

## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

#### 1.01. *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below (singular or plural) will have the meanings indicated.

1. *Addenda* - Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement* - The written instrument which is evidence of the agreement between City and Contractor covering the Work.

3. *Application for Payment* - The form acceptable to Designer 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 supporting documentation required by the Contract Documents.

4. *Approved Equal or-equal* - A substitute product equal to or better than the brand name product as specified and permitted to be used in this Project only when approved by the Designer.

5. *Bid* - The offer or proposal of a bidder submitted on prescribed form setting forth the prices for the Work to be performed. For this project, Invitation to Bid shall also mean Request for Proposals and bid shall also mean the response to the Request for Proposals submitted on prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents* - The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements* - The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds* - Performance and payment bonds and other instruments of security.

9. *Change Order* - A document recommended by Designer, which is signed by Contractor and City authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *City* - The City of Fellsmere, which is located in Indian River County, Florida, with which Contractor has entered into the Agreement and for which the Work is to be performed.

11. *Claim* - A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. *Contract* - The entire and integrated written agreement between the City and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

13. *Contract Documents* - The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award)

when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplemental Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Designer's, written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by City to Contractor are not Contract Documents.

14. *Contract Price* - The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

15. *Contract Times* - The number of days or the dates stated in the Agreement to (i) achieve Substantial Completion and (ii) complete the Work so that it is ready for final payment as evidenced by Designer's written recommendation of final payment.

16. *Contractor* - The individual or entity with whom City has entered into the Agreement.

17. *Cost of the Work* - See paragraph 11.01A for definition.

18. *Drawings* - The part of the Contract Documents prepared by Designer based upon survey data to be provided by Contractor. For this project, the Drawings shall consist of high point, low point, and discharge pipe invert elevations for each alley determined by the City based upon survey data to be provided by Contractor. Together with the Typical alleyway cross-section, mitered end section detail, and outfall pipe detail, the Drawings generally show the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not *Drawings*.

19. *Effective Date of the Agreement* - The date indicated in the Agreement on which it becomes effective. If no such date is indicated, the date on which the Agreement is signed and delivered by the last of the parties to sign and deliver shall be the effective date.

20. *Designer* - The individual or entity named as such in the Agreement.

21. *Designer's Consultant* - An individual or entity having a contract with Designer to furnish services as Designer's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplemental Conditions.

22. *Field Order* - A written order issued by Designer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

23. *General Requirements* - Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

24. *Hazardous Environmental Condition* - The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

25. *Hazardous Waste* - This shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903), as amended from time to time.

26. *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

27. *Liens* - Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
28. *Milestone* - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
29. *Notice of Award* - The written notice by City to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, City will sign and deliver the Agreement.
30. *Notice to Proceed* - A written notice given by City to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
31. *Partial Utilization* - Use by City of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
32. *Project* - The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part, as may be indicated elsewhere in the Contract Documents.
33. *Project Manual* - The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, will be set forth in the table(s) of contents thereof.
34. *Radioactive Material* - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011, et seq.) as amended from time to time.
35. *Resident Project Representative* - The authorized representative of Designer who may be assigned to the Site or any part thereof.
36. *Samples* - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Shop Drawings* - All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
38. *Site* - Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
39. *Specifications* - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
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 at the Site.
41. *Substantial Completion* - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Designer, 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. *Substantially complete* and *substantially completed* are cognate terms.
42. *Supplemental Conditions* - That part of the Contract Documents which amends or supplements these General Conditions.

43. *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 any Subcontractor.

44. *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 those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

45. *Unit Price Work* - Work to be paid for on the basis of unit prices.

46. *Work* - The entire completed 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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

47. *Work Change Directive* - A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by City and recommended by Designer 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 Price or the Contract Times 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 following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

48. *Written Amendment* - A written statement modifying the Contract Documents, signed by City and Contractor on or after the Effective Date of the Agreement and normally dealing with nonengineering, nonarchitectural or nontechnical matters rather than strictly construction-related aspects of the Contract Documents.

## 1.02. Terminology

### A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms *as allowed*, *as approved* or cognate terms are used or the adjectives *reasonable*, *suitable*, *acceptable*, *proper*, *satisfactory*, or adjectives of like effect or import are used to describe an action or determination of Designer as to the Work, it is intended that such action or determination will be to evaluate the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).

### B. *Day*

1. *Day* shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

### C. *Defective*

1. *Defective*, when modifying *Work*, refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Designer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by City at Substantial Completion in accordance with paragraphs 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. *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. *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. *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. When *furnish, install, perform, or provide* is not used in connection with *services, materials, or equipment* in a context clearly requiring an obligation of Contractor, *provide* is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

F. Italicized print will be used to indicate words that are referred to as terms.

G. In the interest of brevity, the contract documents frequently omit modifying words such as *all, any,* and articles such as *the* and *and*, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect interpretation.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When Contractor delivers the executed Agreement to City, Contractor shall also deliver to City such Bonds as Contractor may be required to furnish.

2.02 *Copies of Documents*

A. City shall furnish to Contractor up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *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 Agreement 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 Agreement. 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 Agreement, whichever date is earlier.

2.04 *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 the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Contractor's Review of Contract Documents:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify all pertinent figures, dimensions, quantities, locations, materials, and details therein and all applicable field measurements. Failure to discover or correct errors, conflicts or discrepancies shall not relieve the Contractor of full responsibility for unsatisfactory

work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at his own expense. Contractor shall promptly report in writing to Designer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Designer before proceeding with any Work affected thereby; however, Contractor shall not be liable to City or Designer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof. Any work not herein specified, which may be fairly implied as included in the Contract, or which the Designer shall so adjudge, shall be done by the Contractor without extra charge to the City.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the Supplemental Conditions), Contractor shall submit to Designer for timely review:

1. a preliminary 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 Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

C. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and City shall each deliver to the other, with copies to each additional insured identified in the Supplemental Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and City respectively are required to purchase and maintain in accordance with Article 5.

#### 2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by Contractor, Designer, 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 2.05.B., procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

#### 2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by Contractor, Designer, and others as appropriate will be held to review for acceptability to Designer as provided below the schedules submitted in accordance with paragraph 2.05.B. Contractor shall have an additional ten 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 Designer.

1. The progress schedule will be acceptable to Designer if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Designer 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 Shop Drawing and Sample submittals will be acceptable to Designer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's schedule of values will be acceptable to Designer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is 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. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to City.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Designer as provided in Article 9.

### 3.02 *Reference Standards*

#### A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, 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, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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 or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of City, Contractor, or Designer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to City, Designer, or any of Designer's Consultants, agents, or employees 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 Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall report it to Designer in writing at once. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that Contractor shall not be liable to City or Designer for failure to report any such conflict, error, ambiguity, or discrepancy unless Contractor knew or reasonably should have known thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); 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 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (i) a Field Order; (ii) Designer's approval of a Shop Drawing or Sample; or (iii) Designer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with City: (i) shall not 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 Designer or Designer's Consultant, including electronic media editions and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and Designer and specific written verification or adaptation by Designer. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

B. All copies of Contract Documents, except the Contractor's records set, shall be returned or suitably accounted for to the Designer, on request, upon completion of the Work.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. City shall furnish the Site. City 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. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and City are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in City's furnishing the Site, Contractor may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and City'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.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:*  
The Supplemental Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Designer has used in preparing the Contract Documents; and



2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Designer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the technical data contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such technical data is identified in the Supplemental Conditions. Except for such reliance on such technical data, Contractor may not rely upon or make any Claim against City, Designer, or any of Designer's Consultants 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.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed 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 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; 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 any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify City and Designer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so conclusions.

B. *Designer's Review:* After receipt of written notice as required by paragraph 4.03.A, Designer will promptly review the pertinent condition, determine the necessity of City's obtaining additional exploration or tests with respect thereto, and advise City in writing (with a copy to Contractor) of Designer's findings and conclusions.

#### C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in paragraph 4.03.A; and

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 paragraphs 9.08 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to City in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract;

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If City and Contractor cannot agree on entitlement on any adjustment to the Contract Price and/or Contract Times, a Claim may be made therefor as provided in paragraph 10.05. However, City, Designer, and Designer's Consultants shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents respecting existing Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Designer by the owners of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided in the Supplemental Conditions:

1. City and Designer shall not be responsible for the accuracy or completeness of any such information or data; 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 such information and data;

b. locating all Underground Facilities shown or indicated in the Contract Documents;

c. coordination of the Work with the owners of such Underground Facilities, including City, during construction; and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### B. *Not Shown or Indicated*

If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents:

1. 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to City and Designer. Designer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent they are attributable to such Underground Facility and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated such facility. If Designer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. If City and Contractor cannot agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, City or Contractor may make a Claim therefor as provided in paragraph 10.05.

#### 4.05 *Reference Points*

A. City shall provide engineering surveys to establish reference points for construction which in Designer'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 City. Contractor shall report to Designer 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.

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplemental Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Designer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the technical data contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such *technical* data is identified in the Supplemental Conditions. Except for such reliance on such technical data Contractor may not rely upon such data or make any Claim against City, Designer or any of Designer's Consultants 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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify City and Designer (and promptly thereafter confirm such notice in writing). City shall promptly consult with Designer concerning the necessity for City to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after City has obtained any required permits related thereto and delivered to Contractor written notice: (i)

specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If City 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, either party may make a Claim therefor as provided in paragraph 10.05.

F. 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 City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If City and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. City may have such deleted portion of the Work performed by City's own forces or others in accordance with Article 7.

G. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 - BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in Florida or it ceases to meet the requirements of paragraph 5.01.B, Contractor shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by City or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized Florida to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplemental Conditions.

### 5.03 *Certificates of Insurance*

A. Contractor shall deliver to City, with copies to each additional insured identified in the Supplemental Conditions, certificates of insurance (and other evidence of insurance requested by City or any other additional insured) which Contractor is required to purchase and maintain. City shall deliver to Contractor, with copies to each additional insured identified in the Supplemental Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which City is required to purchase and maintain.

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5.04 *Contractor's Liability insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which 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:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or (ii) by any other person for any other reason;
5. 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;
6. 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;
7. claims for bodily injury or property damage arising out of completed operations;
8. claims involving contractual liability insurance applicable to the Contractor's indemnity obligations.

B. The policies of insurance required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.7 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) City, Designer, Designer's Consultants, and any other individuals or entities identified in the Supplemental Conditions, all of whom shall be listed as additional insureds, and shall include coverage for the respective public officials, officers, directors, partners, employees, agents, and other 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;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplemental Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under paragraphs 4.06, 6.07, 6.11, and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to City and Contractor and to each other additional insured identified in the Supplemental Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to paragraph 5.03 shall so provide);
6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Contractor shall furnish City and each other additional insured identified in the Supplemental Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to City and any such additional insured of continuation of such insurance at final payment and one year thereafter).

#### 5.05 *City's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under paragraph 5.04, City, at City's option, may purchase and maintain at City's expense, City's own liability insurance as will protect City against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

A. Unless otherwise provided in the Supplemental Conditions, Contractor shall purchase and maintain property insurance upon the Work at the site for the full insurable value thereof, subject only to such deductible as may be provided in the Supplemental Conditions or required by law. Said insurance shall cover the interests of City and include the interests of Contractor, Subcontractors, Designer, and Designer's Consultants in the Work, as the case may be, all of which shall be listed as insured or additional insured parties. Said Insurance shall cover against perils of windstorm, fire and extended coverage and shall include 'all risk' insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplemental Conditions. Said Insurance shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including, but not limited to, fees and other charges of Designers, architects, attorneys, and other professionals). Unless otherwise provided in the Supplemental Conditions, Contractor, if it is not covered under the "all risk" insurance, shall purchase and maintain similar property insurance on portions of the Work stored on and off site or in transit when such portions of the Work are to be or have been included in an Application for Payment. The policies of insurance required to be purchased and maintained by Contractor in accordance with paragraphs 5.06 A and 5.06 B shall contain a provision that coverage shall not be canceled or materially changed except on at least thirty days' prior written notice to City.

B. City shall purchase and maintain such boiler and machinery insurance, or additional property insurance as may be required by the Supplemental Conditions or Laws and Regulations which will include the interests of City, Contractor, Subcontractors, Designer, Designer's Consultants, and any other individuals or entities identified in the Supplemental Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to City and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. City shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplemental Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at their/its own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, City shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, City shall in writing advise Contractor whether or not such other insurance has been procured by City.

#### 5.07 *Waiver of Rights*

A. City and Contractor intend that all policies purchased in accordance with paragraph 5.06 will protect City, Contractor, Subcontractors, Designer, Designer's Consultants, and all other individuals or entities identified in the Supplemental Conditions to be listed as insureds or additional insureds (and the public officials, officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, as the case may) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies 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 of the insureds or additional insureds thereunder. City and Contractor waive all rights against each other and their respective public officials, officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, as the case may be, 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, waive all such rights against Subcontractors, Designer, Designer's Consultants, and all other individuals or entities identified in the Supplemental Conditions to be listed as insureds or additional insureds (and the public officials, officers, directors, partners, employees, agents, and other 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 City as trustee or otherwise payable under any policy so issued.

B. City waives all rights against Contractor, Subcontractors, Designer, Designer's Consultants, and the officers, directors, partners, employees, agents, and other 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 City's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by City; 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 City during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by City covering any loss, damage or consequential loss referred to in paragraph 5.07.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, Designer, or Designer's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with City and made payable to City as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. City shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special

agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. City as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of such loss to City's exercise of this power. If such objection be made, City as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, City as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, City as fiduciary shall give bond for the proper performance of such duties.

#### 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either City or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. City and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If City finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

### ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

#### 6.01 *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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but Contractor shall not be responsible for the negligence of City or Designer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent thereto who shall not be replaced without written notice to City and Designer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

#### 6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.



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, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without City's written consent (which will not be unreasonably withheld) given after prior written notice to Designer.

#### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified, 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.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of City. If required by Designer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. 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.

#### 6.04 *Progress Schedule*

A. Contractor shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Designer for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Supplemental Conditions applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

#### 6.05 *Substitutes and 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 specification or description is intended to establish the type, function, appearance, and quality required and a basis for bidding. Unless the specification or description contains or is followed by words reading that no like, equivalent, or *or-equal* item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Designer for review under the circumstances described below.

1. *Or-Equal Items:* If in Designer's sole discretion 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, it may be considered by Designer as an *or-equal* item, in which case review and approval of the proposed item may, in Designer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A. 1, 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 Designer determines that (i) it is at least equal in quality, durability, appearance, strength, and design characteristics and (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and

b. Contractor certifies that (i) there is no increase in cost to the City and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in Designer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an *or-equal* item under paragraph 6.05.A.1, it will be considered a proposed *substitute item*.

b. Contractor shall submit sufficient information as provided below to allow Designer to determine that the item of proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of will not be accepted by Designer from anyone other than Contractor.

c. The procedure for review by Designer will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Designer may decide is appropriate under the circumstances.

d. Contractor shall first make written application to Designer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. Designer will not accept requests for review of substitute items of material and equipment from anyone other than Contractor. Upon receipt of an application for review of a substitution, Designer will determine whether the review will be more extensive than a normal shop drawing review for the specified item. If the substitution will not require a more extensive review, Designer will proceed with the review without additional cost to Contractor. If the substitution requires a more extensive review, Designer will proceed with the review only after Contractor agrees to reimburse City for the review cost. Contractor's application shall certify that the proposed substitute item will adequately perform the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not 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 City for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Designer in evaluating the proposed substitute item. Designer may require Contractor at Contractor's expense to furnish additional data about the proposed substitute item. If substitute materials or equipment are used and are less costly than the originally specified material or equipment, the net difference in cost shall benefit the City and Contractor in equal proportions. This cost difference shall not be reduced by any failure of the Contractor to base its bid on the named materials or equipment.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Designer. Contractor shall submit sufficient information to allow Designer, in Designer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Designer will be similar to that provided in subparagraph 6.05.A.2.

C. *Designer's Evaluation:* Designer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. Designer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed, or utilized until Designer's review is complete, which will be

evidenced by either a Change Order for a substitute or an approved Shop Drawing for an “or equal.” Designer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* City may require Contractor to furnish at Contractor’s expense a special performance guarantee or other surety with respect to any substitute.

E. *Designer’s Cost Reimbursement:* Designer will record time required by Designer and Designer’s Consultants in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with City for work on the Project) occasioned thereby. Whether or not Designer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse City for the charges of Designer and Designer’s Consultants for evaluating each such proposed substitute.

F. *Contractor’s Expense:* Contractor shall provide all data in support of any proposed substitute or “or-equal” at Contractor’s expense.

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

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to City as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Contract documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to City in advance for acceptance by City by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with such requirement, City’s acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued, or Written Amendment signed. No acceptance by City of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of City or Designer to reject defective Work.

C. Contractor shall be fully responsible to City and Designer 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. Nothing in the Contract shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City or Designer and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of City or Designer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Designer through Contractor.

F. 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.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or

Supplier to the applicable terms and conditions of the Contract Documents for the benefit of City and Designer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against City, Contractor, Designer, Designer's Consultants, and all other individuals or entities identified in the Supplemental Conditions to be listed as insureds or additional insureds (and the public officials, officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, as the case may be) 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 such policies and *any* other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *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 City or Designer, 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 City in the Contract Documents. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, Designer, Designer's Consultants, and the public officials, officers, directors, partners, employees or agents, and other consultants 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.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplemental Conditions, Contractor shall obtain and pay for all construction permits and licenses. City 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections to the Work, and City shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

#### 6.09 *Laws and Regulations*

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

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

#### 6.10 *Taxes*

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

#### 6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, Designer, Designer's Consultant, and the public officials, officers, directors, partners, employees, agents, and other consultants of each and any of them, as the case may be 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 claim or action, legal or equitable, brought by any such owner or occupant against City, Designer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work or 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.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other 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 make it ready for utilization by City. At the completion of the Work Contractor shall remove from the Site 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 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 property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Designer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Designer for City.

#### 6.13 *Safety and Protection*

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

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, 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.

C. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.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 (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City or Designer or Designer's 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). Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Designer has issued a notice to City and Contractor in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

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

#### 6.15 *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.

#### 6.16 *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 Designer 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 Designer 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.

#### 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings to Designer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as Designer may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Designer the services, materials, and equipment Contractor proposes to provide and to enable Designer to review the information for the limited purposes required by paragraph 6.7.E.

B. Contractor shall also submit Samples to Designer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Designer may require to enable Designer to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to Designer as required by paragraph 2.07, any related Work performed prior to Designer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. At the time of each submittal, Contractor shall give Designer specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to Designer for review and approval of each such variation.

E. *Designer's Review*

1. Designer will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Designer. Designer'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. Designer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Designer's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Designer's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and Designer has given written approval of each such variation by specific written notation thereof incorporated in

or accompanying the Shop Drawing or Sample approval; nor will any approval by Designer relieve Contractor from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. Contractor shall make corrections required by Designer 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 Designer on previous submittals.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as City and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to City, Designer, and Designer's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. The Uniform Commercial Code warranties of merchantability and fitness for the particular purpose shall also apply and be made a part hereof. All work and materials under the Contract shall be guaranteed by Contractor against mechanical and physical defects, breakage, and other damages and failure, under normal operation, for the period prescribed by §95.11(3)(c), Fla. Stat. (2018) (as amended).

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, Sub-contractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

B. 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:

1. observations by Designer;

2. recommendation by Designer or payment by City of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Designer or any payment related thereto by City;

4. use or occupancy of the Work or any part thereof by City;

5. any acceptance by City or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Designer;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by City.

6.20 *Indemnification*



A. Contractor will indemnify and hold harmless City, its officers and employees, from liability, damages, losses and costs, including but not limited to reasonable attorneys' fees, resulting from any and all claims, actions or suits to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Contractor and other persons or firms employed or utilized by the Contractor in the performance of services under the Agreement in an amount of One Million Dollars (\$1,000,000) per occurrence as provided for by Sections 725.06 and 725.08 Florida Statutes, as amended. The parties agree that the indemnification amount bears a reasonable commercial relationship to the Agreement because it represents the minimum indemnification amount provided in Section 725.06, Florida Statutes, as amended. The specific considerations given for the promises of Contractor set forth in this paragraph are the employment of Contractor pursuant to the Agreement, other good and valuable considerations, and Ten Dollars (\$10.00) in hand paid by the City to Contractor, receipt whereof is hereby acknowledged and the adequacy of which the Contractor accepts as completely fulfilling the obligations of the City. Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes, as amended. Notwithstanding the provisions of this section, nothing contained herein shall be construed as a waiver of any immunity from, or limitation of liability the City has under the Doctrine of Sovereign Immunity in general or under Section 768.28, Florida Statutes, as amended.

In no event will the City, its officers, and employees, be liable to pay a claim or judgment which exceeds the sum of Two Hundred Thousand Dollars (\$200,000), or any claim or judgment, or portion thereof, which when totaled with all other claims or judgments paid and that arose out of the same incidence or occurrence, exceeds the sum of Three Hundred Thousand Dollars (\$300,000). The parties intend for these dollar amounts to be a contractual limitation on the City's liability.

## ARTICLE 7 - OTHER WORK

### 7.01 *Related Work at Site*

A. City may perform other work related to the Project at the Site by City's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract and each utility owner (and City, if City is performing the other work with City's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, 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 their work and will only cut or alter their work with the written consent of Designer and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between City and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Designer 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.

### 7.02 *Coordination*

A. If City intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplemental Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplemental Conditions, City shall have sole authority and responsibility for such coordination.

## ARTICLE 8 - CITY'S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, City shall issue all communications to Contractor through Designer.

### 8.02 *Replacement of Designer*

A. In case of termination of the employment of Designer, City shall appoint a designer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Designer.

### 8.03 *Furnish Data*

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

### 8.04 *Pay Promptly When Due*

A. City shall make payments to Contractor promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

### 8.05 *Lands and Easements; Reports and Tests*

A. City's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to City's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Designer in preparing the Contract Documents.

### 8.06 *Insurance*

A. City's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

### 8.07 *Change Orders*

A. City is obligated to execute Change Orders as indicated in paragraph 10.03.

### 8.08 *Inspections, Tests, and Approvals*

A. City's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

### 8.09 *Limitations on City's Responsibilities*

A. The City 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, nor for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 *Undisclosed Hazardous Environmental Condition*

A. City's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

### ARTICLE 9 - DESIGNER'S STATUS DURING CONSTRUCTION

#### 9.01 *City's Representative*

A. Designer will be City's representative during the construction period. The duties and responsibilities and the limitations of authority of Designer as City's representative during construction are set forth in the Contract Documents and will not be changed without written consent of City and Designer.

#### 9.02 *Visits to Site*

A. Designer will make visits to the Site at intervals appropriate to the various stages of construction as necessary in order to observe 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, Designer, for the benefit of City, will determine, if the Work is proceeding in accordance with the Contract Documents. Except as otherwise provided, Designer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.

#### 9.03 *Project Representative*

A. If City and Designer agree, Designer will furnish a Resident Project Representative to assist Designer in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplemental Conditions. If City designates another representative or agent to represent City at the Site who is not Designer's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplemental Conditions.

#### 9.04 *Clarifications and Interpretations*

A. Designer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Designer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on City and Contractor. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.05 *Authorized Variations in Work*

A. Designer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on City and also on Contractor, who shall perform the Work involved promptly. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. Designer will have authority to disapprove or reject Work which Designer believes to be defective, or that Designer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Designer will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with Designer's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with Designer's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with Designer's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. Designer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Designer will review its preliminary determinations on such matters with Contractor before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Designer's written decision thereon will be final and binding (except as modified by Designer to reflect changed factual conditions or more accurate data) upon City and Contractor, subject to the provisions of paragraph 10.05.

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

A. Designer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Designer in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, Designer will not show partiality to City or Contractor and will not be liable on the basis an alleged impartiality in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Designer pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by City or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on Designer's Authority and Responsibilities*

A. Neither Designer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Designer 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 Designer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Designer to Contractor, any Subcontractor, any Supplier, or to any surety for or employee or agent of any of them.

B. Except as otherwise provided, Designer 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.

C. Designer will not be responsible for either Contractor's failures, in and of themselves, to perform the Work in accordance with the Contract Documents or 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. Designer'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 14.07.A will only be to determine that they comply 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 9.10 shall also apply to Designer's Consultants, Resident Project Representative, and assistants, except as otherwise provided.

## ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

### 10.01 *Authorized Changes in the Work*

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

B. If City and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

C. The Contractor may propose a Change Order to the Designer to change the Contract Price or Contract Times or both. If the Contractor's proposed Change Order is rejected by the Designer, the Contractor may resubmit the proposed Change Order after making any changes recommended by the Designer. Any subsequent resubmittal(s) shall be at Contractor's expense to reimburse the City for any charges by the Designer to review such resubmittal(s).

### 10.02 *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 as provided in paragraph 3.04, except in the case of uncovering Work as provided in paragraph 13.04.B. The Contractor shall make no claim for extra work unless the City in writing and in advance of the work has approved as provided herein, except in the case of an emergency as provided in paragraph 6.16.

### 10.03 *Execution of Change Orders*

A. City and Contractor shall execute appropriate Change Orders recommended by Designer (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by City pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or City's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. 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; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Designer pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents

and applicable Laws and Regulations, but during *any* such appeal, Contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

#### 10.04 *Notification to Surety*

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

#### 10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Designer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Designer and the other party to the Contract within 60 days after the start of such event (unless Designer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. The entire adjustment to which the claimant believes it is entitled as a result of said event shall be presented with the claim and the claim should so state. The opposing party shall submit any response to Designer and the claimant within 30 days after receipt of the claimant's last submittal (unless Designer allows additional time).

B. *Designer's Decision:* Designer will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Designer's written decision on such Claim, dispute, or other matter will be final and binding upon City and Contractor unless:

1. an appeal from Designer's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Designer's written decision is delivered by City or Contractor to the other and to Designer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by City and Contractor), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If Designer does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been made and issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

### ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

#### 11.01 *Cost of the Work*

A. *Costs Included:* *Cost of the Work* means the sum of all costs necessarily and actually incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by City, such

costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

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 City and Contractor. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. 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, 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 City.

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 City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City and Contractor and shall deliver such bids to City, which will then determine, with the advice of Designer, 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 11.01.

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

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 directly related to 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 City with the advice of Designer, 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, 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 5.06.D), 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 City. 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 telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded: Cost of the Work* shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, directors, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which 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 paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work 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 or when a Claim for an 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 12.01.C.

D. *Documentation:* Contractor will: (i) establish and maintain supporting documentation of the Cost of Work identified in paragraphs 11.01.A.1 and 11.01.A.5(i)-(j) in accordance with generally accepted accounting practices, and (ii) submit said supporting documentation to the City in a form acceptable to the City prior to the issuance of the Notice to Proceed. Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Designer an itemized cost breakdown together with supporting data.

11.02 *Cash 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 as may be acceptable to City and Designer. Contractor agrees that:

1. the 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 costs, overhead, profit, and other expenses contemplated for the 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.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by Designer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 *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. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Designer subject to the provisions of paragraph 9.08.

B. 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. Any pay items for which a specific item is not included shall be included in the price of the pay item to which it pertains or is associated. Any items not shown or omitted that are required for a complete installation shall be furnished and installed by the Contractor at no additional cost to the City. The prices shall include all labor, materials, tools, equipment required to complete the work.

C. City or Contractor may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 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 any other item of Work; and

3. if Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or City believes that City is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

### ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

#### 12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Designer and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2) or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2; on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *Contractor's Fee:* 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the Contractor's fee shall be 5 percent;

c. where one or more tiers of subcontracts are the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.A is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1. and 11.01.A.2 and that any higher tier Subcontractor and the Contractor will each be paid a fee of 5 percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5., and 11.01.B;

e. the amount of credit to be allowed by Contractor to City 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 12.01.C.2.a. - e., inclusive.

## 12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the Designer and the other party to the Contract in accordance with the provisions of paragraph 10.05; provided that, authorization of an extension or adjustment of time shall not constitute a waiver of liquidated damages.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

## 12.03 *Delays Beyond Contractor's Control*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by City, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

#### 12.04 *Delays Within Contractor's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

#### 12.05 *Delays Beyond City's and Contractor's Control*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both City and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay. Contractor shall not be entitled to additional compensation by reason of such delay.

#### 12.06 *Delay Damages*

A. In no event shall City or Designer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of Contractor; or
2. delays beyond the control of both City and Contractor including, but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of City or anyone for whom City is responsible.

C. Contractor shall be liable to the City for damages, costs, expenses, and/or advances the City sustains or incurs arising out of or resulting from delays caused by or within the control of Contractor. In the event the City's damages, costs, expenses, and/or advances are not readily ascertainable, Contractor shall be liable to the City for liquidated damages as set forth in Section G.2 of the Supplemental Conditions, which is a reasonable estimate of the City's damages that would reasonably be expected to arise out of or result from delays caused by or within the control of Contractor. *See Hyman v. Cohen*, 73 So. 2d 393 (Fla. 1954).

### ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

#### 13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which City or Designer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

#### 13.02 *Access to Work*

A. City, Designer, Designer's Consultants, other representatives and personnel of City, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe

conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

### 13.03 *Tests and Inspections*

A. Contractor shall give Designer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C. and 13.03.D. below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B.; and
3. as otherwise specifically provided in the Contract Documents.

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 Designer with the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City's and Designer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to City and Designer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Designer, it must, if requested by Designer, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E. shall be at Contractor's expense unless Contractor has given Designer timely notice of Contractor's intention to cover the same and Designer has not acted with reasonable promptness in response to such notice.

### 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Designer, it must, if requested by Designer, be uncovered for Designer's observation and replaced at Contractor's expense.

B. If Designer considers it necessary or advisable that covered Work be observed by Designer or inspected or tested by others, Contractor, at Designer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Designer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor shall 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 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 City shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, City may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), 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, a Claim may be made therefore as provided in paragraph 10.05.

### 13.05 *City 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, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City 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.

### 13.06 *Correction or Removal of Defective Work*

A. Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Designer, remove it from the Project and replace it with Work that is not defective. 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 removal (including but not limited to all costs of repair or replacement of work of others).

### 13.07 *Correction Period*

A. If after the date of Substantial Completion, but within the period of time prescribed by any specific provision of the Supplemental Conditions, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by City or permitted by Laws and Regulations as contemplated in paragraph 6.11.A. is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions: (i) repair such defective land or areas, (ii) correct such defective Work or, if the defective Work has been rejected by City, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and 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) will be paid by Contractor.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, 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.

D. Contractor's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, City (and, prior to Designer's recommendation of final payment, Designer) prefers to accept it, City may do so. 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) attributable to City's evaluation of and determination to accept such defective Work (such costs to be approved by Designer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Designer's recommendation of final payment, a Change Order will

be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, City may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to City.

#### 13.09 *City May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Designer to correct defective Work or to remove and replace rejected Work as required by Designer in accordance with paragraph 13.06.A, 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, City may, after seven days written notice to Contractor, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, City shall proceed expeditiously. In connection with such corrective and remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, City's other contractors, and Designer and Designer's Consultants access to the Site to enable City to exercise the rights and remedies under this paragraph.

C. 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) incurred or sustained by City in exercising the rights and remedies under this paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, City may make a Claim therefor as provided in paragraph 10.05. 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 (or Milestones) because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this paragraph 13.09.

### ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

#### 14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Designer. Progress payments on account of Unit Price Work will be based on the number of units completed.

#### 14.02 *Progress Payments*

##### A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more than once a month), Contractor shall submit to Designer 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. Such application shall be notarized. 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 City 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 or other arrangements to protect City's interest therein, all of which must be satisfactory to City.

2. 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.

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

#### B. Review of Applications

1. Designer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to City or return the Application to Contractor indicating in writing Designer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

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

a. the Work has progressed to the point indicated;

b. the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to 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.

3. Designer's recommendation of payment shall not be deemed to be a representation that (i) 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, beyond the responsibilities of the Designer, as set forth in the Contract Documents, or (ii) that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor.

4. Except as otherwise provided, Designer's review of Contractor's Work for the purposes of recommending payments, including final payment, and the making of such recommendation shall not of themselves: make Designer responsible to supervise, direct, or control the work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto; for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work; to ascertain how or for what purposes Contractor has used the monies paid on account of the Contract price; or to determine that title to any of the work, materials or equipment has passed to City, free and clear of any liens. materials, or equipment has passed to City free and clear of any Liens.

5. Designer may refuse to recommend the whole or any part of any payment if, in Designer's opinion, it would be incorrect to make the representations to City referred to in paragraph 14.02.B.2. Until defective work is satisfactorily corrected, Designer will assign a value to such work and retain that amount from any payments that may be due Contractor. Designer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Designer's opinion to protect City from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. City has been required to correct defective Work or complete Work in accordance with paragraph 13.09;
- d. Designer has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.
- e. third party claims have been filed or reasonable evidence indicates the probable filing of such claims, unless security acceptable to City is provided by the Contractor.
- f. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- g. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract sum;
- h. damage to the City or another Contractor;
- i. reasonable evidence that the Work will not be completed within the Contract time and that the unpaid balance would not be adequate to cover actual liquidated damages for the anticipated delay; or
- j. persistent failure to carry out the Work in accordance with the Contract documents.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to City with Designer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by City to Contractor.

D. *Reduction in Payment*

1. City may refuse to make payment of the full amount recommended by Designer because:

- a. claims have been made against City on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to City to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling City to a set-off against the amount recommended; or
- d. City has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.j or paragraph 15.02.A.

2. If City refuses to make payment of the full amount recommended by Designer, City must give Contractor immediate written notice (with a copy to Designer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, when Contractor corrects to City's satisfaction the reasons for such action.

3. If it is subsequently determined that City's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.



#### 14.03 *Contractor's Warranty of Title*

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

#### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use, Contractor shall notify City and Designer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Designer issue a certificate of Substantial Completion. Promptly thereafter, City, Contractor, and Designer shall make an inspection of the Work to determine the status of completion. If Designer does not consider the Work substantially complete, Designer will notify Contractor in writing giving the reasons therefor. If Designer considers the Work substantially complete, Designer will prepare and deliver to City a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. City shall have seven days after receipt of the tentative certificate during which to make written objection to Designer as to any provisions of the certificate or attached list. If, after considering such objections, Designer concludes that the Work is not substantially complete, Designer will within 14 days after submission of the tentative certificate to City notify Contractor in writing, stating the reasons therefor. If, after consideration of City's objections, Designer considers the Work substantially complete, Designer will within said 14 days execute and deliver to City and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Designer believes justified after consideration of any objections from City. At the time of delivery of the tentative certificate of Substantial Completion Designer will deliver to City and Contractor a written recommendation as to division of responsibilities pending final payment between City and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless City and Contractor agree otherwise in writing and so inform Designer in writing prior to Designer's issuing the definitive certificate of Substantial Completion, Designer's aforesaid recommendation will be binding on City and Contractor until final payment.

B. City shall have the right to exclude Contractor from the Site after the date of Substantial Completion, but City shall allow Contractor reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Use by City at City's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City, Designer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. City at any time may request Contractor in writing to permit City to use any such part of the Work which City believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to City and Designer that such part of the Work is substantially complete and request Designer to issue a certificate of Substantial Completion for that part of the Work. Contractor at any time may notify City and Designer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Designer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, City, Contractor, and Designer shall make an inspection of that part of the Work to determine its status of completion. If Designer does not consider that part of the Work to be substantially complete, Designer will notify City and Contractor in writing giving the reasons therefor. If Designer considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 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.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Designer will promptly review final tests and make a final inspection with City. If this reveals defective work, Contractor will notify Contractor in writing of all particulars in which the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such work or remedy such deficiencies, after which Designer shall conduct additional tests and inspections.

#### 14.07 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Designer, 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, marked-up record documents (as provided in paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by City, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City or City's property might in any way be responsible 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 City to indemnify City against any Lien.

##### B. *Review of Application and Acceptance*

1. If, on the basis of Designer's observation of the Work during construction and final inspection, and Designer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Designer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Designer will, within ten days after receipt of the final Application for Payment, indicate in writing Designer's recommendation of payment and present the Application for Payment to City for payment. At the same time Designer will also give written notice to City and Contractor that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, Designer 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. *Payment Becomes Due*

1. Thirty days after the presentation to City of the Application for Payment and accompanying documentation, the amount recommended by Designer will become due and, when due, will be paid by City to Contractor.

#### 14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Designer so confirms, City shall, upon receipt of Contractor's final Application for Payment and recommendation of Designer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully

completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Designer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by City against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against City other than those previously made in writing which are still unsettled.

### ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

#### 15.01 *City May Suspend Work*

A. At any time and without cause, City may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Designer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in paragraph 10.05.

#### 15.02 *City May Terminate for Cause*

A. The occurrence of any one or more of the following events will 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 established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Designer;

4. Contractor's substantial violation of any provisions of the Contract Documents;

5. Contractor's failure to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and its Subcontractors.

B. If one or more of the events identified in paragraph 15.02.A occur, City may, after giving Contractor (and the surety, if any) seven days written notice, terminate the services of Contractor, exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere, and finish the Work as City may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds 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)

sustained by City arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be reviewed by Designer as to their reasonableness and, when so approved by Designer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, City shall not be required to obtain the lowest price for the Work performed.

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

#### 15.03 *City May Terminate for Convenience*

A. Upon seven days written notice to Contractor and Designer, City may, without cause and without prejudice to any other right or remedy of City, elect to terminate the Contract. In such case, Contractor shall be paid (without duplication of any items):

1. for 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. for 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;

3. for 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

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

#### 15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by City or under an order of court or other public authority, or Designer fails to act on any Application for Payment within 30 days after it is submitted, or City fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 14 days written notice to City and Designer, and provided City or Designer do not remedy such suspension or failure within that time, terminate the Contract and recover from City payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Designer has failed to act on an Application for Payment within 30 days after it is submitted, or City has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 14 days after written notice to City and Designer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude Contractor from making a Claim under paragraph 10.05 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.

#### 15.05 *Contingent Assignment of Subcontracts*

A. Each Subcontractor agreement for a portion of the Work is assigned by the Contractor to the City provided that:

1. Assignment shall be effective only after the termination of the Contract by the City for cause pursuant to paragraph 15.02, and only for those Subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and

2. Assignment shall be subject to the prior rights of the surety, if any, obligated under bond, relating to the Contract. Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractors' compensation shall be equitably adjusted for increases in cost resulting from the suspension.

## ARTICLE 16 - DISPUTE RESOLUTION

### 16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplemental Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, City and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

### 16.02 *Claims for Consequential Damages*

A. The Contractor and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. Damages incurred by the City for rental expenses, for losses of use and for loss of management or employee productivity or of services of such persons; and

2. Damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there for losses of financing, business, and reputation and for loss of profit, except anticipated profit arising directly from the work.

B. The above Mutual Waiver is applicable without limitation to all consequential damage due to either party's termination in accordance with Article 15. Nothing contained in this subparagraph 16.02, shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with requirements of the Contract documents.

## ARTICLE 17 - MISCELLANEOUS

17.01 *Notices.* All notices, consents, requests, instructions, approvals, and other communications provided for herein and all legal process in regard hereto shall be validly given, made or served, if (1) in writing, (2) electronically mailed, and (3) delivered personally, sent by registered or certified mail (return receipt requested), postage prepaid, or legibly transmitted by facsimile and promptly confirmed by mail, to the addresses set forth in the Agreement, as the case may be. Notice duly made hereunder shall be effective the day of its having been delivered personally or faxed and 2 days after its having been mailed. Addresses may be changed by giving notice of a new address in the foregoing manner.

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

17.03 *Cumulative Remedies.* 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 Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations.* All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. It is the intention of the parties that disputes under this Agreement shall be resolved as provided in the Supplemental Conditions. Notwithstanding this, if judicial proceedings are necessary to enforce or interpret the provision hereof, venue for any such judicial proceedings between the parties shall be set in the State Courts of Florida, with the trial venue to be set in the Courts of Indian River County or the Federal courts having jurisdiction over Florida. Each party hereby consents to the exclusive jurisdiction of such courts, waives any objection to venue in such courts, and agrees that the doctrine of forum non conveniens shall not be asserted in any proceeding brought in such courts or in arbitration tribunals for the interpretation and enforcement of this Agreement and for the entry of any arbitration award contemplated by the applicable dispute resolution procedure.

17.06 *Familiarity with Laws.* The Contractor is assumed to be familiar with and shall comply with all Federal, State and Local laws, ordinances, rules, codes, and regulations that may affect the work. Ignorance on the part of the Contractor will in no way relieve it from the responsibility of compliance therewith. All work and materials shall comply with those laws.

17.07 *Liens.* This project is a "Public Work" under Chapter 255, Florida Statutes. No merchant's liens may be filed against the City. Any claimant may apply to the City for a copy of this Contract. The claimant shall have a right of action against the Contractor for the amount due. Such action shall not involve any expense to the City. Claims against the Contractor are subject to timely prior notice to the Contractor as specified in Florida Statutes Section 255.05. The Contractor shall insert the following paragraph in all subcontracts hereunder "Notice: Claims for labor, materials and supplies are not assessable against City of Fellsmere and are subject to proper prior notice to (Contractor's Name) and to (Contractor Surety Company Name), pursuant to Chapter 255 of the Florida Statutes. This paragraph shall be inserted in every sub-subcontract hereunder." Payment due under the Contract shall be paid by the City to the Contractor only after the Contractor has furnished the City with an affidavit stating that all persons, firms or corporations who are defined in Section 713.01, Florida Statutes, who have furnished labor or materials, employed directly or indirectly in the work, have been paid in full. The City may rely on said affidavit at face value. The Contractor hereby releases, any and all rights it may enjoy to perfect any lien or any other type of statutory common law or equitable lien against the job.

17.08 *Protection of Public.*

A. The Contractor shall erect and maintain barricades and sufficient safeguards around all excavation, embankments or obstructions and shall place sufficient amber lights at or near the work, keep the same burning from sunset to sunrise, employ watchmen and strictly obey all laws and ordinances controlling or limiting those engaged on similar work.

B. Where there are telephone, telegraph, light, or power poles, water mains, conduits, pipe, or drains or other construction either public or private in or on the streets or alleys, the Work shall be so conducted that no interruption or delay will be caused in the operation or use of the same.

C. Proper written notice shall be given to the City regarding all the facilities of such construction encountered or likely to be encountered by the City crews, as will enable the City to preserve such crews from injury.

D. The Contractor shall not interfere with public travel and convenience by grading or tearing up streets indiscriminately. The work of conducting the various items of this Contract shall proceed in an orderly, systematic and progressive manner.

17.09 *Incorporation of preambles and exhibits.* The preambles appearing at the beginning of the Agreement and all Exhibits hereto are incorporated herein by reference.

17.10 *Entire agreement.* The Agreement is the entire agreement of the parties and contains all of the terms and conditions agreed upon between the parties. The Agreement supersedes all prior agreements, representations, communications, and understandings, both written and oral, between the parties with respect to the subject matter hereof; they shall have no further force and effect.

17.11 *Amendment.* The Agreement may be modified or amended at any time but only by an instrument in writing duly executed and delivered on behalf of each of the parties hereto.

17.12 *Assignment; delegation.* This Agreement may not be assigned nor may the duties hereunder be delegated by either party without the written consent of the other, except as otherwise provided.

17.13 *Severability.* If any provision hereof shall by court of competent jurisdiction be held to be or shall, in fact, be inoperative or unenforceable as applied in any particular case because of conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such provision shall be excised from the Agreement and the balance of the Agreement shall be given full force and effect, and no other provision or provisions herein contained shall be invalid, inoperative, or unenforceable to any extent whatever, provided that the Agreement, absent the excised portion, remains within the intent of the parties.

17.14 *Rules of Construction.* The following general rules of construction shall govern this Agreement:

A. *Gender, etc.* As used herein, the singular includes the plural, the plural includes the singular, and the use of any gender shall be deemed to include the opposite and neutral gender as the case may be.

B. *Captions.* All section, schedule and exhibit headings are inserted herein for the convenience of the parties and shall not be used in any way to modify, limit, construe, or otherwise affect the interpretation of this Agreement.

C. *Construction.* The parties shall be deemed to have participated equally in preparation of this Agreement. Neither this Agreement nor any provision herein shall be construed more strictly for or against either party by reason of that party's responsibility for drafting.

D. *Reference to Agreement.* The words *hereof*, *herein*, or *hereunder* and other compounds of *here* shall mean and refer to the entire Agreement and not to any particular section, article, provision, exhibit, or paragraph unless so required by context.

17.15 *Attorneys' Fees.* In the event of any arbitration or litigation regarding the breach or interpretation of this Agreement or otherwise to enforce its provisions, the prevailing party in such proceedings shall be entitled to recover, in addition to any relief the court or arbitrator may allow, reasonable attorney's fees and costs incurred in connection with such proceeding, including those incurred in connection with any related appellate or bankruptcy proceeding.

17.16 *Parties in interest.* This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

17.17 *Relationship of parties.* Except as specifically and expressly provided, nothing in this Agreement shall be construed to make any party the partner, joint venturer, agent, trustee, or legal representative of any other party for any purpose. The parties specifically agree that as to each other the parties are independent contractors.

17.18 *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

17.19 *Rights of third parties.* Except as may otherwise be specifically provided herein, nothing which is expressed or implied in the Agreement is intended, or shall be construed, to confer upon or give any person, firm, or corporation, other than the parties, any rights or remedies under or by reason of the Agreement.

17.20 *Waiver.* Each of the parties may, by written notice to the other, (i) extend the time for the performance of any of the obligations or other actions of the other party; (ii) waive any inaccuracies in the representations or warranties of the other party contained in this Agreement or in any document delivered pursuant to this Agreement; (iii) waive compliance with any of the covenants of the other party contained in this Agreement; or (iv) waive, in whole or in part, performance of any of the obligations of the other party. The waiver by any party of a breach of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent or similar breach.

17.21 *Time of the essence.* Time is of the essence in the Agreement.



**SUPPLEMENTAL CONDITIONS TO GENERAL CONDITIONS**

PROJECT: DESIGN AND CONSTRUCTION OF ALLEYWAY GRADING

A. Introduction. These Supplemental Conditions amend or supplement the General Conditions (GC) of the Agreement and other provisions of the Contract Documents as indicated below. All GC provisions not so amended or supplemented shall remain in full force and effect.

B. Bidder's Qualifications. (These paragraphs supplement paragraph 9.0 of the Instructions to Bidders.)

1. As set forth in the Instructions to Bidders, the apparent low Bidder, and any other Bidders who are requested to do so by the City, shall submit within five days of written request:

- [check the box] ( ) an audited financial statement ( ) a financial statement
- a list of major pieces of construction equipment owned by the Bidder
- documentation that the Bidder has qualifications as follows:
  - a) At least five years' experience in the construction of similar projects of this size and larger.
  - b) Bidder must have successfully constructed, as prime Contractor, at least three projects similar in scope to this project.
  - c) Good recommendations from at least three clients similar to City.
  - d) Bidder's superintendent and assistants in all categories must be qualified and experienced in similar projects.
  - e) Evidence of authority to conduct business in City.

C. Definition of Terms: The following terms shall have these meanings:

1. *City* shall mean the City of Fellsmere, 22 South Orange Street, Fellsmere, FL 32948.
2. *Designer* shall mean [REDACTED].
3. *Bidder* shall mean any person, firm, or corporation submitting a Bid Proposal for the project.

D. Permits. As set forth in GC paragraph 6.08, the City has obtained the following permits:

[REDACTED]

The Contractor shall obtain all other required permits and licenses. The City shall pay for all required permits.

E. Tests and Inspections. Under GC paragraph 13.03 notice is hereby given that the City has retained an independent materials testing laboratory to accomplish certain preliminary tests. The tests which will be provided by the City are:

[REDACTED]

The minimum required tests shall be as follows:

[REDACTED]

If a first test is failed, subsequent tests required to verify compliance with Contract Documents, shall be paid for by the Contractor.

F. Overtime Work

1. Work shall be performed during regular working hours. *Regular working hours* are Monday through Friday, excluding City Holidays, from 7 AM to 5 PM. No work shall commence before 7 AM or continue after 7 PM except in an emergency with the specific permission of the Designer.
2. City Holidays are: New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve and Christmas Day. Working on these days will not be permitted without prior written approval of the Designer.
3. The Contractor shall receive no additional compensation for overtime work, i.e., work in excess of eight hours in any one calendar day or 40 hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the Designer in writing.
4. All costs of inspection and testing performed during overtime work by the Contractor, which is allowed solely for the convenience of the Contractor, shall be borne by the Contractor, and a credit given to the City to deduct the costs of all such inspection and testing from any partial payments otherwise due to the Contractor.

G. Liquidated Damages

1. Contractor acknowledges that the Agreement requires the Work to commence within [REDACTED] days after the date specified in the Notice to Proceed. Contract time allowed for the completion for all of the Work is set forth in Article 3.0 of the Agreement. For purposes of this liquidated damages provision, time shall be counted from the date Contractor begins construction, but not later than the [REDACTED] days allowed in the Notice to Proceed. Contractor and City recognize (a) that time is of the essence in the Agreement; (b) that City will suffer damages, including, but not limited to, financial loss, additional administrative time, loss of use, and inconvenience to the public as well as the complications and costs involved in potential legal proceedings, if the Work is not completed within the time specified in the Agreement and (c) that such damages may be difficult to fix and quantify.

2. To reduce uncertainty in their relations and in consideration of their other agreements hereunder, Contractor and City have mutually bargained for and agreed that as a reasonable sum for liquidated damages **for delay only** Contractor shall pay to City the sum of Three Hundred Fifty dollars (\$350.00) for each calendar day overrun beyond the allowable contract time, plus any authorized extensions, that the Work remains not completed and not ready for final payment as required under the GC. Liquidated damages payable hereunder by Contractor shall not exceed the total amount of the contract. Contractor's requests for time extension shall be submitted monthly to Designer with the monthly application for payment. If requests are not submitted for a given monthly period, it will be accepted that no request was or is needed and that no time extension shall be allowed for such month. At the expiration of the time allowed for completion of the Work hereunder, plus any authorized contract time extensions, liquidated damages shall be deducted from payments due and owing to the Contractor.
3. It is expressly agreed and understood between Contractor and City that this liquidated damages provision is not a penalty. In any proceedings (e.g., mediation, arbitration, or litigation) the parties expressly agree that neither they nor their successors, assigns or sureties may assert that this liquidated damages provision is a penalty. Contractor and its surety(ies) agree without recourse to accept this method of determining liquidated damages and reimbursement to the City for delay. This liquidated damages provision is not intended to preclude, foreclose, or in any way prevent City from seeking remedies, relief or recovery other than damages attributable specifically to delay of the Work in any action or proceedings against Contractor or its sureties.

H. Performance and Payment Bonds (Surety). Within ten (10) days of receipt of the Contract Documents for execution, the successful bidder shall furnish a Performance Bond in an amount equal to 125% of the contract price and a Payment Bond in an amount equal to 100% of the contract price. The Contractor shall provide two separate bonds, a combined Payment and Performance Bond for 125% of the contract price is not an acceptable substitute. The Contractor shall at all times have valid Performance and Payment Bonds in force covering the Work. Failure to do so shall constitute a default on the part of the Contractor. If the surety writing the Performance or Payment Bonds becomes disqualified, this shall automatically constitute a default on the part of the Contractor. In lieu of the Performance and Payment Bonds and subject to approval of City, Contractor may furnish alternative security in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit or a security as listed in Part II of Chapter 625, Florida Statutes. Alternative security shall be for the same purpose, for the same amount and subject to the same conditions as those applicable to the bond. The City shall in its sole discretion determine the acceptability and value of an alternative form of security. Such Bonds shall continue in effect for one (1) year after completion and acceptance of the work.

I. Contractors and Subcontractors Insurance. The limit of liability for the insurance required by GC Paragraph 5.04 shall provide coverage for not less than the following amounts or greater where required by laws and regulations:

1. Worker's Compensation, etc. under Paragraphs 5.04.A.1. and 2. of the General

Conditions:

- |  |           |
|--|-----------|
| a) State:                                    | Statutory |
| b) Applicable Federal (e.g. Longshoremen's): | Statutory |
| c) Employer's Liability:                     | \$500,000 |

2. Commercial General Liability (under GC Paragraphs 5.04.A.3.-6.), including Contractual Liability specifically confirming the indemnification of City (with Designer listed as additional insured as required in Paragraph 6.11 and indicating that no act or default shall affect the City's right to recover under such policies in case of loss, Products and Completed Operations Liability, Explosion, Collapse and Underground Property Damage Coverage, and Personal Injury) against all claims and liability for bodily injury, death or property damage arising out of the performance of work under this Agreement.

3. Comprehensive General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):

a) Bodily Injury:

\$1,000,000	each occurrence
\$1,000,000	annual aggregate

b) Property Damage:

\$ 500,000	each occurrence
\$ 500,000	annual aggregate

c) Products and Completed Operations shall be maintained for one (1) year after final payment.

d) Property Damage Liability Insurance will provide C or U coverage as applicable.

4. Contractual Liability

a) Bodily Injury:

\$1,000,000	each occurrence
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b) Property Damage:

\$ 500,000	each occurrence
\$ 500,000	annual aggregate

5. Personal Injury, with Employment Exclusion deleted:

\$1,000,000	annual aggregate
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6. Comprehensive Automobile Liability

a) Bodily Injury:

\$1,000,000	each person
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\$1,000,000

each occurrence

J. Dispute Resolution. Any Claim arising out of or related to the Agreement, except Claims waived as provided for in GC paragraphs 5.07, 16.02.A. and 14.09, shall, after decision by the Designer, or, if Designer has failed to render a timely decision on the Claim, within the term set forth in paragraph 10.05.C., be subject to mediation as a condition precedent to arbitration or legal or equitable proceedings.

1. Demand.

- a) When a written decision of Designer which is subject to dispute resolution under GC paragraphs 10.05 and 16.01 is final, a written demand for mediation and arbitration of a Claim covered by such decision shall be made as provided herein within 30 days after the demanding party receives notice of such written decision. If no decision has been rendered upon a Claim, a written demand for mediation and arbitration of such Claim shall be made as provided herein within 30 days after the Claim is deemed to be denied in its entirety as set forth in GC paragraph 10.05.C.
- b) If demand is not timely made, Designer's decision or the deemed decision under GC paragraph 10.05.C. shall be final and binding upon City and Contractor.
- c) If Designer renders a decision after dispute resolution proceedings have been demanded or initiated, such decision may be entered as evidence, but it shall not supersede mediation or arbitration proceedings, except by agreement of the parties.

2. Mediation.

- a) The parties shall first endeavor to resolve Claims by mediation conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time of the demand.
- b) A demand for mediation shall be filed in writing with the other party to the Agreement, the Designer and the American Arbitration Association.
- c) The demand may be made concurrently with an arbitration demand, but, in such event, mediation shall precede arbitration or legal or equitable proceedings, which shall be stayed for 60 days from the date of filing, unless stayed longer by agreement or court order.
- d) The parties shall share the mediator's fee and any filing fees equally. Mediation shall be held in the locale of the project, unless otherwise agreed.
- e) Agreements reached in mediation shall be enforceable as binding settlement agreements in any court with jurisdiction.

3. Arbitration.

- a) Any Claim arising out of or related to the Agreement, except Claims waived as provided for in GC paragraphs 5.07, 16.02.A. and 14.09, shall be subject to arbitration as provided in this Section J; provided that, prior to arbitration, the parties shall first endeavor to resolve disputes by mediation.

- b) Unless otherwise agreed, arbitration shall be conducted in accordance with Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of demand.
- c) The demand for arbitration shall be filed in writing with the other party to the Agreement, the American Arbitration Association and the Designer.
- d) An arbitration demand shall be made within the time specified in section J.1. hereof, and in other cases within a reasonable time after the Claim arises. In no event may a demand be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- e) A party's arbitration demand shall include and assert all Claims which that party is then known to have against the other party or be forever foreclosed from such unasserted claims.
- f) The award rendered by the arbitrator or arbitrators shall be final.
- g) Judgment may be entered upon the award in accordance with applicable law in any court with jurisdiction.

K. Indemnification. Contractor (Indemnitor) will indemnify and hold harmless City (Indemnitee), its officers and employees, from liability, damages, losses and costs, including but not limited to reasonable attorneys' fees, resulting from any and all claims, actions or suits to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Contractor and other persons or firms employed or utilized by the Contractor in the performance of services under the Agreement in an amount of \$1,000,000 per occurrence as provided for by Sections 725.06 and 725.08 Florida Statutes, as amended. The parties agree that the indemnification amount bears a reasonable commercial relationship to the Agreement because it represents the minimum indemnification amount provided in Section 725.06, Florida Statutes, as amended. The specific considerations given for the promises of Contractor set forth in this paragraph are the employment of Contractor pursuant to the Agreement, other good and valuable considerations and Ten Dollars (\$10.00) in hand paid by the City to Contractor, receipt whereof is hereby acknowledged and the adequacy of which the Contractor accepts as completely fulfilling the obligations of the City. Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes, as amended. Notwithstanding the provisions of this section, nothing contained herein shall be construed as a waiver of any immunity from, or limitation of liability the City has under the Doctrine of Sovereign Immunity in general or under Section 768.28, Florida Statutes, as amended.

In no event will the City, its officers and employees, be liable to pay a claim or judgment which exceeds the sum of Two Hundred Thousand Dollars (\$200,000), or any claim or judgment, or portion thereof, which when totaled with all other claims or judgments paid and that arose out of the same incidence or occurrence, exceeds the sum of Three Hundred Thousand Dollars (\$300,000). The parties intend for these dollar amounts to be a contractual limitation on the City's liability.

L. Indemnification Procedure. Promptly after receipt of notice of the making or commencement by any third party of any claim, action, lawsuit, or proceeding as to which indemnification may be sought (a "Third Party Claim"), Indemnitee shall notify Indemnitor. Failure to do so shall not relieve Indemnitor from any liability that it may have under this section

unless Indemnitor is prejudiced by the lack of such notice; provided that, in such case Indemnitor shall not be responsible for that portion of the liability caused by the prejudice resulting from the lack of notice.

If any such Third Party Claim is brought against Indemnitee, Indemnitor shall be entitled to participate and, to the extent it may elect by written notice delivered promptly to Indemnitee after receiving notice from Indemnitee, to assume the defense with counsel reasonably satisfactory to Indemnitee. The parties agree to cooperate fully in connection with the defense, negotiation, or settlement of any such legal proceeding, claim, or demand. Indemnitee shall have the right to employ its own counsel in any such case, but the fees and expenses of this counsel shall be at the expense of Indemnitee unless:

- (i) the employment of counsel has been authorized in writing by Indemnitor in connection with the defense of the action; or
- (ii) Indemnitor has not employed counsel to have charge of the defense of the action within a reasonable period of time after commencement of the action; or
- (iii) Indemnitee has reasonably concluded that there may be defenses available to it that are different from or additional to those available to Indemnitor, in which case the Indemnitor shall not have the right to direct defense of this action on behalf of Indemnitee. In any of these events, fees and expenses of Indemnitee's counsel shall be borne by Indemnitor.

Neither Indemnitee nor Indemnitor may settle any Third Party Claim without the consent of the other. After any final judgment or award has been rendered by a court, arbitration board, or administrative agency of competent jurisdiction and the time in which to appeal from it has expired, a settlement has been consummated, or Indemnitor and Indemnitee arrive at a mutually binding agreement with respect to each separate matter alleged to be indemnified by Indemnitor, Indemnitee shall forward to Indemnitor notice of any sums due and owing by it with respect to the matter, and Indemnitor immediately shall pay all of the sums owing, by wire transfer or certified or bank cashier's check, to Indemnitee.

M. Termination by City. The City may cancel the Agreement for refusal by Contractor to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor.

N. Public Entity Crime Statement. A person or affiliate who has been placed in the convicted vendor list following a conviction of public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for construction or repair of a public building or public work, may not submit bids, proposals, or replies 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, as amended, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

O. Notice to Contractor. The City shall consider the employment by Contractor of

unauthorized aliens a violation of section 274A(e) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of the Agreement.

P. Correction Period. For a period of [REDACTED] year(s) (if left blank, the period shall be one (1) year) after the date of Substantial Completion, if Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by City or permitted by Laws and Regulations as contemplated in paragraph 6.11.A. is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions: (i) repair such defective land or areas, (ii) correct such defective Work or, if the defective Work has been rejected by City, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.