, and Other Bonds

~~6.02—In accordance with Section 255.05, Florida Statutes, Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. Contractor shall record those bonds in the Public Records of Alachua County Florida. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.~~

- A. All bonds shall be in the form prescribed by ~~the Contract except as provided otherwise by Laws or Regulations~~Florida Statutes, and shall be executed by such sureties licensed to do business in the State of Florida and issued from an insurer with an AM Best rating of A VII or greater, as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- B. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- C. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- D. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- E. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.



- A. ~~Owner and~~ Contractor shall obtain and maintain insurance as required in this Article, ~~and in the Supplementary Conditions.~~
- B. All insurance required by the Contract to be purchased and maintained by ~~Owner or~~ Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. ~~Unless a different standard is indicated in the Supplementary Conditions, all~~ All companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, ~~in the Supplementary Conditions,~~ or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. ~~Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision. Owner is self-insured. Nothing in these Contract Documents shall be deemed to waive Owner's sovereign immunity as provided in Section 768.28, Florida Statutes.~~
- E. Failure of Owner ~~or Contractor~~ to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner ~~or Contractor~~ to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the ~~other party~~ Contractor's obligation to obtain and maintain such insurance.
- F. If ~~either party~~ Contractor does not purchase or maintain all of the insurance required ~~of such party~~ by the Contract, ~~such party~~ Owner shall notify ~~the other party~~ Contractor in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if ~~a party~~ Contractor has failed to obtain required insurance, the ~~other party~~ Owner may elect to obtain equivalent insurance to protect ~~such other party's~~ Owner's interests at the expense of ~~the party who was required to provide such coverage~~ Contractor, and the Contract Price shall be adjusted accordingly.
- I. ~~Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.~~

- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner, ~~and other individuals and entities in the Contract.~~

6.046.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance in an amount of \$1,000,000.00, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

7-8. A per project endorsement providing that the limits of Contractor's commercial liability policy shall apply to the Project without erosion of such limits by other claims or occurrences.

~~8-9. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.~~

- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle in the amount of \$500,000.00. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* ~~Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.~~
- F. *Contractor's pollution liability insurance:* ~~Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations in the amount of \$1,000,000.00. This insurance shall be maintained for no less than three years after final completion. N/A for this project~~
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner ~~and Engineer, and any individuals or entities identified in the Supplementary Conditions~~; include coverage for the respective officers, ~~directors, members, partners and~~ employees, ~~agents, consultants, and subcontractors of each and any of all such additional insureds~~; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
  2. be written for not less than the limits of liability provided in this Article ~~and in the Supplementary Conditions~~, or required by Laws or Regulations, whichever is greater.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has

been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer/Project Manager, and each other insured under the policy.

4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

K. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

#### 6.056.04 *Owner's Liability Insurance*

- A. ~~In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents~~Owner is a governmental entity and is self-insured. Nothing in this Article or in the Contract Documents shall be deemed to waive the Owner's sovereign immunity as provided in Section 768.28, Florida Statutes.
- B. ~~Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.~~

#### 6.066.05 *Property Insurance*

- A. ~~Builder's Risk: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~
  1. ~~include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."~~

- ~~2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.~~
  - ~~3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.~~
  - ~~4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).~~
  - ~~5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).~~
  - ~~6. extend to cover damage or loss to insured property while in transit.~~
  - ~~7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.~~
  - ~~8. allow for the waiver of the insurer's subrogation rights, as set forth below.~~
  - ~~9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.~~
  - ~~10. not include a co insurance clause.~~
  - ~~11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.~~
  - ~~12. include performance/hot testing and start-up.~~
  - ~~13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.~~
- ~~B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this~~

~~Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.~~

- ~~C. *Deductibles:* The purchaser of any required builder's risk or property insurance~~Contractor ~~shall pay for costs not covered because of the application of a policy deductible.~~
- ~~D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.~~
- ~~E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.~~
- ~~F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.~~

#### 6.076.06      Waiver of Rights

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against EngineerProject Manager, Owner, or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the Owner and its respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, Contractor waives all such rights against EngineerProject Manager, Owner its consultants, all Subcontractors, all individuals or entities identified in the Supplementary ConditionsGeneral Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- A.B. The Contractor and Owner mutually waive Claims against each other for consequential damages arising out of or relating to this Contract including, but not limited to, damages incurred by the Owner for lost rent, rental expenses, loss of use, lost income, lost profits, additional financing expenses, and for loss of management or employee productivity or of the services of such persons; and damages incurred by the Contractor for additional overhead, additional home office expenses, additional employee expenses, lost productivity,



equipment expense, financing, business and reputation, and for lost profits, except that anticipated profit arising directly from the Project will not be considered a consequential damage. This mutual waiver applies to all consequential damages. Liquidated Damages, shall not be considered consequential damages and are not subject to this waiver.

~~B. Owner waives all rights against Contractor, Subcontractors, and EngineerProject Manager, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:~~

~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~

~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.~~

~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or EngineerProject Manager, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~

**C. NO DAMAGES FOR DELAY. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delay") whether or not such Delay is foreseeable, unless the Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damage in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.**

D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, and all individuals or entities identified ~~in the Supplementary Conditions~~ as insureds, the EngineerProject Manager and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

~~6.08~~6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

**ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, 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, in compliance with all applicable building codes or industry standards, in compliance with all applicable manufacturers' instructions, and in compliance with all applicable laws. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and ~~Engineer~~Project Manager except under extraordinary circumstances. The superintendent must speak and understand English.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. During working hours, contractor shall maintain at least one person in addition to the superintendent who is able to speak and understand English.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.



C. Regular Working Hours shall be Monday through Friday from 7:00AM to 5:00PM.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by EngineerProject Manager, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work, and the Contractor further agrees to perform the Work in such a manner to preserve any and all manufacturer's warranties.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- ~~C.D.~~ Materials not conforming to the Contract Documents shall be rejected or removed from the Site by the Contractor as directed. No rejected material, the defects of which have been subsequently corrected, shall be used except with the permission of the Owner or Project Manager. Should the Contractor fail to remove defective material within the time indicated in writing, the Owner may remove and replace the defective material, and the cost of such removal and replacement will be deducted from any monies due or to become due to the Contractor or be reimbursed to the Owner by the Contractor.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that EngineerProject Manager authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If EngineerProject Manager in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, EngineerProject Manager shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment EngineerProject Manager determines that:
  - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) it has a proven record of performance and availability of responsive service; and
  - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *EngineerProject Manager's Evaluation and Determination:* EngineerProject Manager will be allowed a reasonable time to evaluate each "or-equal" request. EngineerProject Manager may require Contractor to furnish additional data about the proposed "or-equal" item. EngineerProject Manager will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until EngineerProject Manager's review is complete and EngineerProject Manager determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. EngineerProject Manager will advise Contractor in writing of any negative determination.
- D. *Effect of EngineerProject Manager's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The EngineerProject Manager's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If EngineerProject Manager determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that EngineerProject Manager considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that EngineerProject Manager authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow EngineerProject Manager to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. EngineerProject Manager will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

2. The requirements for review by EngineerProject Manager will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as EngineerProject Manager may decide is appropriate under the circumstances.
3. Contractor shall make written application to EngineerProject Manager for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - a. shall certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design,
    - 2) be similar in substance to that specified, and
    - 3) be suited to the same use as that specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from that specified, and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. EngineerProject Manager's Evaluation and Determination: EngineerProject Manager will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. EngineerProject Manager may require Contractor to furnish additional data about the proposed substitute item. EngineerProject Manager will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until EngineerProject Manager's review is complete and EngineerProject Manager determines that the proposed item is an acceptable substitute. EngineerProject Manager's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. EngineerProject Manager will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Consultant's Cost*: In the event Project Manager retains Consultant to evaluate a substitute proposed or submitted by EngineerContractor, Project Manager will record Engineer's-Consultant's costs in evaluating a substitute proposed or

submitted by Contractor. Whether or not ~~Engineer~~Project Manager approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of ~~Engineer-Consultant~~ for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of ~~Engineer-Consultant~~ for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of ~~Engineer~~Project Manager's Determination:* If ~~Engineer~~Project Manager approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The ~~Engineer~~Project Manager's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to EngineerProject Manager a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal. For purposes of Owner's reporting, the list shall identify any small, minority or disadvantaged businesses on the Project.
- I. Contractor shall be fully responsible to Owner and EngineerProject Manager for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with EngineerProject Manager or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate written contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and EngineerProject Manager.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or EngineerProject Manager and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or EngineerProject Manager to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or EngineerProject Manager, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. In the event either Owner or Contractor breach the duty set forth in Paragraph 7.07.A. above, the breaching party shall defend and hold harmless the non-breaching party to the fullest extent, provided the non-breaching party has provided notice of the violation to the breaching party.

A.C. Nothing in Section 7.07 shall be deemed to have waived Owner's sovereign immunity as granted pursuant to Section 768.28, Florida Statutes.

B.D. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C.E. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.08 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

#### 7.09 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.10 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer/Project Manager shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting regulatory costs, fines, or penalties. Furthermore, Contractor shall indemnify and hold harmless Owner and its 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 the Contractor and persons employed or utilized by the Contractor in the performance of the Project, and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.~~ It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed ~~record~~ copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to EngineerProject Manager for reference. Upon completion of the Work, Contractor shall deliver these record documents to EngineerProject Manager.

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and

other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and EngineerProject Manager of the specific requirements of Contractor's safety program with which Owner's and EngineerProject Manager's employees and representatives must comply while at the Site.
- E. Contractor shall indemnify and hold harmless Owner and its officers and employees from all liabilities, damages, losses and costs, to property referred to in Paragraph 7.12.A.2 or 7.12.A.3, including but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Project. Damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer-Consultant or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and EngineerProject Manager has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.
- H. Contractor shall require its employees, subcontractors, suppliers and all other personnel to observe safety rules and regulations and to wear suitable safety equipment, at all times. Contractor shall bar personnel who disregard safety regulations from the Project.
- I. All vehicles and construction equipment shall be properly registered and shall comply with the Laws and Regulations. All vehicles shall be equipped with such safety devices as flags, marking, beacons, strobes, and lights, in good working order. No separate compensation will be allowed for this work or equipment.
- J. At the end of each work day, the Contractor shall remove its equipment from the roadway, and if applicable, shall store such equipment in areas as approved by Owner. No equipment shall be stored on the roadway during non-work periods. Construction or repair material shall not be stored on the roadway except as approved by Owner.



### 7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

### 7.15 *Emergencies*

- A. ~~In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.~~In emergencies affecting the safety or protection of persons or the Work of property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Project Manager written notice immediately, and in no instance more than 24 hours after the alleged emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Project Manager determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued. Should the Contractor fail to take prompt action whenever conditions make it necessary in the Owner's sole discretion, Owner may make emergency repairs or cause the same to be made, and the costs for such repairs shall be charged against the Contractor and deducted from moneys due to it.

### 7.16 *Shop Drawings, Samples, and Other Submittals*

- A. *Shop Drawing and Sample Submittal Requirements:*
  - 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
    - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
  3. With each submittal, Contractor shall give EngineerProject Manager specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to EngineerProject Manager for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to EngineerProject Manager for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as EngineerProject Manager may require.
1. *Shop Drawings:*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show EngineerProject Manager the services, materials, and equipment Contractor proposes to provide and to enable EngineerProject Manager to review the information for the limited purposes required by Paragraph 7.16.D.
  2. *Samples:*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as EngineerProject Manager may require to enable EngineerProject Manager to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to EngineerProject Manager's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. Contractor is responsible for the accuracy of all Submittals. Owner, Project Manager, and Consultant shall be entitled to rely upon Contractor's representation that such information is correct and accurate.
- ~~C.D.~~ *Other Submittals:* Contractor shall submit other submittals to EngineerProject Manager in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- ~~D.E.~~ *EngineerProject Manager's Review:*
1. EngineerProject Manager will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to EngineerProject Manager. EngineerProject Manager's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ~~Engineer~~Project Manager's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. ~~Engineer~~Project Manager's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. ~~Engineer~~Project Manager's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and ~~Engineer~~Project Manager has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. ~~Engineer~~Project Manager will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. ~~Engineer~~Project Manager's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. ~~Engineer~~Project Manager's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither ~~Engineer~~Project Manager's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E.F. *Resubmittal Procedures:*

1. Contractor shall make corrections required by ~~Engineer~~Project Manager and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by ~~Engineer~~Project Manager on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. In the event Project Manager retains Consultant to review submittals, Engineer-Project Manager will record ~~Engineer's-Consultant's~~ time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for ~~Engineer's-Consultant's~~ charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for ~~Engineer's-Consultant's~~ charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

## 7.17 Contractor's General Warranty and Guarantee

- A. ~~Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.~~ Contractor warrants and guarantees to Owner that the Work to be performed under the Contract Documents, and all workmanship, materials, and equipment performed, furnished, used, or installed in the construction of the Project shall be free from defects and flaws and shall be performed and furnished in strict accordance with the Contract Documents, in compliance with all applicable building codes or industry standards, in compliance with all applicable manufacturers' instructions, and in compliance with all applicable laws. Contractor warrants and guarantees that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract Documents shall be fulfilled.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, in compliance with all applicable building codes or industry standards, in compliance with all applicable manufacturers' instructions, and in compliance with all applicable laws:
1. observations by ~~Engineer~~Project Manager;
  2. recommendation by ~~Engineer~~Project Manager or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by ~~Engineer~~Project Manager or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by ~~Engineer~~Project Manager;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.
- D. Contractors Guarantee. Contractor warrants and guarantees all material and equipment furnished and Work performed for a period of one (1) year from the date of Final Completion. If part of the Work is accepted in accordance with Paragraph 15.04, the guarantee for that portion of the Work shall be for a period of one (1) year from the date fixed for such acceptance. Contractor warrants and guarantees for a period of one (1) year from the date of Final Completion, that the completed Work is free from all defects due to faulty materials or workmanship. If at any time within the said period of guarantee, any part of the Work requires repairing, correction, or replacement, Owner may notify Contractor to commence making such repairs, correction, or replacement and Contractor shall promptly make such repairs, corrections, or replacements as may be necessary by reason of such defects including

the repair of any damage to other property or systems resulting from such defects. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects to the satisfaction of Owner within seven (7) days from receipt of such notice, Owner may do so and charge Contractor the cost thereby incurred, including compensation for additional professional services. The Performance Bond shall remain in full force and effect throughout the guarantee period.

D.E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 Indemnification

- A. ~~To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable~~ Contractor shall indemnify and hold harmless Owner, its 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 the indemnifying party and persons employed or utilized by the Contractor in the performance of the Work.
- B. In any and all claims against Owner or ~~Engineer or any of their~~its officers, ~~or employees directors, members, partners, employees, agents, consultants, or subcontractors~~ by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of ~~Engineer-Consultant~~ and ~~Engineer's-Consultant's~~ officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

## 7.19 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and EngineerProject Manager will specify all performance and design criteria that such services must satisfy. Contractor shall comply with the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes) to retain a design professional. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to EngineerProject Manager.
- C. Owner and EngineerProject Manager shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and EngineerProject Manager have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, EngineerProject Manager's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. EngineerProject Manager's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or EngineerProject Manager.

## ARTICLE 8 – OTHER WORK AT THE SITE

### 8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site. Owner may perform other work related to the Project at the Site with Owner's employees or through other direct contracts therefor, or have other work performed by utility owners.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the



introduction and storage of materials and equipment and the execution of such other work and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of ~~Engineer~~Project Manager and the others whose work will be affected.

- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to ~~Engineer~~Project Manager in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  2. an itemization of the specific matters to be covered by such authority and responsibility; and
  3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times as demonstrated in the Progress Schedule.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or EngineerProject Manager, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, ~~and (2) Contractor shall indemnify and hold harmless Owner, its 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 the indemnifying party and persons employed or utilized by the Contractor in the performance of the Work indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.~~

## ARTICLE 9 – OWNER'S RESPONSIBILITIES

### 9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through EngineerProject Manager.

### 9.02 *Replacement of EngineerProject Manager*

- A. Owner may at its discretion ~~appoint an engineer to~~ replace EngineerProject Manager, ~~provided Contractor makes no reasonable objection to the replacement engineer.~~ The replacement engineerProject Manager's status under the Contract Documents shall be that of the former EngineerProject Manager.

### 9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.



9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the AgreementContract Documents and in accordance with the Local Government Prompt Payment Act.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 ~~*Insurance*~~*Sovereign Immunity*

- A. ~~Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6~~Owner is a governmental entity protected by sovereign immunity as granted by Section 768.28, Florida Statutes. Nothing in the Contract Documents shall be deemed to waive Owner's sovereign immunity.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 ~~*Evidence of Financial Arrangements*~~*Multi-year Obligations*

- A. ~~The obligations of the City as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Contract.~~Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements

~~have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).~~

#### 9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

### ARTICLE 10 – ENGINEERPROJECT MANAGER'S STATUS DURING CONSTRUCTION

#### 10.01 *Owner's Representative*

- A. EngineerProject Manager will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of EngineerProject Manager as Owner's representative during construction are set forth in the Contract- Documents.

#### 10.02 *Visits to Site*

- A. EngineerProject Manager will make visits to the Site at intervals appropriate to the various stages of construction as EngineerProject Manager deems necessary in order to observe ~~as an experienced and qualified design professional~~ the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, EngineerProject Manager, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. EngineerProject Manager will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. EngineerProject Manager's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, EngineerProject Manager will keep Owner informed of the progress of the Work ~~and will endeavor to guard Owner against defective Work~~.
- B. EngineerProject Manager's visits and observations are subject to all the limitations on EngineerProject Manager's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of EngineerProject Manager's visits or observations of Contractor's Work, EngineerProject Manager will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 *Project Representative*

- A. ~~If Owner and Engineer Project Manager have agreed that Engineer will furnish In addition to the Project Manager, Owner hasmay employed a Technical Support a Specialist Resident Project Representative to represent Engineer at the Site and to assist Engineer Project Manager in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions Technical Support Specialist does not have authority to commit to additions to the work which will increase cost of the work.~~

10.04 *Rejecting Defective Work*

- A. ~~Engineer~~Project Manager has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. ~~Engineer~~Project Manager's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. ~~Engineer~~Project Manager's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. ~~Engineer~~Project Manager's authority as to Change Orders is set forth in Article 11.
- D. ~~Engineer~~Project Manager's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. ~~Engineer~~Project Manager will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. ~~Engineer~~Project Manager will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. ~~In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.~~

10.08 *Limitations on ~~Engineer~~Project Manager's Authority and Responsibilities*

- A. Neither ~~Engineer~~Project Manager's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by ~~Engineer~~Project Manager in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ~~Engineer~~Project Manager, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ~~Engineer~~Project Manager to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. ~~Engineer~~Project Manager will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. ~~Engineer~~Project Manager will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. ~~Engineer~~Project Manager will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. ~~Engineer~~Project Manager's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the ~~Resident Project Representative~~Technical Support Specialist, if any.

~~10.09—Compliance with Safety Program~~

- ~~A. While at the Site, Engineer~~Project Manager's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which EngineerProject Manager has been informed.

## ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

~~11.01—Amending and Supplementing Contract Documents~~

~~11.02~~11.01 The Contract Documents may only be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order, executed by the Owner's representative having authority to approve the amendment or supplement. City Commission must approve changes affecting an increase in contract price in excess of ten (10) percent. City Manager must approve changes affecting Contract Price in excess of \$20,000.00. Wild Spaces & Public Places Director must approve changes affecting Contract Price that does not exceed \$20,000.00. Project Manager may execute documents not affecting Contract Price.

1. *Change Orders:*

- a. ~~If an amendment or supplement~~Owner and Contractor may amend to the Contract Documents ~~includes a~~change in the Contract Price or the Contract Times, and such amendment or supplement must be set forth in a written Change Order signed by Project Manager or Owner, as applicable, and Contractor. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

- ~~b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.~~

2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* ~~Engineer~~Project Manager may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment

in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### ~~11.03~~11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by ~~Engineer~~Project Manager's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### ~~11.04~~11.03 *-Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

#### ~~11.05~~11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
- b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27-21 percent of the costs incurred by the Subcontractor that actually performs the work;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.0611.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. If the change in Contract Time does not affect the Contract Price, this Change Order may be executed by the Project Manager (or Wild Spaces & Public Places Director). Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.0711.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to EngineerProject Manager to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by EngineerProject Manager concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
1. *Procedures:* Contractor shall submit each Change Proposal to EngineerProject Manager promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the



EngineerProject Manager and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. EngineerProject Manager will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. EngineerProject Manager's Action: EngineerProject Manager will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If EngineerProject Manager does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of EngineerProject Manager's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. Binding Decision: EngineerProject Manager's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

- 3.4. Waiver for untimely Change Proposals. Failure on the part of the Contractor to submit the Change Proposal within 30 days after the start of the event giving rise thereto, is a complete waiver for any subsequent Change Proposal, or claim arising out of the event giving rise thereto.

~~B. Resolution of Certain Change Proposals: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then EngineerProject Manager will notify the parties that the EngineerProject Manager is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.~~

#### 11.0811.07     Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for EngineerProject Manager's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If ~~Owner or~~ Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### ~~11.09~~11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## ARTICLE 12 – CLAIMS

### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by ~~Owner or~~ Contractor of ~~Engineer~~Project Manager's decisions regarding Change Proposals;
  2. ~~Owner or Contractor~~ demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Disputes that ~~Engineer~~Project Manager has been unable to address ~~because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.~~
- B. *Submittal of Claim:* The ~~party submitting a Claim~~Contractor shall deliver its Claim directly to the ~~other party~~Project Manager ~~to the Contract promptly (but in no event no~~ later than 30 days) after the start of the event giving rise thereto; or in the case of appeals regarding Change Proposals within 30 days of the Project Manager's decision under appeal. ~~The party submitting the Claim shall also furnish a copy to the Engineer, for its information only.~~ The responsibility to substantiate ~~a—its~~ Claim ~~shall rests~~ with the ~~party making the Claim~~Contractor. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The ~~party~~Owner (Wild Spaces & Public Places Director) ~~receiving a Claim shall will~~ review the Claim ~~it~~ thoroughly, giving full consideration to its merits. The ~~two parties shall~~Owner and Contractor will seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim ~~shall will~~ be stated in writing and submitted to the ~~other party, with a copy to Engineer~~Contractor.
- D. *Mediation:*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the



Claim submittal and decision process ~~shall~~will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process ~~shall~~will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

- E. *Partial Approval:* If the ~~party~~Owner (Wild Spaces & Public Places Director) ~~receiving a Claim~~ approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the ~~other party~~Contractor invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the ~~party receiving the Claim~~Owner (Wild Spaces & Public Places Director) may deny it by giving written notice of denial to the ~~other party~~Contractor. If the ~~receiving party~~Owner (Wild Spaces & Public Places Director) does not take action on the Claim within 90 days, then ~~either Owner or Contractor~~ may at any time thereafter submit a letter to the ~~other party~~Owner indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  - 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
  - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work.

Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

2.3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of EngineerProject Manager, which bids, if any, will be acceptable. If any 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 and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

3.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors, ~~attorneys, and accountants~~) employed for services specifically related to the Work.

4.5. 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.
- 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 workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of EngineerProject Manager, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ~~Engineer~~Project Manager an itemized cost breakdown together with supporting data.

~~E-F.~~ The itemized cost breakdown and supporting data is a condition precedent to filing a Change Proposal, or Claim. Failure to provide an itemized cost breakdown with supporting data will result in a denial of the Change Proposal or Claim.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and EngineerProject Manager.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by EngineerProject Manager to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. EngineerProject Manager will determine the actual quantities and classifications of Unit Price Work performed by Contractor. EngineerProject Manager will review with Contractor the EngineerProject Manager's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). EngineerProject Manager's written decision thereon will be final and binding (except as modified by EngineerProject Manager to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of EngineerProject Manager's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;

2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional ~~expense or Owner believes that Owner is entitled to a decrease in Contract Price, and expense and~~ the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

### 14.01 Access to Work

- A. Owner, ~~Engineer~~Project Manager, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### 14.02 Tests, Inspections, and Approvals

- A. Contractor shall give ~~Engineer~~Project Manager timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. ~~Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05. The Contractor shall employ and pay for the services of an independent testing company to conduct all sampling, testing and laboratory work for the project. Independent verification testing by the Contractor will be performed at the discretion of the Project Manager (at Contractor's expense) to verify compliance with specification requirements. The independent testing company must be approved by the Project Manager.~~
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ~~Engineer~~Project Manager the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and ~~Engineer~~Project Manager's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and EngineerProject Manager.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, EngineerProject Manager, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of EngineerProject Manager, Contractor shall, if requested by EngineerProject Manager, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given EngineerProject Manager timely notice of Contractor's intention to cover the same and EngineerProject Manager had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *EngineerProject Manager's Authority:* EngineerProject Manager has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or EngineerProject Manager has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if EngineerProject Manager has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to EngineerProject Manager's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by EngineerProject Manager as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the



decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. ~~Engineer~~Project Manager has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of ~~Engineer~~Project Manager, then Contractor shall, if requested by ~~Engineer~~Project Manager, uncover such Work for ~~Engineer~~Project Manager's observation, and then replace the covering, all at Contractor's expense.
- C. If ~~Engineer~~Project Manager considers it necessary or advisable that covered Work be observed by ~~Engineer~~Project Manager or inspected or tested by others, then Contractor, at ~~Engineer~~Project Manager's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ~~Engineer~~Project Manager may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, or the Work is not in compliance with all applicable building codes or industry standards, in compliance with all applicable manufacturers' instructions, or in compliance with other applicable laws or regulations, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from ~~Engineer~~Project Manager to correct defective Work, or to remove and replace rejected Work as required by ~~Engineer~~Project Manager, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and EngineerProject Manager and EngineerProject Manager's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

### 15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to EngineerProject Manager. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments as set forth in the Contract Documents:*
  - 1. Project Manager is the employee of Owner, designated to receive and approve or reject Contractor's Applications for Payment. Project Manager's address for submission of payments will be provided upon award of bid. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to EngineerProject Manager for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 1-2. All Applications for Payment shall include, in addition to other required items, lien waivers in the form provided for in section 255.05, Florida Statutes, or, for projects covered by a payment bond, waivers of right to claim against the bond in the form provided for in section 255.05, Florida Statutes, for all Work covered by the Application



for Payment, executed by (i) the Contractor and (ii) each subcontractor or materialman to be paid out of the Progress Payment.

2-3. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

5. By signing the Application for Payment, the Contractor certifies that and warrants to the Owner that the Contractor has no notice of potential claims against the Owner for extensions of time or adjustments to the contract price based on events or circumstances existing or occurring before the date of the subject Application for Payment, except as specifically stated in the Application for Payment.

3-6. With ~~E~~each Application for Payment, Contractor shall, in addition to other required items, submit an updated Progress Schedule using the critical path method, and, if actual progress is behind schedule, a narrative discussing any catch-up or work-around plan that Contractor may employ to put the Project back on schedule.

C. *Review of Applications:*

1. ~~Engineer~~Project Manager will, within 10 days after receipt of review and approve, reject, or partially approve each Application for Payment, in accordance with the times established in Florida's Local Government Prompt Payment Act, Section 218.735, Florida Statutes, including each resubmittal, Project Manager will either indicate in writing an approval of payment and present the Application to Finance Department for payment, or return the Application to Contractor indicating in writing Project Manager's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

1-2. ~~Engineer~~Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by ~~Engineer~~Project Manager to Owner, based on ~~Engineer~~Project Manager's observations of the executed Work as an experienced and qualified design professional, and on ~~Engineer~~Project Manager's review of the Application for Payment and the accompanying data and schedules, that to the best of ~~Engineer~~Project Manager's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ~~Engineer~~Project Manager's responsibility to observe the Work.

~~2.3.~~ By recommending any such payment EngineerProject Manager will not thereby be deemed to have represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to EngineerProject Manager in the Contract; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

~~3.4.~~ Neither EngineerProject Manager's review of Contractor's Work for the purposes of recommending payments nor EngineerProject Manager's recommendation of any payment, including final payment, will impose responsibility on EngineerProject Manager:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

~~4.5.~~ EngineerProject Manager may refuse to recommend the whole or any part of any payment if, in EngineerProject Manager's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

~~5.6.~~ EngineerProject Manager will recommend reductions in payment (set-offs) necessary in EngineerProject Manager's opinion to protect Owner from loss because:

- a. the Work is defective, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. EngineerProject Manager has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

~~1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor. Upon the recommendation of Project Manager, Owner shall make payment to Contractor in~~

accordance with the Local Government Prompt Payment Act, Section 218.735, Florida Statutes.

2. If Contractor receives payment for labor, services, or materials furnished by subcontractors and suppliers hired by the Contractor, Contractor must remit payment due to those subcontractors and suppliers within 10 days after Contractor's receipt of payment.

1-3. Contractor shall include a provision in all of its subcontracts requiring a subcontractor who retains subcontractors or suppliers on the project to remit payment to those subcontractors and suppliers hired by the subcontractor within 7 days after the subcontractor receives payment.

E. *Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by EngineerProject Manager, Owner is entitled to impose a set-off against payment based on any of the following:

- a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
- c. Contractor has failed to provide and maintain required bonds or insurance;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
- f. the Work is defective, requiring correction or replacement;
- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- h. the Contract Price has been reduced by Change Orders;
- i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
- j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
- k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- l. there are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of EngineerProject Manager, Owner will give Contractor immediate written notice (with a copy to EngineerProject Manager) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

#### 15.02 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify ~~Owner and EngineerProject Manager~~ in writing that the entire Work is substantially complete and request that EngineerProject Manager issue a certificate of Substantial Completion. Contractor shall at the same time submit to ~~Owner and EngineerProject Manager~~ an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, ~~Owner~~, Contractor, and EngineerProject Manager shall make an inspection of the Work to determine the status of completion. If EngineerProject Manager does not consider the Work substantially complete, EngineerProject Manager will notify Contractor in writing giving the reasons therefor.
- C. If EngineerProject Manager considers the Work substantially complete, EngineerProject Manager will deliver to ~~Owner~~ Contractor a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer Within 30 days of substantial completion for projects less than \$10 million and 60 calendar days for projects \$10 million or greater Project Manager shall attach to the certificate a punch list of items to be completed or corrected before final payment. ~~Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to EngineerProject Manager as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, EngineerProject Manager concludes that the Work is not substantially complete, EngineerProject Manager will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections EngineerProject Manager concludes that the Work is substantially complete, then EngineerProject Manager will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as EngineerProject Manager believes justified after consideration of any objections from Owner.~~

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, EngineerProject Manager, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and EngineerProject Manager will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2. At any time Contractor may notify Owner and EngineerProject Manager in writing that Contractor considers any such part of the Work substantially complete and request EngineerProject Manager to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and EngineerProject Manager shall make an inspection of that part of the Work to determine its status of completion. If EngineerProject Manager does not consider that part of the Work to be substantially complete, EngineerProject Manager will notify Owner and Contractor in writing giving the reasons therefor. If EngineerProject Manager considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, EngineerProject Manager will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection

reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 Final Payment

##### A. Application for Payment:

1. After Contractor has, in the opinion of EngineerProject Manager, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), as-built surveys as described in the City of Gainesville Engineering Design and Construction Manual, and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work to claim against the payment bond. If the Work does not require a Payment and Performance Bond, then Contractor must provide a complete and legally effective release of all lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien claim against Owner could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens claims or other burdens on against Owner's property Owner, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien claim, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

##### B. EngineerProject Manager's Review of Application and Acceptance:

1. If, on the basis of EngineerProject Manager's observation of the Work during construction and final inspection, and EngineerProject Manager's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, EngineerProject Manager is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, EngineerProject Manager will, within ten days after receipt of the final Application for Payment, indicate in writing EngineerProject Manager's recommendation of final payment and present the Application for Payment to Owner for payment. Such



recommendation shall account for any set-offs against payment that are necessary in EngineerProject Manager's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time EngineerProject Manager will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, EngineerProject Manager will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the EngineerProject Manager's written recommendation of final payment.
- D. *Payment Becomes Due:* ~~Thirty days~~Twenty-Five (25) days after the Application for Payment has been received by Project Manager, if Project Manager has approved final Application for Payment, presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by EngineerProject Manager (less any further sum Owner is entitled to set off against EngineerProject Manager's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled liensclaims, from defective Work ~~appearing after final inspection pursuant to Paragraph 15.05,~~ from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

### 16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and ~~Engineer~~Project Manager. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### 16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or ~~Engineer~~Project Manager.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and



2. enforce the rights available to Owner under any applicable performance bond.
  - C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
  - D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
  - E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by EngineerProject Manager as to their reasonableness and, when so approved by EngineerProject Manager, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
  - F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
  - G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.
- 16.03 *Owner May Terminate For Convenience* /Limitation on multi-year obligations
- A. Upon seven days written notice to Contractor and EngineerProject Manager, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
    1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
    2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
    3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
  - B. The obligations of the City as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriation from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the

foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Contract.

- C. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, ~~(1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due,~~ then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. ~~In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.~~

### ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

#### 17.01 Methods and Procedures

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor ~~may~~shall initiate mediation of the underlying dispute. The mediation shall stay the Claim submittal and response process. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- ~~B-C.~~ *Mediation as Condition Precedent.* The parties must submit the dispute to mediation prior to submission to a court of law.
  - ~~1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or~~
  - ~~2. agree with the other party to submit the dispute to another dispute resolution process;~~

~~or~~

- ~~3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

## ARTICLE 18 – MISCELLANEOUS

### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### 18.02 *Computation of Times*

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

### 18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor ~~Engineer~~Project Manager, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### 18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

### 18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

~~A.~~ Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.09 *Applicable Law and Venue*

A. This Contract shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. In the event of any legal action under this Contract, venue shall be in Alachua County, Florida.

18.10 *Attorney's Fees.*

A. The prevailing party to any litigation filed in state or federal court, shall be entitled to attorney's fees and costs, including any attorney's fees and costs incurred on appeal.