



**City of Lauderdale Lakes**

**Commission Meeting Agenda**

**Commission Chambers**

**April 11, 2017**

**7:00 PM**

**Mayor Hazelle Rogers - Vice-Mayor Veronica Edwards Phillips  
Commissioner Sandra Davey - Commissioner Gloria Lewis - Commissioner Beverly Williams**



## City of Lauderdale Lakes Commission Meeting

### **Welcome to the City Commission Meeting**

We are pleased that you have demonstrated an interest in the City of Lauderdale Lakes by attending a Commission Meeting. We hope you enjoy the meeting and will attend more of these meetings in the future.

### **GENERAL RULES AND PROCEDURES FOR PUBLIC PARTICIPATION AT COMMISSION MEETINGS:**

Please turn off or silence cellphones. Any person requiring Auxiliary Aids and services at the meeting must contact the City Clerk's Office at 954-535-2705 at least 24 hours prior to the meeting.

If you or someone you know is hearing or speech impaired, please call Florida Relay Service at 1-800-955-8770 or 8771.

- **Who May Speak** - Any individual who wishes to address the City Commission may do so providing it is accomplished in an orderly manner and in accordance with the procedures outline in Sec. 2-54 (2) of the Code of Ordinances.
- **Petitions From the Public** - Each person desiring to petition the city commission will be allotted five-minutes under the applicable order of business for the city commission meeting. Petitions from the Public shall not exceed 30 minutes in aggregate time. The Mayor at his/her discretion may allow more time than the allotted time.
- **Speaking on items not on the Agenda** - Each person who wishes to address the commission must sign in with the City Clerk before 7:00 p.m. and will be seated in a designated area near the Podium. Names will be called in the order received. The speaker shall step up to the speaker's podium and shall give his/her name and address.
- **Speaking on an item on the Agenda** - Individuals wishing to speak on an item on the Agenda need only to raise their hand to be recognized by the Mayor.

The Commission Meeting is a business meeting, please conduct yourselves in a respectful and professional manner, both in tone of voice, as well as choice of words.

Please direct your comments to the Commission as a body through the presiding office and not to the audience or individual commissioner.

As your commission we will abide by the debate and decorum rules which provides for each commissioner to speak 10 minutes at a time on each subject matter. After every commissioner have spoken the Mayor will provide for other comments.

The above represents a summarization of the rules and procedures as adopted by Ordinance. Copies of the Code Section related to rules and procedures are available from the City Clerk's office.





# City of Lauderdale Lakes

Office of the City Clerk

4300 Northwest 36 Street - Lauderdale Lakes, Florida 33319-5599

(954) 535-2705 - Fax (954) 535-0573

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## Revised

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1. **CALL TO ORDER**
2. **ROLL CALL**
3. **INVOCATION AND PLEDGE OF ALLEGIANCE**
  - A. INVOCATION PROVIDED BY: PASTOR VALTRICTS BINNS, AMBASSADOR SEVENTH-DAY ADVENTIST CHURCH
  - B. PLEDGE OF ALLEGIANCE LED BY: CASEY BARBER, CITY RESIDENT
4. **PROCLAMATIONS/PRESENTATIONS**
5. **APPROVAL OF MINUTES FROM PREVIOUS MEETING**
  - A. APPROVAL OF MINUTES  
March 27, 2017 Commission Workshop Minutes  
March 28, 2017 Commission Meeting Minutes
6. **PETITIONS FROM THE PUBLIC**
  - A. PETITIONS FROM THE PUBLIC  
All petitioners must sign in with the City Clerk and will be seated in a designated area. Petitioners will be allowed to speak for five (5) minutes. Petitions from the Public will not exceed 30 minutes in aggregate time.
7. **CONSIDERATION OF ORDINANCES ON SECOND READING**
  - A. ORDINANCE 2017-006 CREATING DIVISION 8 OF CHAPTER 2 OF THE CODE OF THE ORDINANCES; PROVIDING FOR THE CREATION OF A MILITARY AFFAIRS BOARD  
This Ordinance would create a Military Affairs Board. This Ordinance was adopted on first reading at the March 28, 2017 Commission Meeting.
  - B. ORDINANCE 2017-007 AMENDING SECTION 2-311 OF THE CODE OF ORDINANCES, TO PROVIDE FOR THE MEMBERSHIP OF NONSTATUTORY BOARDS  
This Ordinance aligns Section 2-311 of the Code of Ordinances with the recent changes in the City's Charter. This Ordinance was approved on first reading at the March 28, 2017 Commission Meeting.
  - C. ORDINANCE 2017-008 AMENDING SUBSECTION 302.3 OF THE SECTION 302 OF CHAPTER 3 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR MEMBERSHIP ON THE PLANNING AND ZONING BOARD  
This Ordinance would amend Subsection 302.3 of Section 302 of the Land Development Regulations as it relates to the Planning and Zoning Board. This Ordinance was approved on first reading at the March 28, 2017 Commission Meeting.
8. **CONSIDERATION OF ORDINANCES ON FIRST READING**

**9. CONSIDERATION OF RESOLUTIONS ON CONSENT AGENDA**

**10. CONSIDERATION OF RESOLUTIONS ON REGULAR AGENDA**

**A. TABLED RESOLUTION 2017-036 APPOINTING FIVE MEMBERS TO THE PLANNING AND ZONING ADVISORY BOARD**

This Resolution appoints or reappoints members to the Planning and Zoning Board. This Resolution was tabled during the March 28, 2017 Commission Meeting.

**B. RESOLUTION 2017-043 REQUESTING AN AMENDMENT TO THAT CERTAIN TRAFFIC ENGINEERING AGREEMENT WITH BROWARD COUNTY, DATED AS OF THE 24TH DAY OF JUNE, 1993, REGARDING TRAFFIC MANAGEMENT**

This Resolution requests that Broward County provide for an amendment to the Traffic Engineering Agreement dated June 24, 1993. Multiple requests made by the City Commission to install a 4-way stop sign at the intersection of NW 34th Street and NW 35th Avenue have been denied by the County. Unless the traffic conditions and crashes change in the future, the only way to install the 4-way stop sign at that intersection is to exclude that intersection from the existing traffic engineering agreement with the County and allow City Staff to design and install the sign in-house.

**C. RESOLUTION 2017-044 AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT BETWEEN THE SCHOOL BOARD OF BROWARD COUNTY AND THE CITY REGARDING TRANSPORTATION SERVICES FOR A FIVE-YEAR TERM**

This Resolution authorizes the Mayor and City Clerk, to execute and attest the renewal agreement between the School Board of Broward County and the City of Lauderdale Lakes to provide transportation services for a term of five years.

**D. RESOLUTION 2017-045 ACCEPTING THE FISCAL YEAR 2015/2016 COMPREHENSIVE ANNUAL FINANCIAL REPORT PREPARED BY THE CITY'S AUDITORS, KEEFE, MCCULLOUGH & CO., LLP.**

This Resolution accepts the City's Fiscal Year 2015/2016 Comprehensive Annual Financial Report.

**E. RESOLUTION 2017-046 CREATING A BUDGET ADVISORY COMMITTEE FOR THE DEVELOPMENT OF THE FISCAL YEAR 2018 BUDGET**

This Resolution creates a Budget Advisory Committee through September 30, 2017 to assist in the budget development for the FY 2018 Budget.

**F. RESOLUTION 2017-047 AWARDING RFP #17-1302-01R TO METRO EQUIPMENT SERVICES INC., FOR PHASE I - STORMWATER CONVEYANCE AND WATER QUALITY IMPROVEMENT PROJECT, AS THE MOST RESPONSIVE AND RESPONSIBLE PROPOSER, ON A REQUEST FOR PROPOSAL IN AN AMOUNT UP TO ONE MILLION FIVE HUNDRED FORTY-ONE THOUSAND TWO HUNDRED NINETY-TWO AND 55/100 DOLLARS (\$1,541,292.55)**

This Resolution awards RFP #17-1302-01R to the most responsive and responsible proposer. The Purchasing Division and Evaluation Committee recommends to the Mayor and City Commission, Metro Equipment Services, Inc. The firm will provide construction services to repair and stabilize selected canal banks within the City. The scope of services includes the furnishing of all labor, materials, machinery, equipment, tools, and supervision necessary to perform the required tasks associated with the project.

**G. RESOLUTION 2017-048 AWARDING ITB #17-1302-05B TO VICTORY ENGINEERS AND GENERAL CONTRACTING, LLC FOR THE COMPREHENSIVE PARK IMPROVEMENTS PROJECT, AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, ON A INVITATION TO BID IN AN AMOUNT UP TO ONE HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS (\$196,456.60)**

This Resolution awards ITB #17-1302-05B to the lowest responsive and responsible proposer. The Purchasing Division recommends to the Mayor and City Commission, Victory Engineers and General Contracting. The contractor will provide infrastructural improvements to the City's Aquatics Center and Willie Web Senior Park. The scope of services includes the furnishing of all labor, materials, machinery, equipment, tools, and supervision necessary to perform the required tasks

associated with the project.

- H.** RESOLUTION 2017-049 AWARDING RFP #17-6365-06R TO E AND F ENTERPRISES, INC. DBA CREATIVE CONTRACTING GROUP FOR THE NW 41ST STREET ENTRYWAY IMPROVEMENTS PROJECT, AS THE MOST RESPONSIVE AND RESPONSIBLE PROPOSER, ON A REQUEST FOR PROPOSAL IN AN AMOUNT UP TO THIRTY-FOUR THOUSAND DOLLARS (\$34,000).

This Resolution awards RFP #17-6365-06R to the most responsible and responsive proposer. The Purchasing Division and Evaluation Committee recommends to the Mayor and City Commission, E and F Enterprises, Inc. dba Creative Contracting Group. The firm will renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41st Street and State Road 441. The objective of the NW 41st Street Entryway Improvements Project (Oakland Estates Entry Wall) is to make the entryway more decorative and aesthetically pleasant. The scope of services includes the furnishing of all labor, materials, machinery, equipment, tools, and supervision necessary to perform the required tasks associated with the project.

- I.** RESOLUTION 2017-050 AUTHORIZING THE CITY MANAGER TO UTILIZE THE PORT CONSOLIDATED, INC. CONTRACT FOR UNLEADED GASOLINE AND DIESEL FUEL THROUGH THE SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE GROUP CONTRACT NO. E-13-17 FOR A THREE YEAR PERIOD, IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000) PER FISCAL YEAR, FROM MARCH 15, 2017 THROUGH MARCH 14, 2020.

This Resolution authorizes the use of the Port Consolidated, Inc. contract for Unleaded Gasoline and Diesel Fuel as a 'piggy back' agreement for purchase of unleaded gasoline and diesel fuel.

- J.** RESOLUTION 2017-051 AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE A PROCUREMENT PURCHASE EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000) BUT LESS THAN FORTY THOUSAND DOLLARS (\$40,000) WITH HOME DEPOT

This Resolutions authorizes the City Manager to execute a procurement purchase and purchases order(s) exceeding twenty-five thousand (\$25,000.00) dollars, but less than forty thousand (\$40,000.00) dollars to Home Depot for the provision of the maintenance, repair, operating supplies, industrial supplies, and related products in accordance with the U.S Communities Cooperative Government Purchasing Alliance Contract No. 16154 (lead agency Maricopa County, Phoenix, Arizona) Agreement.

- 11. CORRESPONDENCE**
- 12. REPORT OF THE MAYOR**
- 13. REPORT OF THE VICE MAYOR**
- 14. REMARKS OF THE COMMISSIONERS**
- 15. REPORT OF THE CITY MANAGER**
- 16. REPORT OF THE CITY ATTORNEY**
- 17. ADJOURNMENT**

## **PLEASE TURN OFF ALL CELL PHONES DURING THE MEETING**

If a person decides to appeal any decision made by the Board, Agency, or Commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (FS 286.0105)

Any person requiring auxiliary aids and services at this meeting may contact the City Clerk's Office at (954) 535-2705 at least 24 hours prior to the meeting. If you are hearing or speech impaired, please contact the Florida Relay Service by using the following numbers: 1-800-955-8770 or 1-800-955-8771.

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**Mayor Hazelle Rogers - Vice-Mayor Veronica Edwards Phillips**  
**Commissioner Sandra Davey - Commissioner Gloria Lewis - Commissioner Beverly Williams**

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## CITY OF LAUDERDALE LAKES

Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

Title
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### APPROVAL OF MINUTES

Summary
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March 27, 2017 Commission Workshop Minutes

March 28, 2017 Commission Meeting Minutes

Staff Recommendation
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**Background:**

**Funding Source:**

**Sponsor Name/Department:**

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
<input type="checkbox"/> March 27, 2017 Commission Workshop Minutes	Backup Material
<input type="checkbox"/> March 28, 2017 Commission Meeting Minutes	Backup Material



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Office of the City Clerk  
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## **WORKSHOP MEETING MINUTES**

**Alfonso Gereffi Room**

**March 27, 2017**

**5:00 PM**

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### **1. CALL TO ORDER**

Mayor Hazelle Rogers called the March 27, 2017 Commission Workshop to order at 5:04 p.m. in the Alfonso Gereffi Room, located at 4300 N.W. 36th Street, Lauderdale Lakes, Florida 33319.

### **2. ROLL CALL**

#### **PRESENT**

Mayor Hazelle Rogers  
Vice-Mayor Veronica Edwards Phillips  
Commissioner Sandra Davey  
Commissioner Gloria Lewis  
Commissioner Beverly Williams

#### **ALSO PRESENT**

City Manager Phil Alleyne  
City Attorney James Brady  
City Clerk Sharon Houslin  
City Staff  
Members of the Public

### **3. DISCUSSION**

City Manager Phil Alleyne introduced the following new employees: Dwight Hinkson, Commission Aide, Office of the City Clerk; Julie Dominique, Staff Assistant, Development Services Department; Syed Zaman, Engineering Construction Inspector, Office of the City Manager; and Krisstoff Campbell, Maintenance Worker I, Public Works Department.

Mayor Hazelle Rogers asked if all of the positions in the 2017 Budget were filled. City Manager Alleyne responded that there are two more positions which needs to be filled.

City Manager Phil Alleyne reviewed the March 28, 2017 Commission Meeting Agenda with the Commission as follows:

#### **CONSIDERATION OF RESOLUTIONS ON CONSENT**

**ITEM 9A - RESOLUTION 2017-029 REAFFIRMING THE CITY'S SUPPORT OF SENATE BILL 932 AND HOUSE BILL 715, PROVIDING FOR THE ABILITY OF LOCAL GOVERNMENTS TO LEVY A SPECIAL ASSESSMENT FOR LAW ENFORCEMENT SERVICES IN THE STATE OF FLORIDA**

Mayor Hazelle Rogers stated that she carried this bill for the City of North Lauderdale as a State Representative but was unable to get it passed because her colleagues believed it was a tax. Mayor

Rogers states that supports the bill because whatever is received from the taxes, the ad valorem will be reduced. Discussion ensued regarding the Police Services Assessment.

ITEM 9B - RESOLUTION 2017-030 URGING ALL MEMBERS OF THE FLORIDA LEGISLATURE TO OPPOSE HB17 WHICH PREEMPTS LOCAL BUSINESS REGULATIONS, AND PROHIBITS LOCAL GOVERNMENT FROM IMPOSING OR ADOPTING ANY NEW REGULATIONS ON BUSINESSES, PROFESSIONS, AND OCCUPATIONS, UNLESS, EXPRESSLY AUTHORIZED BY THE LEGISLATURE AND REPEALS EXISTING BUSINESS REGULATIONS AS OF JANUARY 1, 2020

Commissioner Beverly Williams spoke regarding home rule and stated that Cities should be allowed to set regulations in their own City. Mayor Hazelle Rogers stated that the Broward League of Cities and the Florida League of Cities oppose the bill.

ITEM 9C - RESOLUTION 2017-031 SUPPORTING THE US CENTER FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE DEPARTMENT OF JUSTICE (DOJ) TO CURTAIL THE OVER-PRESCRIBING OF OPIOIDS

Commissioner Beverly Williams stated that opioids abuse is an epidemic in every state and the National League of Cities is working to curtail the abuse.

ITEM 9D - RESOLUTION 2017-032 ENDORSING THE KIWANIS CLUB OF LAUDERDALE LAKES' THIRD ANNUAL 5K RUN ON SATURDAY, APRIL 15, 2017 AT VINCENT TORRES MEMORIAL PARK AND THE C-13 CANAL; PROVIDING FOR LIMITED USE OF THE CITY LOGO

There was no discussion regarding this item.

#### **CONSIDERATION OF RESOLUTIONS ON REGULAR AGENDA**

ITEM 10A - RESOLUTION 2017-033 URGING THE BROWARD COUNTY COMMISSION TO ADOPT A COUNTYWIDE ORDINANCE WHICH HOLDS VENUES, BUSINESSES, AND OTHER RESPONSIBLE PARTIES ACCOUNTABLE FOR SNIPER SIGNS AND POSTERS UNLAWFULLY PLACED ON UTILITY POLES, UTILITY BOXES, TRAFFIC CONTROL BOXES, BUS SHELTERS, BENCHES, TREES, OR ANY OTHER PUBLIC PROPERTY.

Commissioner Beverly Williams stated that individuals come out during the middle of the night and place signs up advertisements nightclubs and bars. Two months ago the City of Hollywood found out who were putting up the signs, and found out it was a felony. Commissioner Beverly Williams stated that the City needs to get a handle on people putting up these signs. Mayor Hazelle Rogers stated that this resolution puts the burden on the County and she believes in home rule. Mayor Rogers asked the commission to support the resolution but to not only rely on the County but to put our own policies in place to clean up these poles.

ITEM 10B - RESOLUTION 2017-034 RATIFYING THE CITY MANAGER'S FILING OF THE CITY'S FISCAL YEAR 2017, PERIOD 4 (JANUARY), FINANCIAL ACTIVITY REPORT

Financial Services Director, Susan Gooding-Liburd presented the January 2017, Period 4, Financial Activity Report. Ms. Gooding-Liburd acknowledge that the request for rental revenue was not placed on the physical report, but she provided a separate document of that activity and going forward she will ensure that it is included in the report.

Commissioner Gloria Lewis requested that all the buildings are included in the report.

ITEM 10C - RESOLUTION 2017-035 RATIFYING THE CITY SEAL AND A SEPARATE CITY LOGO AND MOTTO AND RETIRING THE CITY'S BRANDING-IMAGE LOGO AND SLOGAN

Commissioner Gloria Lewis asked why do we have to wait until the end of the year to retire the Branding-

Image Logo. City Manager Phil Alleyne indicated that there are certain expenses that need to be phased out related to stationary, vehicles and entryway signs. Commissioner Sandra Davey suggested that we cease using the Branding-Image Logo immediately. Commissioner Gloria Lewis suggested that we cease it as of March 31, 2017 and phase it out. City Manager Alleyne stated that we can cease it as long as we realize there will be a fiscal impact.

#### ITEM 10D - RESOLUTION 2017-036 APPOINTING OR REAPPOINTING MEMBERS TO THE PLANNING AND ZONING BOARD

Mayor Hazelle Rogers asked if each commissioner can have an individual appointment to the Planning and Zoning Board. City Attorney James Brady stated that legislation will need to be done in order for the Planning and Zoning Board to be in line with the other boards.

Commissioner Gloria Lewis expressed her disappointment that the former board members were not contacted to see if they were interested in serving on the board.

Commissioner Beverly Williams asked how can she keep her appointment. City Attorney Brady explained the nomination process for the Planning and Zoning Board.

Mayor Rogers advised that the Commission would like to change the Code so that each commissioner can have an individual appointment.

City Attorney Brady stated that because an Ordinance takes two readings, they would not be able to appoint individually until the first meeting of April.

Commissioner Gloria Lewis asked about the School Board Member that serves on the Board. Tanya Davis-Hernandez, Director of Development Services spoke regarding Chris Akagbosu and stated that he is only notified when there is an issue that involves the School Board.

City Clerk Sharon Houslin explained the process that was used to inform the Commission of the candidates for the Board.

Commissioner Gloria Lewis stated that the current board members are good and have an understanding of the planning process.

City Attorney James Brady stated that he will draft an Ordinance to be placed on tomorrow nights meeting as a goldenrod item. The Ordinance if passed would change the Planning and Zoning Board appointments from May 1st to November and allow for each commissioner to have an individual appointment.

#### ITEM 10E - RESOLUTION 2017-037 APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD FOR A TWO-YEAR TERM

#### ITEM 10F - RESOLUTION 2017-038 APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD FOR A THREE-YEAR TERM

Items 10E & 10 F were heard together.

Commissioner Gloria Lewis asked if there is conflict with family members applying for the Board. Mayor Rogers stated that her niece is applying as well as a spouse of a commissioner.

City Attorney James Brady stated that there is no conflict; however, if a commissioner feels there is a conflict they can abstain from voting on that item.

#### ITEM 10G - RESOLUTION 2017-039 RATIFYING COMMISSIONER GLORIA LEWIS'S APPOINTMENT OF PAUL MARTIN TO THE BEAUTIFICATION ADVISORY BOARD



There was no discussion regarding this item.

**ITEM 10H - RESOLUTION 2017-040 APPOINTING A DIRECTOR, AN ALTERNATE DELEGATE AND SECOND ALTERNATE DELEGATE TO THE BROWARD LEAGUE OF CITIES FOR THE 2017-2018 YEAR**

Mayor Hazelle Rogers stated that the Broward League of Cities does not have delegates.

The consensus of the Commission is as follows: Director - Commissioner Beverly Williams; Alternate - Vice-Mayor Veronica Edwards Phillips; Mayor Hazelle Rogers - Second Alternate.

**ITEM 10I - RESOLUTION 2017-041 ACCEPTING THE AWARD OF THE 2016 COMMUNITY ORIENTED POLICING SERVICES ("COPS") GRANT OVER A THIRTY-SIX MONTH PERIOD IN A TOTAL AWARD AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000)**

Susan Gooding-Liburd, Assistant City Manager and Director of Financial Services and Broward Sheriff's Office, Captain Andrew Dunbar presented information on the COPS Grant. Ms. Gooding-Liburd stated that this resolution is to accept the Grant for two officers.

Mayor Hazelle Rogers asked how long would it be before the City receive the additional officers. Captain Dunbar stated that once the Resolution is approved, he can start drawing the Grant money to hire an officer.

Commissioner Gloria Lewis asked that if this is not a matching grant, why is the City paying \$294,590.52. Captain Dunbar explained how the Grant funds are used.

**ITEM 10J - RESOLUTION 2017-042 URGING SUPPORT OF THE ADEQUATE FUNDING OF THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

Commissioner Beverly Williams stated that about two months ago there was a presentation by Florida Power and Light asking cities to support the LIHEAP and the Resolution will be going to the Federal Government. Vice-Mayor Veronica Edwards Phillips expressed her support for the Resolution. Mayor Hazelle Rogers expressed her support for the Resolution but stated that the City should find money to put in programs to help residents who need immediate help.

**4. DISCUSSION OF PROPOSED ORDINANCE(S)**

**A. DISCUSSION REGARDING ORDINANCE 2017-006 CREATING DIVISION 8 OF CHAPTER 2 OF THE CODE OF THE ORDINANCES; PROVIDING FOR THE CREATION OF A MILITARY AFFAIRS BOARD**

This is a discussion regarding a proposed ordinance which would create a Military Affairs Board.

Commissioner Beverly Williams spoke regarding creating a Military Affairs Board in order to show respect to veterans within the City. Commissioner Beverly Williams spoke regarding the event that was held November 11, 2017 honoring Veterans Day. Commissioner Beverly Williams spoke about the committee that the City of Tamarac offers and she would like for the City to have something similar.

**B. DISCUSSION REGARDING ORDINANCE 2017-007 AMENDING SECTION 2-311 OF THE CODE OF ORDINANCES, TO PROVIDE FOR THE MEMBERSHIP OF NONSTATUTORY BOARDS**

This is a discussion regarding a proposed ordinance which would align Section 2-311 of the Code of Ordinances with the recent changes in the City's Charter.

City Attorney James Brady stated that this Ordinance will align the boards with the number of commissioners by reducing the non-statutory boards to five from seven. Mayor Rogers asked which boards are statutory boards in which City Attorney Brady responded that the Planning and Zoning

and Civil Service board are statutory and that the exercise sovereign power. Discussion ensued regarding the Code Enforcement Board. City Attorney Brady stated that this Ordinance makes it consistent with the November 8, 2016 Election.

## 5. ADDITIONAL WORKSHOP ITEMS

### A. DISCUSSION REGARDING THE WELCOMING CITIES AND COUNTIES INITIATIVE (5:30 P.M. TIME CERTAIN)

This is a discussion regarding the welcoming cities and counties initiative that is taking place across America. Welcoming America and its municipal partners are convening United States cities and counties to support locally-driven efforts to create more welcoming, immigrant-friendly environments that maximize opportunities for economic growth and cultural vitality.

This item was heard from 5:30 p.m. - 6:08 p.m.

Mayor Hazelle Rogers stated that she wanted to have a conversation to see what the City can do to assist law enforcement with immigration reform.

Representatives for the American Civil Liberties Union and the Service Employees International Union spoke and informed the Commission on the Welcoming Cities Initiative. The Representatives stated that they are asking the Commission to support the establishment and communication of a clear policy that local police and government agents will not enforce federal immigration law nor help facilitate ICE deportations, except where legally required to do so.

Commissioner Sandra Davey asked if this legislation mean that the City of Lauderdale Lakes will be a safe haven for immigrants. Discussion ensued regarding the Presidents Executive Order on Immigration and the fear that has been placed in undocumented immigrants.

Mayor Hazelle Rogers stated that the School Board of Broward recently approved a resolution to protect children of undocumented immigrants from immigration enforcement while they're in school or participating in school-related activities. Mayor Rogers stated that she does not want anyone in our parks or facilities to feel afraid of being deported. Mayor Rogers stated that law enforcement are not immigration agents and should not be asking people to show proof that they are legally in the Country. Mayor Rogers stated that most people do not walk around with a passport or other documents that prove they are citizens.

Vice Mayor Veronica Edwards Phillips asked the Representatives to define a Sanctuary City. One of the Representatives from the SEIU responded that there's no legal definition of a sanctuary city, county or state, and what it means varies from place to place. But jurisdictions that fall under that term, generally have policies or laws that limit the extent to which law enforcement and other government employees will go to assist the federal government on immigration matters. The term does not have legal consequence and is specifically symbolic.

Commissioner Sandra Davey asked how the person would be safe in our parks and what happens if the City finds this person is on a deportation list.

Commissioner Gloria Lewis stated that she could not support the initiative until she gets more education on what President Trump is trying to do.

Commissioner Sandra Davey asked if an undocumented resident of Lauderdale Lakes is apprehended by the law and Lauderdale Lakes becomes a safe haven, what does the City do? If you come into the Country and overstay for visa; you have violated the law and she does not see how a person can be protected.

Commissioner Beverly Williams stated that the Country is in a bad place. She does not understand how the City can be a safe haven to save an undocumented person in the Community.

Mayor Hazelle Rogers reiterated that she does not walk around with anything that states she is a United States Citizens. All we are saying is that law enforcement should not be asking if someone is a citizens. They should deal with the crime at hand because they are not immigration agents.

Ronald Laporte, from the SEIU spoke regarding racial profiling and how some officers feel immigrants are illegal or criminals.

Commissioner Sandra Davey has personally witnessed kids entering the classroom upset and afraid because of their immigration status.

Mayor Hazelle Rogers stated that the City will have another conversation on this subject.

\*Commissioner Gloria Lewis spoke regarding the Code Ordinance which was not placed on the Workshop for discussion.

**B. DISCUSSION REGARDING THE PRELIMINARY FISCAL YEAR 2018 BUDGET CALENDAR**

This is a discussion regarding the preliminary Fiscal Year 2018 Budget Calendar.

Financial Services Director, Susan Gooding-Liburd provided the Commission with dates for the Budget Calendar and asked for feedback regarding the dates. Ms. Gooding-Liburd explained that the dates are only preliminary dates. Mayor Hazelle Rogers asked when does the Budget Advisory Committee begin. Ms. Gooding-Liburd responded that the selection for the Budget Advisory Committee will be at the next Commission Meeting.

**C. DISCUSSION REGARDING THE LAUDERDALE LAKES FOOTBALL AND CHEERLEADING PROGRAM BEING OPERATED BY THE CITY THROUGH THE PARKS AND HUMAN SERVICES DEPARTMENT**

This is a discussion in reference to the Lauderdale Lakes Football and Cheerleading Program to be operated by the City through the Parks and Human Services Department to include all financials, league selections, codes of conduct, background screenings, by-laws, registration and all policies and procedures necessary to protect the youth and the integrity of the City of Lauderdale Lakes.

Item 5C was heard second under Additional Workshop Items and moved prior to item 5B.

Director of Parks and Human Services, Treasa Brown Stubbs provided the Commission with an update regarding the Lauderdale Lakes Football Program. Ms. Brown Stubbs stated that in February the Lauderdale Lakes Youth Club resigned from the program and there was an outcry from coaches and parents. Ms. Brown Stubbs stated she presented a proposal to the Parks and Recreation Advisory Board and the Board unanimously voted to request the City host and operate the Lauderdale Lakes Vikings Football and Cheerleading Program. Ms. Brown Stubbs stated that although the Parks and Human Services Director and Athletic Division would oversee the program, an executive board composed of qualified volunteers and selected by the Parks and Human Services Professional Team, would assist in the operation of the program.

Ms. Brown stated that before the Commission is the proposed budget to operate the Football and Cheerleading program. The City of Lauderdale Lakes would assume all financial responsibilities and regulate the revenue and expenditures for the program; this includes providing support for the program through the City's General Fund Budget. Due to the program having to replace the majority of the equipment, there will be high startup expenses for the first year.

The goal of the program would be to accept approximately 300 youth (8 teams) to include Football Players and Cheerleaders. The proposed budget includes an equitable registration fee for residents and non-residents which is comparable to other programs of our size. The recommendation further suggested two possible Youth Football Leagues to apply to join including Gold Coast Pop Warner, Inc. or the Florida Youth Football League. Both organizations present a host of teams to compete

with and valuable services for the youth and volunteers within the program. They both offer coaches training, scholastic requirements, and growth opportunities for the athletes.

Ms. Brown Stubbs stated that the Board would include herself, a member from the Finance Department, and members of Parks and Recreation Staff, Terrance Williams, Samuel Bryant, and Vincent Mullins and constituent from the Community that includes Detective Bernard Brown, Al Brown and Nima Smith, Broward OIC.

Commissioner Gloria Lewis asked what is the \$8,500.00 and would they have to get new equipment. Ms. Brown Stubbs stated that the City would have to purchase all new uniforms and equipment and that we have sponsors to help keep some of the cost down. Commissioner Gloria Lewis asked about an education component.

Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, and Commissioner Beverly Williams expressed their endorsement for the Program.

Mayor Hazelle Rogers stated that she is in support of the Program but she would like to know that there is a dedicated funding source for the program. Mayor Rogers stated that she would like to see a mentoring program that teaches kids conduct, dress and character.

Commissioner Gloria Lewis spoke regarding illegal activity involved with some of the leagues. Ms. Brown Stubbs spoke regarding the two leagues that are being considered.

**D. DISCUSSION REGARDING SAMUEL S. BROWN SCHOLARSHIP FUND**

This is a discussion regarding the guidelines for the Samuel S. Brown Scholarship Fund.

Mayor Hazelle Rogers stated that this is a conversation regarding updating the guidelines for the Mayor Samuel S. Brown Scholarship Fund. Mayor Rogers suggested to update the guidelines to include that a student can reapply and the student must report their progress and return to volunteer with the Mayor's office. Commissioner Gloria Lewis expressed her concern that the guidelines being proposed are too stringent for the funds being offered.

**E. DISCUSSION REGARDING THE 40TH YEAR COMMUNITY DEVELOPMENT BLOCK GRANT**

This is a report on the 40th Year Community Development Block Grant (CDBG). The 40th year CDBG Minor Home Repair program was not completed in the time frame required, therefore projects completed outside the program will not be funded.

Tanya Davis-Hernandez, Director of Development Services provided an update on the 40th Year CDBG Minor Home Repair. Ms. Davis-Hernandez stated that the City submitted an extension letter which was denied by Broward County. Since the City was denied an extension the City would have to absorb the cost for three projects in the amount of \$68,220.00. The consensus from the Commission is for the City Attorney to review the files and report his findings to them before they agree on absorbing the cost which they believe was caused by the vendor.

**6. REPORTS**

Mayor Hazelle Rogers stated that tomorrow evening, before the Commission Meeting she will be presenting "Keys to the City" to Mayor Demosthenes of the City of Riviere de l'Artibonte, Haiti.

Meeting adjourned at 8:35 p.m.

"In accordance with Sec. 2-55 of the Code of Ordinance, the minutes are action minutes and do not record or transcribe debate or argument. The City Clerk maintains an audio recording of the Workshop and Commission Meeting minutes in accordance with state retention regulations. For an audio/video copy of the minutes, please contact the City Clerk's Office at 954-535-2705."

---

HAZELLE ROGERS, MAYOR

ATTEST:

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SHARON HOUSLIN, CITY CLERK



**City of Lauderdale Lakes**  
Office of the City Clerk  
4300 Northwest 36 Street - Lauderdale Lakes, Florida 33319-5599  
(954) 535-2705 - Fax (954) 535-0573

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## **COMMISSION MEETING MINUTES**

**Commission Chambers**

**March 28, 2017**

**7:00 PM**

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### **1. CALL TO ORDER**

Mayor Hazelle Rogers called the March 28, 2017 Commission Meeting to order at 7:01 p.m. in the Commission Chambers, located at 4300 N.W. 36th Street, Lauderdale Lakes, Florida 33319.

### **2. ROLL CALL**

#### **PRESENT**

Mayor Hazelle Rogers  
Vice Mayor Veronica Edwards Phillips  
Commissioner Sandra Davey  
Commissioner Gloria Lewis  
Commissioner Beverly Williams

#### **ALSO PRESENT**

City Manager Phil Alleyne  
City Attorney James Brady  
City Clerk Sharon Houslin  
City Staff  
Members of the Public

### **3. INVOCATION AND PLEDGE OF ALLEGIANCE**

### **4. PROCLAMATIONS/PRESENTATIONS**

#### **A. PRESENTATION BY EDITH LEDERBERG, AREA AGENCY ON AGING - 15TH YEAR FAIR SHARE PLAQUE**

Edith Lederberg, President of the Areawide Council on Aging presented the City with the 15th Year Fair Share Plaque.

Treasa Brown Stubbs, Director of Parks and Human Services presented Edith Lederberg with a bouquet of flowers and a plaque for the Areawide Council on Aging support of the Lauderdale Lakes Alzheimer's Center.

#### **B. PROCLAMATION PROCLAIMING BOYD H. ANDERSON HIGH SCHOOL DAY - SPONSORED BY: VICE-MAYOR VERONICA EDWARDS PHILLIPS**

Vice Mayor Veronica Edwards Phillips read and presented a Proclamation to Boyd H. Anderson High School proclaiming March 28, 2017 as Boyd H. Anderson High School Day. Boyd H. Anderson High School Principal, Dr. Angel Almanzar accepted the Proclamation.

## 5. APPROVAL OF MINUTES FROM PREVIOUS MEETING

### A. APPROVAL OF MINUTES

February 27, 2017 Commission Workshop Minutes  
February 28, 2017 Commission Meeting Minutes

Commissioner Beverly Williams made a motion to approve the February 27, 2017 Commission Workshop Minutes and the February 28, 2017 Commission Meeting Minutes. Vice Mayor Veronica Edwards Phillips seconded the Motion. There was a unanimous voice vote of approval. The Minutes were approved unanimously.

## 6. PETITIONS FROM THE PUBLIC

### A. PETITIONS FROM THE PUBLIC

All petitioners must sign in with the City Clerk and will be seated in a designated area. Petitioners will be allowed to speak for five (5) minutes. Petitions from the Public will not exceed 30 minutes in aggregate time.

- Kalita Reidy spoke on behalf of her mother, Ms. Lucy-Ann Leroy who is a city resident. Ms. Reidy is requesting help for her mother's property boundaries as it pertains to a split meter and as well as various yard issues with the neighbor. The property address is 3591 NW 23<sup>rd</sup> Ct. in the Eastgate neighborhood.
- Byron Maylor, city resident, followed up about the bus shelters within the City and asked for an update pertaining to his request for a 4-way stop at the intersection at 35<sup>th</sup> Avenue and 34<sup>th</sup> Street.

\*In regards to the bus shelters, City Manager Phil Alleyne informed Mr. Maylor that Broward County is dealing with a surety company for the existing contracts and that should be done by the end of August and a new contract should be in place by September and the project should be completed by the end of the year. In regards to the 4-way stop, Mr. Alleyne informed Mr. Maylor that city staff meet with Broward County and the county denied the request as the intersection did not meet the 4-way requirement. However, the city is working on a resolution to amend the current contract with the county to separate that intersection. Once the resolution has passed, the 4-way stop will be installed.

## 7. CONSIDERATION OF ORDINANCES ON SECOND READING

## 8. CONSIDERATION OF ORDINANCES ON FIRST READING

### A. ORDINANCE 2017-006 CREATING DIVISION 8 OF CHAPTER 2 OF THE CODE OF THE ORDINANCES; PROVIDING FOR THE CREATION OF A MILITARY AFFAIRS BOARD

This Ordinance creates a Military Affairs Board.

City Attorney Brady read the following Ordinance by title only:

#### **ORDINANCE 2017-006**

AN ORDINANCE CREATING DIVISION 8 OF CHAPTER 2 OF THE CODE OF THE ORDINANCES; PROVIDING FOR THE CREATION OF A MILITARY AFFAIRS BOARD; PROVIDING FOR THE COMPOSITION OF THE BOARD; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR STAFF SUPPORT AND COUNSEL; PROVIDING FOR FISCAL PROCEDURES AND BUDGET APPROPRIATION; PROVIDING FOR REPORTING METHODOLOGIES; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

Commissioner Gloria Lewis made a motion to move Ordinance 2017-006 to the floor for discussion.



Vice-Mayor Veronica Edwards Phillips seconded the motion. There was a unanimous voice vote of approval.

Mayor Rodgers asked if there was any discussion. Discussion ensued. Mayor, Rogers asked if there was any further discussion. Hearing no discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**B. ORDINANCE 2017-007 AMENDING SECTION 2-311 OF THE CODE OF ORDINANCES, TO PROVIDE FOR THE MEMBERSHIP OF NONSTATUTORY BOARDS**

This Ordinance aligns Section 2-311 of the Code of Ordinances with the recent changes in the City's Charter.

City Attorney Brady read the following Ordinance by title only:

**ORDINANCE 2017-007**

AN ORDINANCE AMENDING SECTION 2-311 OF THE CODE OF ORDINANCES, TO PROVIDE FOR THE MEMBERSHIP OF NONSTATUTORY BOARDS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

Commissioner Beverly Williams made a motion to move Ordinance 2017-007 to the floor for discussion. Vice-Mayor Veronica Edwards Phillips seconded the motion. There was a unanimous voice vote of approval.

Commissioner Gloria Lewis made a motion to amend the Ordinance as follows: I move to amend Section 2 of proposed Ordinance 2017-007, at Section 2-311(a) by adding the following language, in the fourth line of the text, after the words "member of the applicable board." All members of such boards shall be appointed at the next regularly scheduled meeting following the commencement of the term of the mayor-commissioner or city commissioner making the appointment. Such appointments shall be confirmed by the city commission as a whole. Each member shall serve at the pleasure of and concurrent with the term of the appointing mayor-commissioner or city commissioner, as applicable, or, upon good cause shown, at a duly noticed meeting of the city commission, a member may be removed upon the affirmative vote of three (3) members of the city commission. Mayor Hazelle Rogers seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers requested a roll call of the amendment:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

Mayor Rodgers requested a roll call on the Ordinance as amended:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**9. CONSIDERATION OF RESOLUTIONS ON CONSENT AGENDA**

**A. RESOLUTION 2017-029 REAFFIRMING THE CITY'S SUPPORT OF SENATE BILL 932 AND**



HOUSE BILL 715, PROVIDING FOR THE ABILITY OF LOCAL GOVERNMENTS TO LEVY A SPECIAL ASSESSMENT FOR LAW ENFORCEMENT SERVICES IN THE STATE OF FLORIDA

This Resolution reaffirms the City's support of Senate Bill 932 and House Bill 715 sponsored by Senator Perry E. Thurston and State Representative Barrington A. Russell, Sr.

- B.** RESOLUTION 2017-030 URGING ALL MEMBERS OF THE FLORIDA LEGISLATURE TO OPPOSE HB17 WHICH PREEMPTS LOCAL BUSINESS REGULATIONS, AND PROHIBITS LOCAL GOVERNMENT FROM IMPOSING OR ADOPTING ANY NEW REGULATIONS ON BUSINESSES, PROFESSIONS, AND OCCUPATIONS, UNLESS, EXPRESSLY AUTHORIZED BY THE LEGISLATURE AND REPEALS EXISTING BUSINESS REGULATIONS AS OF JANUARY 1, 2020

This Resolution urges all members of the Florida Legislature to oppose the adoption of HB17.

- C.** RESOLUTION 2017-031 SUPPORTING THE US CENTER FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE DEPARTMENT OF JUSTICE (DOJ) TO CURTAIL THE OVER-PRESCRIBING OF OPIOIDS

This resolution supports the "CDC" and "DOJ" to curtail the over prescribing of opioids by physicians.

- D.** RESOLUTION 2017-032 ENDORSING THE KIWANIS CLUB OF LAUDERDALE LAKES' THIRD ANNUAL 5K RUN ON SATURDAY, APRIL 15, 2017 AT VINCENT TORRES MEMORIAL PARK AND THE C-13 CANAL; PROVIDING FOR LIMITED USE OF THE CITY LOGO

This is a resolution endorsing the Kiwanis Club of Lauderdale Lakes to host a 5K Run in Partnership with the City of Lauderdale Lakes on Saturday, April 15, 2017 at Vincent Torres Park and the C-13 Canal beginning at 8:00 a.m.

City Attorney Brady read the following Resolutions by title only:

**RESOLUTION 2017-029**

A RESOLUTION OF THE CITY OF LAUDERDALE LAKES, BROWARD COUNTY, FLORIDA, REAFFIRMING THE CITY'S SUPPORT OF SENATE BILL 932 AND HOUSE BILL 715, PROVIDING FOR THE ABILITY OF LOCAL GOVERNMENTS TO LEVY A SPECIAL ASSESSMENT FOR LAW ENFORCEMENT SERVICES IN THE STATE OF FLORIDA, SPONSORED BY SENATOR PERRY E. THURSTON, JR. AND REPRESENTATIVE BARRINGTON A. RUSSELL; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

**RESOLUTION 2017-030**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, BROWARD COUNTY, FLORIDA, URGING ALL MEMBERS OF THE FLORIDA LEGISLATURE TO OPPOSE HB17 WHICH PREEMPTS LOCAL BUSINESS REGULATIONS, AND PROHIBITS LOCAL GOVERNMENT FROM IMPOSING OR ADOPTING ANY NEW REGULATIONS ON BUSINESSES, PROFESSIONS, AND OCCUPATIONS, UNLESS, EXPRESSLY AUTHORIZED BY THE LEGISLATURE AND REPEALS EXISTING BUSINESS REGULATIONS AS OF JANUARY 1, 2020; DIRECTING CITY ADMINISTRATION TO TRANSMIT A CERTIFIED COPY OF THIS RESOLUTION TO THE BROWARD LEAGUE OF CITIES, THE BROWARD COUNTY LEGISLATIVE DELEGATION, THE PALM BEACH COUNTY LEAGUE OF CITIES, THE MIAMI-DADE COUNTY LEAGUE OF CITIES AND ANY OTHER INTERESTED PARTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

### **RESOLUTION 2017-031**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, BROWARD COUNTY, FLORIDA, SUPPORTING THE COMBINED EFFORTS OF THE UNITED STATES CENTER FOR DISEASE CONTROL AND PREVENTION ("CDC") AND THE DEPARTMENT OF JUSTICE ("DOJ") TO CURTAIL THE OVER-PRESCRIBING OF OPIOIDS BY PHYSICIANS THROUGH MORE PHYSICIAN EDUCATION, AS WELL AS BETTER RISK ASSESSMENT OF PATIENTS; SUPPORTING THE STRENGTHENING OF PRESCRIPTION DRUG MONITORING PROGRAMS IN EVERY STATE AND ENSURING SAFE-DRUG DISPOSAL; SUPPORTING THE EFFORTS OF THE CITY COUNTY NATIONAL TASK FORCE ON THE OPIOID EPIDEMIC TO PROVIDE EDUCATIONAL OPPORTUNITIES; PROVIDING FOR INSTRUCTIONS TO THE CITY MANAGER; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR AN EFFECTIVE DATE.

### **RESOLUTION 2017-032**

A RESOLUTION ENDORSING THE KIWANIS CLUB OF LAUDERDALE LAKES' THIRD ANNUAL 5K RUN ON SATURDAY, APRIL 15, 2017, BEGINNING AT 8:00 A.M. AT VINCENT TORRES MEMORIAL PARK AND THE C-13 CANAL; PROVIDING FOR LIMITED USE OF THE CITY LOGO; PROVIDING FOR DIRECTIONS TO THE CITY MANAGER; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Commissioner Gloria Lewis made a motion to approve the Consent Agenda. Commissioner Beverly Williams seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers asked if there was any discussion. Hearing no discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None  
Motion passed: 5-0

## **10. CONSIDERATION OF RESOLUTIONS ON REGULAR AGENDA**

- A.** RESOLUTION 2017-033 URGING THE BROWARD COUNTY COMMISSION TO ADOPT A COUNTYWIDE ORDINANCE WHICH HOLDS VENUES, BUSINESSES, AND OTHER RESPONSIBLE PARTIES ACCOUNTABLE FOR SNIPE SIGNS AND POSTERS UNLAWFULLY PLACED ON UTILITY POLES, UTILITY BOXES, TRAFFIC CONTROL BOXES, BUS SHELTERS, BENCHES, TREES, OR ANY OTHER PUBLIC PROPERTY

This Resolution holds venues, businesses, and other responsible parties accountable for snipe signs and posters unlawfully placed on utility poles, utility boxes, traffic control boxes, bus shelters, benches, trees, or other public property.

City Attorney Brady read the following Resolution by title only:

### **RESOLUTION 2017-033**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, BROWARD COUNTY, FLORIDA URGING THE BROWARD COUNTY COMMISSION TO ADOPT A COUNTYWIDE ORDINANCE WHICH HOLDS VENUES, BUSINESSES, AND OTHER RESPONSIBLE PARTIES ACCOUNTABLE FOR SNIPE SIGNS AND POSTERS UNLAWFULLY PLACED ON UTILITY POLES, UTILITY BOXES, TRAFFIC CONTROL BOXES, BUS SHELTERS, BENCHES, TREES, OR ANY OTHER PUBLIC PROPERTY; PROVIDING INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Mayor Rogers made a motion to move Resolution 2017-033 to the floor for discussion. Commissioner Beverly Williams seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers asked if there was any discussion. Discussion ensued.

Mayor Rogers asked if there was any further discussion. Hearing no discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**B. RESOLUTION 2017-034 RATIFYING THE CITY MANAGER'S FILING OF THE CITY'S FISCAL YEAR 2017, PERIOD 4 (JANUARY), FINANCIAL ACTIVITY REPORT**

This Resolution serves to ratify the filing and presentation of the City's Fiscal Year 2017 January (Period 4) - Financial Activity Report provided by the Financial Services Department.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-034**

A RESOLUTION RATIFYING THE CITY MANAGER'S FILING OF THE CITY'S FISCAL YEAR 2017, PERIOD 4 (JANUARY), FINANCIAL ACTIVITY REPORT, AS PREPARED BY THE DEPARTMENT OF FINANCIAL SERVICES, FOR THE PURPOSE OF CONFORMING TO THE CITY'S ADOPTED FINANCIAL INTEGRITY PRINCIPLES AND FISCAL POLICIES; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Commissioner Beverly Williams made a motion to move Resolution 2017-034 to the floor for discussion. Vice Mayor Veronica Edwards Phillips. seconded the motion. There was a unanimous voice vote of approval.

Mayor Rodgers asked if there was any discussion. Financial Services Director, Susan Gooding-Liburd provided an overview of the January 2017 Financial Activity Report. Mayor, Rogers asked if there was any further discussion. Hearing no discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Beverly Williams. AGAINST: Commissioner Gloria Lewis

Motion passed: 4-1

**C. RESOLUTION 2017-035 RATIFYING THE CITY SEAL AND A SEPARATE CITY LOGO AND MOTTO AND RETIRING THE CITY'S BRANDING-IMAGE LOGO AND SLOGAN**

This Resolution would ratify City's official seal, logo and "We Care" motto and retire the branding-image logo and slogan "Life in Full Color" as of the close of business December 31, 2017.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-035**

A RESOLUTION RATIFYING THE ADOPTION OF THE CITY SEAL AND A SEPARATE CITY LOGO AND MOTTO; PROVIDING FOR THE RETIREMENT OF THE CITY'S BRANDING-IMAGE; PROVIDING FOR INSTRUCTIONS TO THE CITY MANAGER; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Mayor Hazelle Rogers made a motion to move Resolution 2017-035 to the floor for discussion. Vice Mayor Veronica Edwards Phillips seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers asked if there was any discussion. Discussion ensued.

Commissioner Gloria Lewis made a motion to amend the Resolution in Section 2 (C) to read as follows: Retirement of the branding–image and slogan “Life In Full Color” as of the close of business March 31, 2017 together with all iterations thereof, as follows

Mayor, Rogers asked if there was any further discussion. Hearing no discussion, Mayor Rogers requested a roll call on the amendment:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

Mayor Rogers requested a roll call on the Resolution as amended:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**D. RESOLUTION 2017-036 APPOINTING OR REAPPOINTING MEMBERS TO THE PLANNING AND ZONING BOARD**

This Resolution serves to appoint or reappoint members to the Planning and Zoning Board.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-036**

A RESOLUTION APPOINTING OR REAPPOINTING MEMBERS TO THE PLANNING AND ZONING BOARD; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Mayor Hazelle Rogers made a motion to Table Resolution 2017-036 to a time certain of April 11, 2107.

Mayor Rogers requested a roll call on the Tabled Resolution .

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**E. RESOLUTION 2017-037 APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD FOR A TWO-YEAR TERM**

This Resolution appoints a member to the Civil Service Board for a two-year term.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-037**

A RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD FOR A TWO-YEAR TERM; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Vice Mayor Veronica Edwards Phillips made a motion to move Resolution 2017-037 to the floor for discussion. Commissioner Gloria Lewis seconded the motion. There was a unanimous voice vote of approval.

City Attorney Read the Ballots as follows: Nyoka G. Stewart 2 votes, Aretha Wimberly 1 vote, and Anika Omphroy, 1 vote.

Commissioner Gloria Lewis made a motion to appoint Nyoka G. Stewart to the Civil Service Board. Mayor Hazelle Rogers seconded the motion.

Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None  
Motion passed: 5-0

**F. RESOLUTION 2017-038 APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD FOR A THREE-YEAR TERM**

This Resolution appoints a member to the Civil Service Board for a three-year term.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-038**

A RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD FOR A THREE-YEAR TERM; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

City Attorney Read the Ballots as follows: Anika Omphroy 2 votes, Terrance Barber 2 vote, and Levoyd Williams, 1 vote.

Commissioner Gloria Lewis made a motion to appoint Anika Omphroy to the Civil Service Board. Commissioner Beverly Williams seconded the motion.

Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice-Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**G. RESOLUTION 2017-039 RATIFYING COMMISSIONER GLORIA LEWIS'S APPOINTMENT OF PAUL MARTIN TO THE BEAUTIFICATION ADVISORY BOARD**

This Resolution serves to ratify Commissioner Gloria Lewis's appointment to the Beautification Advisory Board.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-039**

A RESOLUTION RATIFYING COMMISSIONER GLORIA LEWIS'S APPOINTMENT OF PAUL MARTIN TO THE BEAUTIFICATION ADVISORY BOARD; PROVIDING FOR THE ADOPTION

OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Commissioner Beverly Williams made a motion to move Resolution 2017-039 to the floor. Commissioner Sandra Davey seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers asked if there was any discussion. Hearing no discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**H. RESOLUTION 2017-040 APPOINTING A DIRECTOR, AN ALTERNATE DELEGATE AND SECOND ALTERNATE DELEGATE TO THE BROWARD LEAGUE OF CITIES FOR THE 2017-2018 YEAR**

This Resolution serves to appoint a Director, an Alternate and Second Alternate to the Broward League of Cities for the 2017-2018 year.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-040**

A RESOLUTION APPOINTING A DIRECTOR, AN ALTERNATE AND SECOND ALTERNATE TO THE BROWARD LEAGUE OF CITIES FOR THE 2017-2018 YEAR; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Mayor Hazelle Rogers made a motion to amend Resolution 2017-040 by deleting the term "delegate" wherever it appears in the document. Commissioner Beverly Williams seconded the motion.

Commissioner Gloria Lewis made a motion to nominate Commissioner Beverly Williams as the Director, Vice Mayor Veronica Edwards Phillips as the Alternate, and Mayor Hazelle Rogers as the Second Alternate. Mayor Hazelle Rogers seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers requested a roll call on the Resolution as amended:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**I. RESOLUTION 2017-041 ACCEPTING THE AWARD OF THE 2016 COMMUNITY ORIENTED POLICING SERVICES ("COPS") GRANT OVER A THIRTY-SIX MONTH PERIOD IN A TOTAL AWARD AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000)**

This Resolution accepts the award of the 2016 COPS Grant from the U.S Department of Justice (US DOJ), Office of Community Oriented Policing Services (COPS Office), authorizes the City Manager to execute an agreement with the US DOJ to utilize the grant funding, authorizes the City Manager to submit a memorandum of understanding to the Broward Sheriff's Office regarding the administration of the grant including grant reporting and other requirements, and authorizes the City Manager and City Attorney to amend its agreement with BSO to include the new COPS16 Grant positions.

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-041**

A RESOLUTION ACCEPTING THE AWARD OF THE 2016 COMMUNITY ORIENTED POLICING SERVICES ("COPS") GRANT, OVER A THIRTY-SIX MONTH PERIOD, IN A TOTAL AMOUNT OF TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS, IN THREE PERIODS, ALLOCATED AT NINETY-NINE THOUSAND NINE HUNDRED TWENTY-EIGHT AND 45/100 (\$99,928.45) DOLLARS, FOR THE FIRST TWELVE-MONTH PERIOD, SEVENTY-SIX THOUSAND THREE HUNDRED SEVENTY-THREE AND NO/100 (\$76,373.00) DOLLARS, FOR THE SECOND TWELVE-MONTH PERIOD AND SEVENTY-THREE THOUSAND SIX HUNDRED NINETY-EIGHT AND 55/100 (\$73,698.55) DOLLARS, FOR THE THIRD TWELVE-MONTH PERIOD; AUTHORIZING THE CITY MANAGER TO PROVIDE A LETTER OF INTENT TO THE BROWARD SHERIFF'S OFFICE ("BSO") NOTIFYING SUCH OFFICE OF THE ACCEPTANCE OF THE COPS GRANT AWARD AND PROVIDING FOR ADMINISTRATION OF THE GRANT BY THE BROWARD SHERIFF'S OFFICE; PROVIDING FOR INSTRUCTIONS TO THE CITY MANAGER; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Commissioner Gloria Lewis made a motion to move Resolution 2017-041 to the floor. Commissioner Beverly Williams seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers asked if there was any discussion. Hearing no discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**J. RESOLUTION 2017-042 URGING SUPPORT OF THE ADEQUATE FUNDING OF THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

This Resolution urges support of the adequate funding of the "Low Income Home Energy Assistance Program (LIHEAP).

City Attorney Brady read the following Resolution by title only:

**RESOLUTION 2017-042**

A RESOLUTION OF THE CITY OF LAUDERDALE LAKES URGING SUPPORT OF THE ADEQUATE FUNDING OF THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE

Commissioner Gloria Lewis made a motion to move Resolution 2017-042 to the floor. Commissioner Beverly Williams seconded the motion. There was a unanimous voice vote of approval.

Mayor Rogers asked if there was any discussion. Discussion ensued. Mayor Rogers asked if there were any further discussion. Hearing no further discussion, Mayor Rogers requested a roll call:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**K. GOLDENROD ITEM - ORDINANCE 2017-008 AMENDING SUBSECTION 302.3 OF THE SECTION 302 OF CHAPTER 3 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR MEMBERSHIP ON THE PLANNING AND ZONING BOARD**



City Attorney Brady read the following Ordinance by title only:

**ORDINANCE 2017-008**

AN ORDINANCE AMENDING SUBSECTION 302.3 OF THE SECTION 302 OF CHAPTER 3 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR MEMBERSHIP ON THE PLANNING AND ZONING BOARD, TOGETHER WITH QUALIFICATIONS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT REGULATIONS; PROVIDING AN EFFECTIVE DATE.

Commissioner Gloria Lewis made a motion to hear Goldenrod Ordinance 2017-008. Commissioner Beverly Williams seconded the motion. There was a unanimous voice vote of approval.

Commissioner Gloria Lewis made a motion to amend Ordinance 2017-008 in Sec. 302.3 to read: Any member of the board may be removed from office by the appointing city commissioner or, on good cause shown, by the affirmative vote of three (3) city commissioners at a duly noticed and called meeting of the city commission.

Commissioner Gloria Lewis made a motion to amend Ordinance 2017-008 to remove and keep the strikeout in Section 302.3 (a) to read: Three (3) absences from regular board meetings during any twelve-month period shall be deemed adequate cause for removal unless such absence is excused officially by the city commission or unless such absence is due to illness.

Mayor Rogers requested a roll call on the first motion:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

Mayor Rogers requested a roll call on the second motion:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

Mayor Rogers requested a roll call on Ordinance 2017-008 as amended:

FOR: Mayor Hazelle Rogers, Vice Mayor Veronica Edwards Phillips, Commissioner Sandra Davey, Commissioner Gloria Lewis, Commissioner Beverly Williams. AGAINST: None

Motion passed: 5-0

**11. CORRESPONDENCE**

Broward Sheriff Office, Captain Andrew Dunbar recognized Dutch Pot Restaurant for being a Citizens on Patrol partner with the Broward Sheriff's Office.

**12. REPORT OF THE MAYOR**

- Mayor Hazelle Rogers spoke of the meeting with Mayor Demosthenes of the City of Riviere de l'Artibonite, Haiti which was held prior to the Commission Meeting. Mayor Rogers presented Mayor Demosthenes with a key to the City. Mayor Rogers spoke of the immigration reform and the fear that many residents may feel. Mayor Rogers encouraged residents who feel insecure to get an attorney and to be safe and respectful.



### **13. REPORT OF THE VICE MAYOR**

- Vice Mayor Veronica Edwards Phillips thanked everyone for attending and watching the meeting. Mayor Edwards Phillips reiterated the accomplishments of Boyd Anderson High School who has a 92% graduation rate and encouraged young women to carry themselves as queens and have a high respect for themselves.

### **14. REMARKS OF THE COMMISSIONERS**

- Commissioner Sandra Davey thanked everyone for attending the meeting and as a "We Care" city reminded residents to cross at designated crossways.
- Commissioner Gloria Lewis thanked everyone for watching and attending the meeting and spoke of her displeasure with the term "ICE" (Immigration and Customs Enforcement). Commissioner Lewis assured residents to feel safe when it comes to immigration reform.
- Commissioner Beverly Williams spoke of the Cancer relay taking place in May and requested that 50 people join her. Commissioner Williams shared a report of Commission on Ethics report and thanked everyone for listening.

### **15. REPORT OF THE CITY MANAGER**

- City Manager Phil Alleyne informed everyone about the six new businesses that recently opened in the City; summer camp registration taking place at the Multipurpose building on April 1, 2017; Eggstravaganza event on April 8, 2017 at Vincent Torres Park; and the UNIFEST celebration on Sunday May 21, 2017 at Vincent Torres Park starting at 8 a.m.

### **16. REPORT OF THE CITY ATTORNEY**

### **17. ADJOURNMENT**

Meeting adjourned at 9:01 p.m.

"In accordance with Sec. 2-55 of the Code of Ordinance, the minutes are action minutes and do not record or transcribe debate or argument. The City Clerk maintains an audio recording of the Workshop and Commission Meeting minutes in accordance with state retention regulations. For an audio/video copy of the minutes, please contact the City Clerk's Office at 954-535-2705."

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HAZELLE ROGERS, MAYOR

ATTEST:

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SHARON HOUSLIN, CITY CLERK

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

Title
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ORDINANCE 2017-006 CREATING DIVISION 8 OF CHAPTER 2 OF THE CODE OF THE ORDINANCES; PROVIDING FOR THE CREATION OF A MILITARY AFFAIRS BOARD
---

Summary
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This Ordinance would create a Military Affairs Board. This Ordinance was adopted on first reading at the March 28, 2017 Commission Meeting.
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Staff Recommendation
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**Background:**

At the February 27, 2017 Commission Workshop, the City Commission expressed its desire to create a Military Affairs Board to provide for organized support of those who have served and those serving in the military.

**Funding Source:**

Not applicable

**Sponsor Name/Department:** Mayor Hazelle Rogers, Office of the Mayor and Commission

**Meeting Date:** 4/11/2017

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Ordinance 2017-006 - Military Affairs Board	Ordinance

ORDINANCE 2017-006

AN ORDINANCE CREATING DIVISION 8 OF CHAPTER 2 OF THE CODE OF THE ORDINANCES; PROVIDING FOR THE CREATION OF A MILITARY AFFAIRS BOARD; PROVIDING FOR THE COMPOSITION OF THE BOARD; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR STAFF SUPPORT AND COUNSEL; PROVIDING FOR FISCAL PROCEDURES AND BUDGET APPROPRIATION; PROVIDING FOR REPORTING METHODOLOGIES; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Country has sustained two domestic wars, two world wars and several wide-ranging conflicts with the combined loss of millions of lives, illustrating the principle that freedom is not free, and

WHEREAS, a strong military presence is necessary to the protection of freedom and democracy, and

WHEREAS, strong public support is necessary to the maintenance of a strong military, and

WHEREAS, the appreciation of the citizenry for the military is reflected in numerous ways throughout the Country, and

WHEREAS, the City Commission has determined that it is appropriate to provide for the organized support of those who have served and those serving in the military, together with their respective family members,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. CREATION: Division 8 of Chapter 2 of the Code of Ordinances is hereby created and titled as follows:

Division 8 – Military Affairs Board

SECTION 3. CREATION: Section 2-437 of Chapter 2 of the Code of Ordinances is hereby created to read as follows:

Sec. 2-437 – Composition. There is hereby created a Military Affairs Board in the City. The Board shall be composed of five (5) members. The Mayor and each of the other City Commissioners shall make their respective appointments, to be ratified by the City Commission.

SECTION 4. CREATION: Section 2-438 of Chapter 2 of the Code of Ordinances is hereby created to read as follows:

Sec. 2-438 - Powers and Duties. The Board shall:

- (1) Provide the City Commission with recommendations regarding military affairs in Broward County, the several cities of the County and the City, regarding the general welfare of active, reserve, retired, disabled and deceased military personnel within or having strong connections to the City, and
- (2) Promote measures to enhance the quality of life for active, reserve, retired and disabled military personnel and their respective families and the families of deceased military personnel within or having strong connections to the City, and
- (3) Advocate for, on behalf of military personnel within or having strong connections to the City regarding, among other things: health care; housing; housing and business loans; pension benefits; education;

- employment; incarceration; reintegration; unemployment benefits;  
disability claims; vocational training, and insurance, and
- (4) Take steps to increase awareness and support for military personnel from  
the City or having strong connections to the City, and
- (5) Interface with local reserve officer training corps ("ROTC") programs at  
both the high school and junior high school levels, and
- (6) Form an independent 501(c)(3) corporation, approved by the City  
Commission, which shall raise private funds to assist military personnel  
and perform other functions provided for herein, and
- (7) Accept gifts of money or services for public purposes provided for herein,  
and
- (8) Work with other similarly focused bodies for the purposes contemplated  
herein.

SECTION 5. CREATION: Section 2-439 of Chapter 2 of the Code of Ordinances is hereby created as follows:

Sec. 2-439 Staff Support and Counsel. The City Manager shall provide the Board with adequate staff to perform its powers and duties, and the Board shall utilize the City Attorney's office for legal services.

SECTION 6. CREATION: Section 2-440 of Chapter 2 of the Code of Ordinances is hereby created as follows:

Sec. 2-440 Fiscal Procedures and Budget Appropriation. Funding shall be provided annually through a line-item in the yearly budget in such amount as the City Commission shall deem appropriate.

SECTION 7. CREATION: Section 2-441 of Chapter 2 of the Code of Ordinances is hereby created as follows:

Sec. 2-441 Reporting Methodologies. The Board shall establish, through the City Clerk's office, a standardized form which shall be used for reporting on all matters which may come before it. All recommendations of the Board shall set forth the nature of the item considered, the action taken, any conditions set forth respecting the action taken and specific reasons supporting such action.

SECTION 8. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 9. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 10. INCLUSION IN CODE: It is the intention of the City Commission of the City of Lauderdale Lakes that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Lauderdale Lakes and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 11. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING BY TITLE ONLY, UPON APPROVAL OF AT LEAST FIVE (5) AFFIRMATIVE VOTES OF THE CITY COMMISSIONERS, ON THE 28<sup>TH</sup> DAY OF MARCH, 2017.

PASSED ON SECOND READING BY TITLE ONLY THE 11<sup>TH</sup> DAY OF APRIL, 2017.

ADOPTED AND PASSED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD ON THE 11<sup>TH</sup> DAY OF APRIL, 2017.

\_\_\_\_\_  
HAZEL ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
SHARON HOUSLIN, CITY CLERK  
JCB:jl  
Sponsored by: MAYOR HAZELLE ROGERS

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

#### Title

ORDINANCE 2017-007 AMENDING SECTION 2-311 OF THE CODE OF ORDINANCES, TO PROVIDE FOR THE MEMBERSHIP OF NONSTATUTORY BOARDS

#### Summary

This Ordinance aligns Section 2-311 of the Code of Ordinances with the recent changes in the City's Charter. This Ordinance was approved on first reading at the March 28, 2017 Commission Meeting.

#### Staff Recommendation

#### Background:

As of the election of November 8, 2016, the City Commission is comprised of a Mayor-Commissioner and four City Commissioners. Section 2-311 contemplates that all non-statutory boards are comprised of seven (7) members appointed by the Mayor and each City Commissioner. Section 2-311 needs to be aligned with the recent change in the City Charter. If amended Section 2-311 of the Code of Ordinance will read:

(a)

All nonstatutory boards, including the economic development advisory board, shall be comprised of ~~seven~~ five members. The ~~mayor-commissioner~~ and each city commissioner shall each have the right to appoint a member of the applicable board. ~~With the exception of the economic development advisory board, the city commission shall appoint one at-large member, who shall be a permanent resident of the city at the time of appointment.~~

(b)

The economic development advisory board shall be comprised of seven members. The ~~mayor-commissioner~~ and each city commissioner shall each have the right to appoint one member to the economic development board and the city commission, as a whole, shall appoint one at-large member, who shall be a permanent resident of the city at the time of appointment. Florida Medical Center shall nominate one additional member for appointment to the board. Such member shall be confirmed by the city commission. Each board member appointed by the ~~mayor-commissioner~~ or city commissioner shall serve at the pleasure of the ~~mayor-commissioner~~ or city commissioner appointing such member. The at-large member and the member nominated by Florida Medical Center shall serve at the pleasure of the city commission. All such board members shall be appointed at the next regularly scheduled city commission meeting following the commencement of the term of the ~~mayor-commissioner~~ or commissioner making the appointment.

#### Funding Source:

Not applicable

**Sponsor Name/Department:** Sharon Houslin, City Clerk

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
<input type="checkbox"/> Ordinance 2017-007 - Amending Section 2-311 Related to Non-Statutory Boards	Ordinance



ORDINANCE 2017-007

AN ORDINANCE AMENDING SECTION 2-311 OF THE CODE OF ORDINANCES, TO PROVIDE FOR THE MEMBERSHIP OF NONSTATUTORY BOARDS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, as of the election of November 8, 2016, the City Commission is comprised of a Mayor-Commissioner and four City Commissioners, and

WHEREAS, Section 2-311 of the Code of Ordinances contemplates that all non-statutory boards are comprised of seven (7) members appointed by the Mayor and each City Commissioner, and

WHEREAS, it is appropriate to align Section 2-311 with the recent change in the City Charter,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. AMENDMENT: Section 2-311 of the Code of Ordinances is hereby amended to read as follows:

**Sec. 2-311. - Appointment of members.**

(a)

All nonstatutory boards, including the economic development advisory board, shall be comprised of seven five members. The mayor-commissioner and each city commissioner shall each have the right to appoint a member of the applicable board. All members of such boards shall be appointed at the next regularly scheduled meeting following the commencement of the term of the mayor-commissioner or city

commissioner making the appointment. Such appointments shall be confirmed by the city commission as a whole. Each member shall serve at the pleasure of and concurrent with the term of the appointing mayor-commissioner or city commissioner, as applicable, or, upon good cause shown, at a duly noticed meeting of the city commission, a member may be removed upon the affirmative vote of three (3) members of the city commission. With the exception of the economic development advisory board, the city commission shall appoint one at-large member, who shall be a permanent resident of the city at the time of appointment.

(b)

The economic development advisory board shall be comprised of seven members. The mayor-commissioner and each city commissioner shall each have the right to appoint one member to the economic development board and the city commission, as a whole, shall appoint one at-large member, who shall be a permanent resident of the city at the time of appointment. Florida Medical Center shall nominate one additional member for appointment to the board. Such member shall be confirmed by the city commission. Each board member appointed by the mayor-commissioner or city commissioner shall serve at the pleasure of the mayor-commissioner or city commissioner appointing such member. The at-large member and the member nominated by Florida Medical Center shall serve at the pleasure of the city commission. All such board members shall be appointed at the next regularly scheduled city commission meeting following the commencement of the term of the mayor-commissioner or commissioner making the appointment.

SECTION 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. INCLUSION IN CODE: It is the intention of the City Commission of the City of Lauderdale Lakes that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Lauderdale Lakes and that the

sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING BY TITLE ONLY, UPON APPROVAL OF AT LEAST FIVE (5) AFFIRMATIVE VOTES OF THE CITY COMMISSIONERS, ON THE 28<sup>TH</sup> DAY OF MARCH, 2017.

PASSED ON SECOND READING BY TITLE ONLY THE 11<sup>TH</sup> DAY OF APRIL, 2017.

ADOPTED AND PASSED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD ON THE 11<sup>TH</sup> DAY OF APRIL, 2017.

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HAZELLE ROGERS, MAYOR

ATTEST:

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SHARON HOUSLIN, CITY CLERK  
JCB:jl  
Sponsored by: SHARON HOUSLIN, City Clerk

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement:

Title
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ORDINANCE 2017-008 AMENDING SUBSECTION 302.3 OF THE SECTION 302 OF CHAPTER 3 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR MEMBERSHIP ON THE PLANNING AND ZONING BOARD
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Summary
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This Ordinance would amend Subsection 302.3 of Section 302 of the Land Development Regulations as it relates to the Planning and Zoning Board. This Ordinance was approved on first reading at the March 28, 2017 Commission Meeting.
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Staff Recommendation
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#### Background:

Subsection 302.3 of Section 302 of Chapter 3 of the Land Development Regulations is hereby amended to read as follows: **Sec. 302.3. Membership.** The planning and zoning board shall be composed of:

(a) Three (3) members, all of whom shall be residents of the city and, as near as practical, shall have experience in one or more of the following areas: land use, land development, architecture, real estate brokerage, practice of law or elected public service. The terms of office shall be for one year, commencing annually on May 1 and expiring on April 30, with eligibility for re-appointment. The mayor-commissioner and each city commissioner shall nominate a member of the board, to be ratified by the city commission. Such member shall serve at the pleasure of the mayor-city commissioner or city commissioner who appointed such member. Vacancies on the board shall be filled by the city commission for the balance of the unexpired term by the mayor-commissioner or city commissioner who appointed the member to the vacant seat. Any member of the board may be removed from office by the appointing city commissioner or, on good cause shown, by the affirmative vote of four (4) city commissioners at a duly noticed and called meeting of the city commission, a majority of the city commission. Three (3) absences from regular board meetings during any twelve-month period shall be deemed adequate cause for removal unless such absence is excused officially by the city commission or unless such absence is due to illness.

(b) One (1) ex-officio member who shall be appointed by the School Board of Broward County, pursuant to F.S. § 163.3174(1), as may be amended from time to time. The school board representative shall be an ex-officio, non-voting member, who shall not be considered for quorum or voting purposes and shall consider only the following matters:

1. City comprehensive land use plan amendments and rezonings that would, if approved, increase residential density for the property that is the subject of the development permit application.
2. Developments of regional impact and other residential or mixed use developments with a residential component that if approved, may increase residential density and affect student enrollment, projections or school facilities.

#### Funding Source:

**Sponsor Name/Department:** Sharon Houslin, City Clerk

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
<input type="checkbox"/> Ordinance 2017-008 - Amending Planning and Zoning Board Membership Requirements	Ordinance

## ORDINANCE 2017-008

AN ORDINANCE AMENDING SUBSECTION 302.3 OF THE SECTION 302 OF CHAPTER 3 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR MEMBERSHIP ON THE PLANNING AND ZONING BOARD, TOGETHER WITH QUALIFICATIONS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT REGULATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, as of the election of November, 2016, the revision to the City Charter was fully implemented, providing for a Mayor-Commissioner and four (4) City Commissioners as the governing body of the City, and

WHEREAS, the City enjoys the services of many volunteers on several community-based boards and committees, and

WHEREAS, it is appropriate to align the structure of such boards and committees with the current form of government,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. AMENDMENT: Subsection 302.3 of Section 302 of Chapter 3 of the Land Development Regulations is hereby amended to read as follows:

### **Sec. 302.3.**

*Membership.* The planning and zoning board shall be composed of:

(a)

Three (3) members, all of whom shall be residents of the city and, as near as practical, shall have experience in one or more of the following areas: land use, land development, architecture, real estate brokerage, practice of law or

~~elected public service. The terms of office shall be for one year, commencing annually on May 1 and expiring on April 30, with eligibility for re-appointment. The mayor-commissioner and each city commissioner shall nominate a member of the board, to be ratified by the city commission. Such member shall serve at the pleasure of the mayor-city commissioner or city commissioner who appointed such member. Vacancies on the board shall be filled by the city commission for the balance of the unexpired term by the mayor-commissioner or city commissioner who appointed the member to the vacant seat. Any member of the board may be removed from office by the appointing city commissioner or, on good cause shown, by the affirmative vote of three (3) city commissioners at a duly noticed and called meeting of the city commission. a majority of the city commission. Three (3) absences from regular board meetings during any twelve-month period shall be deemed adequate cause for removal unless such absence is excused officially by the city commission or unless such absence is due to illness.~~

(b)

One (1) ex-officio member who shall be appointed by the School Board of Broward County, pursuant to F.S. § 163.3174(1), as may be amended from time to time. The school board representative shall be an ex-officio, non-voting member, who shall not be considered for quorum or voting purposes and shall consider only the following matters:

(1)

City comprehensive land use plan amendments and rezonings that would, if approved, increase residential density for the property that is the subject of the development permit application.

(2)

Developments of regional impact and other residential or mixed use developments with a residential component that if approved, may increase residential density and affect student enrollment, projections or school facilities.

SECTION 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. INCLUSION IN THE LAND DEVELOPMENT REGULATIONS: It is the intention of the City Commission of the City of Lauderdale Lakes that the provisions of this Ordinance shall become and be made a part of the Land Development Regulations of the City of Lauderdale Lakes and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 28<sup>TH</sup> DAY OF MARCH, 2017.

PASSED ON SECOND READING ON THE 11<sup>TH</sup> DAY OF APRIL, 2017.

ADOPTED AND PASSED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD ON THE 11<sup>TH</sup> DAY OF APRIL, 2017.

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HAZELLE ROGERS, MAYOR

ATTEST:

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SHARON HOUSLIN, CITY CLERK

JCB:jl

Sponsored by: MAYOR HAZELLE ROGERS



**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

Title
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TABLED RESOLUTION 2017-036 APPOINTING FIVE MEMBERS TO THE PLANNING AND ZONING ADVISORY BOARD
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Summary
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This Resolution appoints or reappoints members to the Planning and Zoning Board. This Resolution was tabled during the March 28, 2017 Commission Meeting.

Staff Recommendation
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#### Background:

In accordance with Ordinance #05-46, the City of Lauderdale Lakes Planning and Zoning Board consists of six (6) members. Pursuant to the applicable rule or regulations, and at the specific request of the City Commission, the board shall:

- Act in an advisory capacity to the City Commission on questions relating to zoning and matters connected therewith, and in such capacity the board may conduct investigations and hold public hearings on all matters or proposals to change zoning regulations, report its findings and recommendations on such matters and proposals to the city commission
- Study proposed city plans, with a view of improving same so as to provide for development, general improvement and probably further growth of the City
- Make recommendations to the City Commission relating to a city plan and new developments for the adoption of a city plan
- Examine and comment upon all new plats presented to the City Commission
- Perform such other duties as the Commission may, from time to time, assign to such board

#### Appointment of Members / Term

There are six members on the Planning and Zoning Board. Five members are appointed by the Commission and one non-voting member is designated by the Broward County School Board.

#### Open Seats:

It is necessary to appoint or re-appoint individuals to the Planning and Zoning Board to 1) ensure that there is a quorum to conduct regular Planning and Zoning Board meetings, 2) provide proper review and input on planning and zoning items, 3) to serve in an advisory capacity and make recommendations on City matters for the Commission's consideration. It is critical that the City Commission appoints members to the Planning and Zoning Board with the relevant planning and zoning knowledge and experience and the ability to provide professional input on planning and zoning matters and proposals from outside developers.

#### Funding Source:

Not applicable

**Sponsor Name/Department:** Sharon Houslin, City Clerk

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution 2017-036 - Appointing Members to the Planning and Zoning Board	Resolution
<input type="checkbox"/> Resolution 2016-23 Appointing Members to the P&Z Board	Backup Material

▢	Current P&Z Board Members	Backup Material
▢	Shayla Lynne Bullard - P&Z Application	Backup Material
▢	Josephine Samantha Vacciana - P&Z Application	Backup Material
▢	Larry Striggles - P&Z Application	Backup Material

RESOLUTION 2017-036

A RESOLUTION APPOINTING OR REAPPOINTING MEMBERS TO THE PLANNING AND ZONING BOARD; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board ("Board") consists of five (5) members, each of whom is appointed by the members of the City Commission, respectively, and one ex-officio member to be appointed by the School Board of Broward County, and

WHEREAS, it is appropriate that all the members of the Board are appointed as herein stated to the Planning and Zoning Board,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. SLATE OF BOARD MEMBERS AND APPOINTEES: The City Commission hereby approves the appointments of representatives to the Planning and Zoning Board as follows:

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

Mayor Hazelle Rogers

Vice Mayor Veronica Edwards Phillips

Commissioner Sandra Davey

Commissioner Gloria Lewis

Commissioner Beverly Williams

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

\_\_\_\_\_  
HAZELLE ROGERS., MAYOR

ATTEST:

\_\_\_\_\_  
SHARON HOUSLIN, CITY CLERK  
JCB:jla  
Sponsored by: SHARON HOUSLIN, City Clerk

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)

Approved  
RESOLUTION 2016-23

A RESOLUTION APPOINTING OR REAPPOINTING MEMBERS  
TO THE PLANNING AND ZONING BOARD; PROVIDING FOR THE  
ADOPTION OF REPRESENTATIONS; PROVIDING AN  
EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board ("Board") consists of six (6) members, each of whom is appointed by the members of the City Commission, respectively, and one ex-officio member to be appointed by the School Board of Broward County, and

WHEREAS, it is appropriate that all the members of the Board are appointed as herein stated to the Planning and Zoning Board,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

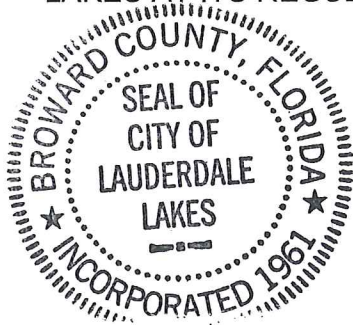
Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

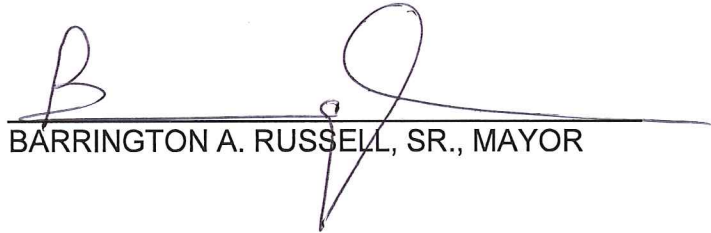
Section 2. SLATE OF BOARD MEMBERS AND APPOINTEES: The City Commission hereby approves the appointments of representatives to the Planning and Zoning Board as follows:

Chris Akagbouso, School Board of Broward County  
Tycie Causwell  
Suzette Maylor  
Adrian Sargeant  
Janet Thompson  
Sylvia Williams


Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD MARCH 22, 2016.



  
BARRINGTON A. RUSSELL, SR., MAYOR

ATTEST:

  
SHARON HOUSLIN, CITY CLERK  
JCB:jla  
Sponsored by: SHARON HOUSLIN, City Clerk

**VOTE:**

Vice-Mayor Eileen Rathery	<input checked="" type="checkbox"/> (For)	<input type="checkbox"/> (Against)	<input type="checkbox"/> (Other)
Commissioner Edwina Coleman	<input checked="" type="checkbox"/> (For)	<input type="checkbox"/> (Against)	<input type="checkbox"/> (Other)
Commissioner Gloria Lewis	<input checked="" type="checkbox"/> (For)	<input type="checkbox"/> (Against)	<input type="checkbox"/> (Other)
Commissioner Beverly Williams	<input checked="" type="checkbox"/> (For)	<input type="checkbox"/> (Against)	<input type="checkbox"/> (Other)
Commissioner Patricia Williams	<input checked="" type="checkbox"/> (For)	<input type="checkbox"/> (Against)	<input type="checkbox"/> (Other)

## PLANNING AND ZONING BOARD

Created: amended Ordinance #93-21

**Revised Ordinance #03-12**

**Revised Ordinance #05-46**

Membership: Six members, five appointed by Commission, and one non-voting member designated by Broward County School Board. Qualifications: engineering experience, architectural experience; knowledge of building codes and ordinances, the ability to read plot and site plans, the ability to review plats, the city planning and management experience and real estate experience

Terms: One-year terms from May 1<sup>st</sup> to April 30<sup>th</sup>

Form 1 Financial Statement: Required

**Meeting: Every 4<sup>th</sup> Thursday of every month @ 7:00 P.M.**

Liaison: Director of Development Services

NAME	APPOINTMENT	TERM EXPIRES
Chris Akagbouso	School Board Representative	4/2017
Adrian Sargeant	Reso. 2016-23	4/2017
Tycie Causwell	Reso. 2011-22	4/2017
Sylvia F. Williams	Reso. 2011-22	4/2017
Janet Thompson	Reso. 2011-23	4/2017
Suzette A. Maylor	Reso. 2011-22	4/2017





Service on an Advisory Board or Committee provides citizens with an opportunity to help shape policy and direction for the City of Lauderdale Lakes. Please indicate your interest in serving on an Advisory Board and/or Committee by completing this application.

**If you currently serve on a Board or Committee, please provide the name of the Advisory Board or Committee.**

<input type="checkbox"/> Beautification Advisory Board	<input type="checkbox"/> Parks and Recreation Board
<input type="checkbox"/> Civil Service Board	<input checked="" type="checkbox"/> Planning and Zoning Board *
<input type="checkbox"/> Economic Development Advisory Board	<input type="checkbox"/> School Advisory Board
<input type="checkbox"/> Historic Preservation Board	<input type="checkbox"/> Committee

Current or Last Employer: Broward County Schools - Indian Ridge Middle School  
Address: 1355 South Nob Hill Road, Davie FL 33329  
Position Held: Teacher Years of Service 14

\*\*\*

Please describe your professional, voluntary or other experience that best qualifies you for the selected advisory board/committee:

Land Developer / Owner Bullard Estates

If you are employed by the City of Lauderdale Lakes and interested in serving on the Civil Service Board, please provide your current position title and department.

N/A

If you are applying for an Advisory Board which has specific requirements, please explain how your experience and/or educational background meets the criteria (additional backup may be provided):

The ability to read plot and site plans, the ability to review plans, and planning and management experience with real estate

**ACKNOWLEDGMENT (Check Below):**

- ☒ I understand that in accordance with the Florida Sunshine Law, this information will be available for public review and I waive any objections to such publication.
- ☒ If appointed, I agree to faithfully and fully perform the duties of my office, will make every endeavor to serve my full term, and will comply with all laws or Ordinances of the City, County, and State of Florida, particularly those pertaining to the conduct of public office and the financial disclosure requirements, if applicable, to my position.
- ☒ I understand, if appointed, an updated application must be submitted to seek appointment to another advisory board.
- ☒ I understand that if I am appointed to the Planning and Zoning Board I may be required to have additional experience, education and knowledge related to planning, zoning, redevelopment or related disciplines.

  
SIGNATURE:

Shayla L. Bullard  
NAME (printed)

12-23-16  
DATE

Please complete and return this information:

City of Lauderdale Lakes  
City Clerk's Office  
4300 Northwest 36<sup>th</sup> Street  
Lauderdale Lakes, Florida 33319  
954-535-2705



CITY OF LAUDERDALE LAKES  
APPLICATION FOR ADVISORY BOARD

PERSONAL INFORMATION:

Name: Josephine Samantha Vacciana Date: 12/20/16  
Home Address: 3754 N.W. 21st Street  
City/State/Zip: Lauderdale Lakes, FL 33311  
Home Phone: (954) 937-9642 Other: \_\_\_\_\_ E-Mail: VaccianaLaw@gmail.com  
☒ Check this box if you want to receive emails on City events and activities

WORK RELATED INFORMATION:

Employer/Business Name: Trial Lawyers of the Palm Beaches  
Occupation/Position: Attorney  
Business Address: 301 Yamato Road Ste 1240  
City/State/Zip: Boca Raton, FL 33431  
Business Phone: 561 288 8366 Fax: 561 571 5202 E-Mail: VaccianaLaw@gmail.com

Where should we contact you? Home: \_\_\_\_\_ Business: ☒  
Education (list highest degree/level): J.D.  
Area of concentration/degree: Law  
How long have you lived in the City? 11 years  
Are you a U.S. Citizen? Yes ☒ No \_\_\_\_\_  
Have you ever been convicted of a felony? Yes \_\_\_\_\_ No ☒  
Have you ever been convicted of crime involving dishonesty? Yes \_\_\_\_\_ No ☒

Please indicate the top two boards on which you are interested in serving. For example, insert #1 for the first board choice and #2 for second board choice.

	Beautification Advisory Board
	Civil Service Board
<u>2</u>	Economic Development Advisory Board
	Historic Preservation Board
<u>1</u>	Planning and Zoning Board*
<u>3</u>	Parks and Recreation Advisory Board
	School Advisory Board

\* Financial Disclosure Form is required, if appointed to serve.



Please list present or prior service on governmental boards and committees:

N/A

Please describe your background and/or experience which best qualifies you to serve on your number one board selected. Attach additional background information as needed:

Strong Statutory, Case law & Municipal Law experience

Please describe your background and/or experience which best qualifies you to serve on your number two board selected. Attach additional background information as needed:

List membership(s) in professional, job, and community related organizations:

Florida Bar, New Life Youth Board, CASA

List any active professional, technical or occupational licenses, certificates that you hold which might be beneficial to the top two boards you selected:

Florida Bar license

Some board positions are open to only City employees. Are you presently employed by the City? (Yes or No) No

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

Date: 10/20/16

Please return this application to:

Office of the City Clerk  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

*This application will be kept on file for a period of one year from the date of completion.*



**CITY OF LAUDERDALE LAKES  
ADVISORY BOARD/COMMITTEE APPLICATION**

Service on an Advisory Board or Committee provides citizens with an opportunity to help shape policy and direction for the City of Lauderdale Lakes. Please indicate your interest in serving on an Advisory Board and/or Committee by completing this application.

This application is for: ☒ New Appointment ☐ Re-Appointment

If you currently serve on a Board or Committee, please provide the name of the Advisory Board or Committee. \_\_\_\_\_

Please check the Advisory Board and/or Committee for which you wish to be considered:

<input type="checkbox"/> Beautification Advisory Board	<input type="checkbox"/> Parks and Recreation Board
<input type="checkbox"/> Civil Service Board	<input checked="" type="checkbox"/> Planning and Zoning Board *
<input type="checkbox"/> Economic Development Advisory Board	<input type="checkbox"/> School Advisory Board
<input type="checkbox"/> Historic Preservation Board	<input type="checkbox"/> Committee

\*Per Section 112.317 Florida Statutes, Members of some Advisory Boards are required to file a Financial Disclosure Report.

Please type or print information.

**PERSONAL:**

Name LARRY G. STRIGGLES E-Mail Address: LGSTRIGGLES@GMAIL.COM

Residential Address 3250 NW 21 STREET  
Street Name

LDLE. LKS FL 33311  
City State Zip

Daytime Number: 954/560-6807 Alternate Number 954/714-0958

**EDUCATION:**

High School: NOVA Location: DAVIE, FL

College (if applicable): FLORIDA STATE Location: TALL, FL

Years Completed: 4 Degree: B.S. ACCOUNTING

Other professional or technical training: \_\_\_\_\_

**EMPLOYMENT:**

Current or Last Employer: SELF EMPLOYED

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

Position Held: TAX CONSULTANT Years of Service 30

\*\*\*

Please describe your professional, voluntary or other experience that best qualifies you for the selected advisory board/committee:

MAJESTIC GARDENS CONDO ASSOC. BOARD (CURRENT)  
FORMER LAUDERDALE LAKES PARKS + REC BOARD  
OLD DILLARD MUSEUM BOARD (FORMER)  
PROJECT MANAGED PARKING LOT CONSTRUCTION (HFA of BROWARD)

If you are employed by the City of Lauderdale Lakes and interested in serving on the Civil Service Board, please provide your current position title and department.

N/A

If you are applying for an Advisory Board which has specific requirements, please explain how your experience and/or educational background meets the criteria (additional backup may be provided):

REVIEWED SPECIFICATIONS FOR MINOR HOME REPAIR PROGRAM (HFA)  
PROJECT MANAGED CONSTRUCTION PROJECTS (HFA)

**ACKNOWLEDGMENT (Check Below):**

- ☒ I understand that in accordance with the Florida Sunshine Law, this information will be available for public review and I waive any objections to such publication.
- ☒ If appointed, I agree to faithfully and fully perform the duties of my office, will make every endeavor to serve my full term, and will comply with all laws or Ordinances of the City, County, and State of Florida, particularly those pertaining to the conduct of public office and the financial disclosure requirements, if applicable, to my position.
- ☒ I understand, if appointed, an updated application must be submitted to seek appointment to another advisory board.
- ☒ I understand that if I am appointed to the Planning and Zoning Board I may be required to have additional experience, education and knowledge related to planning, zoning, redevelopment or related disciplines.

SIGNATURE

Larry G. Striggles

NAME (printed)

12-12-16

DATE

Please complete and return this information:

City of Lauderdale Lakes  
City Clerk's Office  
4300 Northwest 36<sup>th</sup> Street  
Lauderdale Lakes, Florida 33319  
954-535-2705



## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

#### Title

RESOLUTION 2017-043 REQUESTING AN AMENDMENT TO THAT CERTAIN TRAFFIC ENGINEERING AGREEMENT WITH BROWARD COUNTY, DATED AS OF THE 24TH DAY OF JUNE, 1993, REGARDING TRAFFIC MANAGEMENT

#### Summary

This Resolution requests that Broward County provide for an amendment to the Traffic Engineering Agreement dated June 24, 1993. Multiple requests made by the City Commission to install a 4-way stop sign at the intersection of NW 34th Street and NW 35th Avenue have been denied by the County. Unless the traffic conditions and crashes change in the future, the only way to install the 4-way stop sign at that intersection is to exclude that intersection from the existing traffic engineering agreement with the County and allow City Staff to design and install the sign in-house.

#### Staff Recommendation

#### Background:

On May 11th, 2010 and November 13th, 2012 The City Commission adopted 2 resolutions requesting the County to install a 4-way stop sign at that intersection of NW 34th Street and NW 35th Avenue. Both requests were denied by the County for the following reasons:

- Low traffic volume (minimum 300 Vehicle per hour for any 8 hours period)
- Insufficient number of crash (minimum 5 crashes within 12 months)

In January 2017, due to increase complaints from adjacent residents and multiple reported crashes, City Staff requested a new traffic study from the County. On April 4th, 2017, the County submitted a new report that indicates the requested 4-way stop sign is still not warranted. Unless traffic conditions change or unfortunately, more crashes occur in the future, the only way to install the 4-way stop sign at that intersection is to exclude the intersection from the agreement amend the traffic engineering agreement with the County. Once the amendment is approved by the County, City Staff will design and install the sign per MUTCD requirements.

#### Funding Source:

The cost to install the new stop signs including striping is estimated to be around \$600. The funds will be deducted from approved Public Works operations budget.

**Sponsor Name/Department:** Ronald Debrunes, Public Works Director

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
❑ Resolution 2017-043 - Traffic Engineering Agreement	Resolution
❑ Project Location Map	Exhibit
❑ Copy of Previously approved Resolution 2010-33	Backup Material
❑ Copy of Previously approved Resolution 2012-121	Backup Material
❑ Broward County Denial Memo	Backup Material

RESOLUTION 2017-043

A RESOLUTION OF THE CITY OF LAUDERDALE LAKES, REQUESTING AN AMENDMENT TO THAT CERTAIN TRAFFIC ENGINEERING AGREEMENT WITH BROWARD COUNTY, DATED AS OF THE 24<sup>TH</sup> DAY OF JUNE, 1993, REGARDING TRAFFIC MANAGEMENT; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Broward County entered into a Traffic Engineering Agreement as of the 24<sup>th</sup> day of June, 1993 ("Agreement"), under which the County assumed traffic management prerogatives and obligations within the City, and

WHEREAS, the City has identified the intersection of Northwest 34<sup>th</sup> Street and Northwest 35<sup>th</sup> Avenue as an intersection of interest, because of the several motor vehicle accidents which have occurred at such location, over the years, and

WHEREAS, the City sought to engage the County in specific traffic management protocols in order to make such intersection safer, but Broward County found the various suggested changes as unwarranted and declined to take action because of concerns with the efficient flow of traffic, and

WHEREAS, the City is prepared to undertake the responsibility for traffic management at such intersection, as well as the obligation to indemnify the County for claims and losses which may be suffered by the County by virtue of actions taken or inactions of the City with regard to the traffic management of such intersection, and

WHEREAS, the County has requested an indication from the City's governing body that the City desires to amend the Agreement to eliminate the intersection of Northwest 34<sup>th</sup> Street and Northwest 35<sup>th</sup> Avenue from the scope of the County's responsibilities under the Agreement,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:



Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. REQUEST: The City Commission of the City of Lauderdale Lakes hereby requests Broward County to provide for an amendment to the Traffic Engineering Agreement, dated the 24<sup>th</sup> day of June, 1993, in order to delete the intersection of Northwest 34<sup>th</sup> Street and Northwest 35<sup>th</sup> Avenue from the scope of County's traffic management responsibilities under said Agreement, in connection with which the City will provide for the customary indemnification provisions in favor of Broward County.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

\_\_\_\_\_  
HAZELLE ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
SHARON HOUSLIN, CITY CLERK

JCB:jla

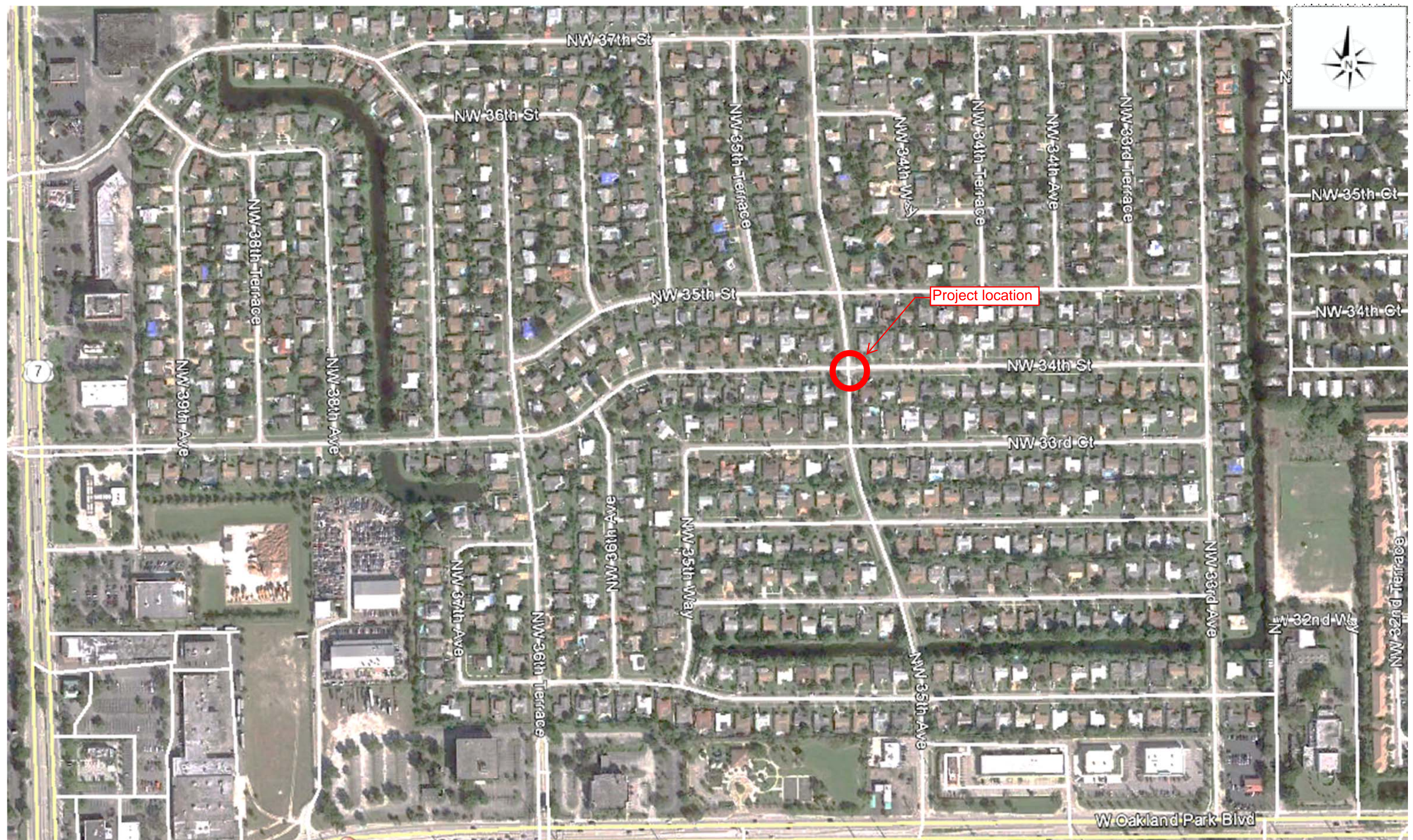
Sponsored by: RONALD DESBRUNES, Director of Public Works

**VOTE:**

Mayor Hazelle Rogers	_____ (For)	_____ (Against)	_____ (Other)
Vice-Mayor Veronica Edwards Phillips	_____ (For)	_____ (Against)	_____ (Other)
Commissioner Sandra Davey	_____ (For)	_____ (Against)	_____ (Other)
Commissioner Gloria Lewis	_____ (For)	_____ (Against)	_____ (Other)
Commissioner Beverly Williams	_____ (For)	_____ (Against)	_____ (Other)



## PROJECT LOCATION MAP





RESOLUTION No. 2010-33

A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE SUCH STEPS AS SHALL BE NECESSARY AND APPROPRIATE TO CAUSE THE CONSTRUCTION OF TWO ADDITIONAL TRAFFIC CONTROL DEVICES, PREFERABLY STOP SIGNS, ON THE NORTH AND SOUTH CORNERS OF THE INTERSECTION OF NORTHWEST 34<sup>TH</sup> STREET AND 35<sup>TH</sup> AVENUE; PROVIDING FOR COOPERATION WITH THE BROWARD COUNTY TRAFFIC ENGINEERING DIVISION; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, there have been three traffic accidents, causing damage to both public and private property, at the intersection of Northwest 34<sup>th</sup> Street and 35<sup>th</sup> Avenue, and

WHEREAS, cut-through traffic often approaches the intersection at a high rate of speed, and

WHEREAS, it is appropriate to resolve the dangerous condition at such intersection, in order to protect the health, safety and welfare of the community, and

WHEREAS, the City has an Interlocal Agreement with Broward County, in connection with which the Broward County Traffic Engineering Division determines the warrants for and the placement of traffic control devices,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The City Manager is hereby authorized and directed to take such steps as shall be necessary and appropriate to cause the construction of two additional traffic control devices, preferably stop signs, on the north and south corners of the intersection of Northwest of 34<sup>th</sup> Street and 35<sup>th</sup> Avenue.

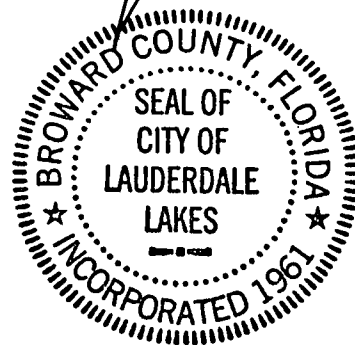
Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD MAY 11, 2010.

  
BARRINGTON A. RUSSELL, SR., MAYOR

ATTEST:

  
HAZELINE F. CARSON, CITY CLERK



RESOLUTION NO. 2012-121

A RESOLUTION TO BROWARD COUNTY SEEKING THE ESTABLISHMENT OF TRAFFIC CONTROL DEVICES, INCLUDING A FOUR-WAY TRAFFIC CONTROL DEVICE AT THE INTERSECTION OF NW 35<sup>TH</sup> AVENUE AND NW 34<sup>TH</sup> STREET, LAUDERDALE LAKES, TO MITIGATE EXISTING DANGEROUS CONDITIONS; PROVIDING FOR JUSTIFICATION WARRANTING SUCH TRAFFIC DEVICES; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, for several years, persons living in the vicinity of the intersection of NW 35<sup>th</sup> Avenue and NW 34<sup>th</sup> Street, including civic activist Byron Maylor, have petitioned the City Commission for the establishment of a four-way traffic control device at such intersection, and

WHEREAS, through an interlocal agreement, the County of Broward provides traffic control administration and functionality for the City, including control of local roads, and

WHEREAS, in the last approximately three (3) years, there have been five (5) traffic accidents at such location:

10/12/2012	Friday	6:15 PM	V-1 west bound and failed to stop at stop sign striking V-2.
10/11/2012	Thursday	5:40 PM	V-1 east bound stopped at stop sign. V-1 proceeded and stuck V-2 who had the right of way.
10/16/2011	Sunday	8:47 PM	V-1 west bound did not stop completely at

			stop sign and struck V-2
8/21/2010	Saturday	8:52 PM	V-1 west bound. Disobeyed stop and struck V2.
12/27/2009	Sunday	12:26 PM	V-1 east bound and was turning right into V-2 path. V-2 had the right of way.

WHEREAS, in one case, the accident actually involved a vehicle which came to rest at the wall of the house located at 3491 NW 34<sup>th</sup> Street, which is located at the corner of such intersection, and

WHEREAS, such record of vehicular accidents warrants an appropriate study and additional and modified traffic control devices to mitigate against the obvious dangers at such intersection, and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

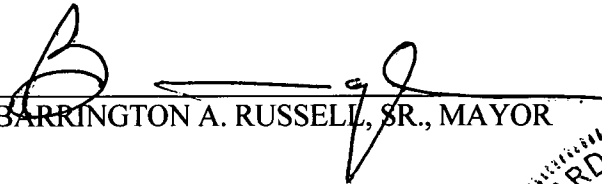
Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. REQUEST TO BROWARD COUNTY: The City Commission hereby requests Broward County to undertake such studies as shall be necessary to determine whether or not specified warrants are met to support the establishment of additional and modified traffic control devices at the intersection of NW 35<sup>th</sup> Avenue and NW 34<sup>th</sup> Street, including the reconfiguration of the stop-bars and the placement of four-way traffic control devices.

Section 3. INSTRUCTIONS TO THE INTERIM CITY CLERK: The Interim City Clerk is hereby authorized and directed to provide true copies of this Resolution to the Honorable John Rodstrom, Mayor of Broward County, and Chris Walton, Director of the Broward County Transportation Department.

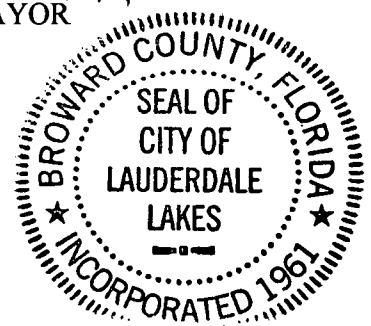
Section. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD NOVEMBER 13, 2012.

  
BARRINGTON A. RUSSELL, SR., MAYOR

ATTEST:

  
CELESTINE DUNMORE, INTERIM CITY CLERK  
JCB



Sponsored by: MAYOR BARRINGTON A. RUSSELL, SR. and the CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES

**VOTE:**

Vice Mayor Edwina Coleman  
Commissioner Eric Haynes  
Commissioner Gloria Lewis  
Commissioner Eileen Rathery  
Commissioner Levoyd Williams  
Commissioner Patricia Williams

<u>X</u>	(For)	___	(Against)	___	(Other)	
___	(For)	___	(Against)	<u>X</u>	(Other)	left the dais
<u>X</u>	(For)	___	(Against)	___	(Other)	
<u>X</u>	(For)	___	(Against)	___	(Other)	
<u>X</u>	(For)	___	(Against)	___	(Other)	
<u>X</u>	(For)	___	(Against)	___	(Other)	

## Ronald Desbrunes

---

**From:** Meyer, Jeffrey <JMEYER@broward.org>  
**Sent:** Tuesday, April 04, 2017 10:08 AM  
**To:** Maqsood M. Nasir, P.E.  
**Cc:** Brunner, Scott; Sebo, Andrew; Caratozzolo, Carmelo; Cai, Lei; Samuels, Odane; Ronald Desbrunes; Vincent Richmond  
**Subject:** FW: NW 34 St & NW 35 Ave (Lauderdale Lakes) - Request for AWSC  
**Attachments:** AWSC Analysis Summary.pdf

Hello Mr. Nasir,

In response to your email request, the Broward County Traffic Engineering Division (BCTED) completed a study of the subject intersection to assess the justification for all-way stop control (AWSC).

Our AWSC study was performed in accordance with the guidelines identified in the Federal Highway Administration publication entitled Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD states “STOP signs should not be used for speed control.” MUTCD further states that AWSC installations should ordinarily be used where the volume of traffic on the intersecting roads is significant and approximately equal. Specifically, the MUTCD states that the total vehicular volume entering the intersection from all approaches must be at least 500 vehicles per hour (VPH) for any eight hours of an average day with minor-street traffic comprising 40 percent or more of the total approach volumes. Another justification for the installation of AWSC may be a crash problem as evidenced by the occurrence of five or more crashes within a 12-month period, where the crashes are of the types that are susceptible to correction by AWSC.

Traffic volume data for all approaches to the intersection were collected for a consecutive 24-hour period commencing March 6, 2017. Our review of that data showed that there were no hours during which the MUTCD minimum vehicular volume requirements were met. A copy of the analysis summary sheet is attached.

Crash records for the intersection were procured from the Broward Sheriff's Office and extracted from Signal Four Analytics, a crash records database established by the University of Florida GeoPlan Center, for the 24-month time period from March 2015 to March 2017. A review of the crash reports indicated that six crashes were of a type susceptible to correction by AWSC which occurred within a 24 month period, and three of them occurred within a 12 month period. Therefore, the crash requirement is not met. However, based on our review of the crash reports, motorists' running of the STOP signs were frequently found to be contributing factors to the crashes. Motorists' disobedience of the stop restrictions may best be addressed by the local police department providing selective enforcement of the traffic statute. As a further countermeasure to motorists running the STOP signs, BCTED will replace the existing 30 inch by 30 inch STOP signs with larger STOP signs of 36 inch by 36 inch at the subject intersection.

With regard to sight distance, BCTED considers criteria of the Florida Department of Transportation's (FDOT's) Roadside Design Standards for 2016, Index 546, and Geometric Design of Highways and Streets (AASHTO). These publications have established guidelines for sight distance standards for motorists at a stop-controlled intersection. Per these publications, a minimum sight distance of 335 feet should be available for stopped motorists on minor streets when the speed limit is 30 miles per hour on major streets. During the field review performed by staff, sight distance restrictions were observed for eastbound (EB) and westbound (WB) motorists.



The measured sight distance for an EB driver stopped on NW 34 Street of southbound traffic on NW 35 Avenue is approximately 187 feet, which is 148 feet less than the minimum requirement of 335 feet. Specifically, a parked vehicle (noticed on several occasions), a hedge row and palm trees along the west side of NW 35 Avenue are obscuring visibility between EB and southbound (SB) motorists. As such, BCTED would like to request the City's Code Compliance Division have the home owner trim the hedge row on the northwest corner of the intersection to improve the sight distance of EB motorists looking north. BCTED would also like the City to consider the restriction of on-street parking on the west side of NW 35 Avenue between NW 35 Street and NW 34 Street. If the City desires to do so, please send a request to BCTED and staff will install the appropriate NO PARKING signage at the above-mentioned location.

The measured sight distance for a WB driver stopped on NW 34 Street of southbound traffic on NW 35 Avenue is approximately 213 feet, which is 122 feet less than the minimum requirement of 335 feet. The WB motorists sight distance is restricted due to palm trees in the swale on the northeast corner of the intersection. Staff also found the measured distance between the WB stop line and the north-south sidewalk along NW 35 Ave to be approximately 10 feet. Per Broward County Signing and Pavement Standards the minimum distance between the stop line and crosswalk area is four feet. Subsequently, a work order has been issued to relocate the WB stop line and STOP sign six feet farther west, thus removing the palm trees from blocking the view of WB motorists looking to the north.

In summary, neither the volumetric nor the crash warrants are satisfied. As such, BCTED will not implement AWSC at the subject intersection at this time.

If BCTED may be of further assistance, please do not hesitate to contact us.

Sincerely,

Jeffrey J Meyer  
Broward County Traffic Engineering Division  
Telephone No. : 954.847.2652  
Facsimile Transmittal No. : 954.735.8564  
Hours: Monday through Thursday, 7 AM to 5 PM  
[jmeyer@broward.org](mailto:jmeyer@broward.org)

---

**From:** Caratozzolo, Carmelo  
**Sent:** Tuesday, January 31, 2017 3:00 PM  
**To:** 'Maqsood M. Nasir, P.E.' <[mmnasir@lauderdalelakes.org](mailto:mmnasir@lauderdalelakes.org)>  
**Cc:** Brunner, Scott <[SBrunner@broward.org](mailto:SBrunner@broward.org)>; Ronald Desbrunes <[ronaldd@lauderdalelakes.org](mailto:ronaldd@lauderdalelakes.org)>; Vincent Richmond <[VincentR@lauderdalelakes.org](mailto:VincentR@lauderdalelakes.org)>; Meyer, Jeffrey <[JMEYER@broward.org](mailto:JMEYER@broward.org)>; Cai, Lei <[LCAI@broward.org](mailto:LCAI@broward.org)>; Sebo, Andrew <[ASEBO@broward.org](mailto:ASEBO@broward.org)>  
**Subject:** RE: NW 34 St & NW 35 Ave (Lauderdale Lakes) - Request for AWSC

Good Afternoon Nasir,

In response to your below request, the Broward County Traffic Engineering Division (BCTED) will perform a study to assess justification for all-way stop at the intersection of NW 34 Street and NW 35 Avenue in the City of Lauderdale Lakes.

Engineering Technician Jeff Meyer will perform the study under my supervision. The study will be completed in March 2017, at which time the City of Lauderdale Lakes will be notified of the study findings and recommendations.

Please feel free to contact BCTED if we may be of further assistance in the interim.

Sincerely,  
Carmelo



Carmelo Caratozzolo, P.E., Traffic Operations Engineer  
Broward County Traffic Engineering Division  
2300 West Commercial Boulevard, Fort Lauderdale, FL 33309  
Office Tel. No.: 954.847.2600, Facsimile Transmittal No.: 954.847.2700  
[ccaratozzolo@broward.org](mailto:ccaratozzolo@broward.org) [www.broward.org](http://www.broward.org)



-----Original Message-----

From: Maqsood M. Nasir, P.E. [<mailto:mmnasir@lauderdalelakes.org>]

Sent: Tuesday, January 31, 2017 2:35 PM

To: Caratozzolo, Carmelo <[CCARATOZZOLO@broward.org](mailto:CCARATOZZOLO@broward.org)>

Cc: Brunner, Scott <[SBrunner@broward.org](mailto:SBrunner@broward.org)>; Ronald Desbrunes <[ronaldd@lauderdalelakes.org](mailto:ronaldd@lauderdalelakes.org)>; Vincent Richmond <[VincentR@lauderdalelakes.org](mailto:VincentR@lauderdalelakes.org)>

Subject: FW: NW 34 St & NW 35 Ave (Lauderdale Lakes) - Request for AWSC

Good afternoon Carmelo. Please see the email below as we talked.

Thanks,  
Maqsood Mohammad Nasir, P.E.  
City Engineer/CIP Administrator

City of Lauderdale Lakes  
4300 NW 36th Street | Lauderdale Lakes, FL 33319  
V: 954-535-2712  
F: 954-733-4220  
mmnasir@lauderdalelakes.org  
www.lauderdalelakes.org

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From: Ronald Desbrunes  
Sent: Tuesday, January 31, 2017 12:24 PM  
To: Maqsood M. Nasir, P.E.  
Cc: Meyer, Jeffrey  
Subject: NW 34 St & NW 35 Ave (Lauderdale Lakes) - Request for AWSC

Nasir,

Please forward the request below to Mr. Scott Brunner from Broward County.

The City of Lauderdale lakes is requesting the installation of a 4-Way Stop Sign at the intersection of NW 34th Street and NW 35th Avenue. The City is getting a lot of complaints/requests from the residents living near that intersection due to multiple accidents or near fatalities. Currently, the intersection is a 2-way Stop along NW 34th Street. There are no traffic control devices along NW 35th Avenue. Please investigate this situation and let me know how you can help.

The City Commission would like to have a timeline for this investigation. Also, I believe that the intersection was investigated back in 2012 for the same reason, I would appreciate it if I could get a copy of the previous report. Feel free to contact me if you need assistance or more information.

Thanks

Ronald Desbrunes, P.E.  
Director | Public Works

[cid:image001.jpg@01D277E7.2FE0AD50]<<http://www.lauderdalelakes.org/>>

City of Lauderdale Lakes  
4300 NW 36th Street | Lauderdale Lakes, FL 33319  
V: 954-535-2778  
F: 954-733-4220  
ronaldd@lauderdalelakes.org<<mailto:vanessas@lauderdalelakes.org>>

[www.lauderdalelakes.org](http://www.lauderdalelakes.org)<<http://www.lauderdalelakes.org>>

[cid:image002.png@01D277E7.2FE0AD50]<<https://www.facebook.com/pages/City-of-Lauderdale-Lakes-Florida/145139825542>>

[cid:image003.png@01D277E7.2FE0AD50] <<https://twitter.com/cityoflaudlakes>>

City Operating Hours

Monday - Friday 8:00 a.m. - 5:00 p.m.

The City of Lauderdale Lakes is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such law and thus subject to disclosure. All E-mails sent and received are captured by our servers and kept as public record.

[cid:image004.jpg@01D277E7.2FE0AD50]

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Under Florida law, most e-mail messages to or from Broward County employees or officials are public records, available to any person upon request, absent an exemption. Therefore, any e-mail message to or from the County, inclusive of e-mail addresses contained therein, may be subject to public disclosure.

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Under Florida law, most e-mail messages to or from Broward County employees or officials are public records, available to any person upon request, absent an exemption. Therefore, any e-mail message to or from the County, inclusive of e-mail addresses contained therein, may be subject to public disclosure.

Intersection Name:	NW 34 St & NW 35 Ave
Municipality:	Lauderdale Lakes
Count Date:	3-6-17 to 3-7-17
Prepared Date:	8-Mar-17
	Prepared By: Jeff Meyer

ALL-WAY STOP WARRANT ANALYSIS SUMMARY SHEET									
Time Period	NB Major Street Traffic (VPH)	SB Major Street Traffic (VPH)	EB Minor Street Traffic (VPH)	WB Minor Street Traffic (VPH)	Total All Approaches (VPH) Rqmt. = 500 VPH	"✓" if Total Appr. Volume Is 500 VPH or Greater	Both Minor Streets (VPH) Rqmt. = 200 VPH	"✓" if Total Minor Street Volume Is 200 VPH or Greater	Is Warrant Met For This Hour?
0000-0100	20	5	3	7	35		10		
0100-0200	11	2	4	7	24		11		
0200-0300	6	6	0	2	14		2		
0300-0400	5	8	1	0	14		1		
0400-0500	7	11	2	1	21		3		
0500-0600	17	23	9	3	52		12		
0600-0700	40	61	12	14	127		26		
0700-0800	68	88	18	25	199		43		
0800-0900	63	72	19	33	187		52		
0900-1000	59	43	7	25	134		32		
1000-1100	45	75	12	28	160		40		
1100-1200	75	37	13	30	155		43		
1200-1300	70	49	10	39	168		49		
1300-1400	61	52	12	31	156		43		
1400-1500	76	52	11	34	173		45		
1500-1600	121	59	13	40	233		53		
1600-1700	116	63	16	57	252		73		
1700-1800	155	70	19	61	305		80		
1800-1900	156	66	27	54	303		81		
1900-2000	115	66	12	58	251		70		
2000-2100	92	45	10	36	183		46		
2100-2200	76	42	4	28	150		32		
2200-2300	66	26	5	17	114		22		
2300-2400	37	18	5	14	74		19		
TOTAL	1,557	1,039	244	644	3,484		888		
NUMBER OF HOURS VOLUME REQUIREMENTS ARE MET FOR ALL APPROACHES AND MINOR STREET (Must be at least 8 for all)									0
MINOR STREET PERCENTAGE ----->							25.49%		
IS ALL-WAY STOP WARRANT MET? ----->							NO		

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: Yes

Contract Requirement: Yes

#### Title

RESOLUTION 2017-044 AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT BETWEEN THE SCHOOL BOARD OF BROWARD COUNTY AND THE CITY REGARDING TRANSPORTATION SERVICES FOR A FIVE-YEAR TERM

#### Summary

This Resolution authorizes the Mayor and City Clerk, to execute and attest the renewal agreement between the School Board of Broward County and the City of Lauderdale Lakes to provide transportation services for a term of five years.

#### Staff Recommendation

##### **Background:**

For over five years, the City of Lauderdale Lakes has entered into an agreement with the School Board of Broward County to provide school bus transportation services for City recreational programs and events. The agreement provides a reimbursement rate for services at seventy dollars per hour (\$70) for school bus transportation services for a term of five years. Notification of the School Board's annual reimbursement rates shall be mailed to designated City staff each year prior to the effective date. Currently, the City utilizes this service primarily to provide transportation for the Summer Camp Program that is funded through the Children Service's Council Summer Maximizing out of School Time grant. The City has the option to utilize the service for other programs if deemed appropriate.

Staff is recommending renewing the agreement at the seventy dollar per hour rate and accepting the five year term.

##### **Funding Source:**

Children Service's Council Maximizing out of School Time Grant/General Fund

**Sponsor Name/Department:** Treasa Brown Stubbs, Director of Parks and Human Services

**Meeting Date:** 4/11/2017

##### **ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Resolution 2017-044- Transportation Services	Cover Memo
<input type="checkbox"/> Exhibit A to Resolution Approving Transportation Services by the School Board of Broward County	Exhibit
<input type="checkbox"/> School Board of Broward County Agreement Cover Letter	Backup Material
<input type="checkbox"/> Agreement - Transportation Services	Backup Material

RESOLUTION 2017-044

A RESOLUTION OF THE CITY OF LAUDERDALE LAKES, BROWARD COUNTY, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT BETWEEN THE SCHOOL BOARD OF BROWARD COUNTY AND THE CITY REGARDING TRANSPORTATION SERVICES FOR A FIVE-YEAR TERM, UNDER THE AUSPICES OF SECTION 1006.2161(1)(a), FLORIDA STATUTES, A SUMMARY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, AND A FACSIMILE COPY OF WHICH CAN BE INSPECTED IN THE OFFICE OF THE CITY CLERK; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the School Board of Broward County ("School Board") owns and operates a fleet of vehicles for the transportation of pupils, and

WHEREAS, the City provides recreational programs dependent upon the availability of transportation, and

WHEREAS, Section 1006.2161(1)(a), Florida Statutes, provides for governmental agencies to use school buses for a public purpose, and

WHEREAS, City, being eligible under the subject legislation to use school buses and to enter into an Agreement with the School Board to define the relationship between them and to set forth the rights and obligations thereof,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement with the School Board

of Broward County, regarding transportation services for a five-year term, under the auspices of Section 1006.2161(1)(a), Florida Statutes, a summary of which is attached as **Exhibit A**, and a facsimile copy of which can be inspected in the office of the City Clerk.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain five (5) fully executed copies of the subject Agreement, with one to be maintained by the City; with three to be delivered to the School Board of Broward County, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES  
AT ITS REGULAR MEETING HELD APRIL 11, 2017.

\_\_\_\_\_  
HAZELLE ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
SHARON HOUSLIN, CITY CLERK

JCB:jl

Sponsored by: TREASA BROWN-STUBBS, Director of Parks and Human Services

**VOTE:**

Mayor Hazelle P. Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)



## **Exhibit “A”**

### **Transportation Services Agreement Between the School Board of Broward County and the City of Lauderdale Lakes**

This resolution serves to approve the agreement for transportation services between the School Board of Broward County and the City of Lauderdale Lakes. The agreement shall be executed for a term of five (5) years commencing on the date executed by all parties.



**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

3831 NW 10<sup>th</sup> Avenue • Oakland Park, Florida 33309 • Office: 754-321-4402 • Fax: 754-321-4515

Student Transportation & Fleet Services  
Harrison Knight, Assistant Director  
754.321.4402  
harrison.knight@browardschools.com  
www.browardschools.com

**The School Board of  
Broward County, Florida**

Abby M. Freedman, Chair  
Nora Rupert, Vice Chair

Robin Bartleman  
Heather P. Brinkworth  
Patricia Good  
Donna P. Korn  
Laurie Rich Levinson  
Ann Murray  
Dr. Rosalind Osgood

Robert W. Runcie  
Superintendent of Schools

March 20, 2017

City of Lauderdale Lakes  
Tresa Brown-Stubbs, Director  
Parks and Human Services  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

Dear Director Brown-Stubbs:

Please find attached three copies of the proposed agreement between The School Board of Broward County, Florida, and the City of Lauderdale Lakes, to provide school bus transportation for recreational programs and events for a contract term of 5 years. This agreement provides reimbursement for the operating cost of regular school buses used by the City of Lauderdale Lakes at the District's approved Reimbursement Rate. Please note this contract also provides for the reimbursement for a school bus attendant at the District's bus attendant approved Reimbursement Rate, should a wheelchair lift equipped bus be required.

The approved reimbursement rates are established annually, based on the District's previous fiscal year operational cost for school bus transportation. Notification of the annual reimbursement rates is mailed to your designated contract administrator each year prior to the effective date. The current approved transportation Reimbursement Rate is \$70 per hour. The approved bus attendant Reimbursement Rate is \$28 per hour, which is in addition to the approved transportation Reimbursement Rate.

If the City of Lauderdale Lakes desires to continue the utilization of the District's school bus transportation for recreational programs and events, please have all three copies of the agreement executed and returned to my office to the attention of Cyrilla Bradley, as soon as possible. If you require additional information, or if you have any questions concerning the agreement, please contact Ms. Cyrilla Bradley, Accountant V, at 754 321-4427.

Sincerely,

Harrison Knight, Assistant Director  
Student Transportation & Fleet Services

HK/CB:mt  
Attachments

c: Cyrilla Bradley, Accountant V, Vehicle Maintenance

## **AGREEMENT**

**THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between**

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**CITY OF LAUDERDALE LAKES, FLORIDA**

(hereinafter referred to as "CITY"),  
whose principal place of business is  
2300 Civic Center Place  
LAUDERDALE LAKES, Florida 33441-3598,  
(collectively referred to as the "Parties")

**WHEREAS**, SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

**WHEREAS**, CITY provides recreational programs dependent upon availability of transportation; and

**WHEREAS**, Section 1006.261(1)(a), Florida Statutes, provides for governmental agencies to use school buses for public purpose; and

**WHEREAS**, CITY, being eligible under this legislation to use school buses, desires to enter into this Agreement with SBBC to define the relationship between the Parties and set forth the rights and obligations herein;

**NOW, THEREFORE**, in consideration of the premises and of mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE 1 - RECITALS**

1.01 **Recitals.** The foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on April 1, 2017, and conclude on May 31, 2022.

2.02 **Transportation Needs.** Prior to the execution of this Agreement, the Parties have discussed the transportation needs of CITY and the approximate number of school buses that may be made available to CITY; however, nothing contained herein will obligate SBBC to provide buses to CITY, if it is deemed by SBBC that such action will reduce or delay transportation of pupils. CITY, through its Contract Administrator, agrees to provide SBBC with two (2) weeks written notice in order to obtain the school vehicles for transportation purposes as described within this Agreement. Said requests for transportation are limited to days that public schools are not in session including, but not limited to, employee planning days, summer or holiday breaks, or weekends. For emergency reasons only as determined by CITY, SBBC agrees to provide the referenced school vehicles to CITY provided written notice is provided by CITY to SBBC no less than 48-hours prior to CITY needing such services, and subject to availability. Emergency notice scheduling shall not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by CITY.** CITY agrees to fully reimburse SBBC for the operating costs of school buses used by CITY during the term of this Agreement. CITY shall pay SBBC's posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover the use, operational costs, and reimbursement for the driver's hours, and all other costs and expenses incurred by SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, CITY shall pay SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

2.04 **Lack of Petroleum Products.** In the event petroleum products required for SBBC to provide school buses under this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by SBBC upon no less than twenty-four (24) hours notice in writing to CITY. SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school buses are used by CITY, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of SBBC.

2.06 **Damage to the Vehicles Paid by CITY.** CITY agrees to pay for any damage to the school vehicles while such vehicles are being used by CITY. In the event of an at fault third party, CITY has the right to subrogation. All accidents involving a school vehicle while in CITY's use will be reported by CITY to SBBC as provided in

SBBC's written procedures provided to CITY or as required in the daily operation of SBBC.

2.07 **Reporting of Incidents Involving NonPupil Passengers.** CITY agrees to report to SBBC the nature and extent of any incidents resulting in property damage or personal injury to any non-pupil passenger while boarding, riding in, or debarking from any such school bus while being used by CITY and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee or agent of CITY.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the Parties in writing, the costs borne by SBBC on behalf of CITY under this Agreement shall be reimbursed as invoiced within thirty (30) days from presentment to, or receipt of, the referenced invoice by CITY's Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty (30) days.

2.09 **Geographic Limitations on the Use of School Vehicles.** CITY will limit its use of the school buses to and within the confines of the Tri-County Area (i.e. Palm Beach County, Broward County, and Miami-Dade County). Under no circumstances should the school buses be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** During CITY's use of the school vehicle(s), the passenger capacity transported shall not exceed the rated capacity of such vehicle(s). No person shall be permitted to stand in any school bus at any time while such vehicle is moving. CITY shall not use the school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** CITY reserves the right to cancel any scheduled use of the school buses that it deems necessary, at no charge, provided a minimum of twenty-four (24) hours written notice is provided to SBBC prior to the scheduled use. Any cancellations which do not comply with the minimum notice requirements will result in a four (4) hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** CITY's Contract Administrator for this Agreement is the Director of Parks and Human Services or designee. The Contract Representative for SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Insurance.** CITY is an entity subject to Section 768.28, Florida Statutes, and CITY shall furnish SBBC with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

CITY, at its sole discretion, may maintain Specific Excess General Liability in the amount of \$1,000,000 combined single limit per occurrence, solely for any liability resulting from entry of a claims-bill pursuant to Section 768.28(5) Florida Statutes, or liability imposed pursuant to Federal Law.

2.14 **Inspection of CITY's Records by SBBC.** CITY shall establish and maintain books, records, and documents (including, electronic storage media, (collectively "CITY's Records" as defined in (a) below), sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All CITY's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation, or reproduction, during normal working hours, by SBBC's agent or its authorized representative, to permit SBBC to evaluate, analyze, and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze, and verify any and all invoices, billings, payments or claims submitted by CITY or any of CITY's payees pursuant to this Agreement. CITY's Records subject to examination under this Section shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement, and include any and all documents pertinent to the evaluation, analysis, verification, and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **CITY's Records Defined.** For the purposes of this Agreement, the term "CITY's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile, or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations, or reproductions, SBBC's agent or authorized representative shall have access to CITY's Records from the effective date of this Agreement through the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to CITY pursuant to this Agreement, as applicable.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide CITY reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation, or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in CITY's facilities where such records are maintained in order for SBBC to exercise its rights permitted under this Section.

(e) **Failure to Permit Inspection.** Failure by CITY to permit audit, inspection, examination, evaluation, or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any CITY's claims for payment by SBBC, as applicable.

(f) Overcharges and Unauthorized Charges. If applicable, in the event an audit is conducted in accordance with this Section which discloses overcharges or unauthorized charges to SBBC by CITY in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by CITY. If the audit discloses billings or charges to which CITY is not contractually entitled, CITY shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Payee's Records. CITY shall require any and all subcontractors, insurance agents, and material suppliers (hereafter referred to as "Payees") providing services or goods under this Agreement to comply with the requirements of this Section by including such requirements in any written subcontract. Failure by CITY to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and, if applicable, shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to CITY pursuant to this Agreement, and such excluded costs shall become the liability of CITY.

(h) Inspector General Audits. CITY shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or any other state or federal officials.

2.15 **Notice.** When any party to this Agreement desires to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified, and the place for giving notice shall remain the same until it is changed by written notice to the other party in compliance with the provisions of the Section. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC:	Superintendent of Schools The School Board of Broward County, FL 600 Southeast 3rd Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of Student Transportation & Fleet Services The School Board of Broward County, FL 3895 NW 10th Avenue Fort Lauderdale, Florida 33309
To the CITY:	Director of Parks and Human Services City of Lauderdale Lakes 4300 NW 36 <sup>th</sup> Street Lauderdale Lakes, FL 33319

2.16 **Background Screening** CITY agrees to comply with all applicable requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and

meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of CITY or its personnel providing any services under the conditions described in the previous sentence. CITY shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to CITY and its personnel. Failure of CITY to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, CITY agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from CITY's failure to comply with the requirements of this Section or the applicable requirements under Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or CITY of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Third Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. No party to this Agreement intends to directly or substantially benefit a third party by this Agreement. There are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a claim against any party based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.02 **Independent Contractor.** The Parties shall at all times act in the capacity of independent contractor and not as an officer, employee, or agent of the other. Neither party nor its respective agents, employees, subcontractors, or assignees shall represent to others that it has the authority to bind the other party without the other party's written consent. No right to SBBC's retirement, leave benefits, or any other benefits of SBBC's employees shall exist as a result of CITY's performance of any of its duties or responsibilities under this Agreement. SBBC shall not be responsible for any social security benefits, withholding taxes, contributions made to any unemployment compensation funds, or insurance for the other party or the other party's officers, employees, agents, subcontractors, or assignees.

3.03 **Equal Opportunity Provision.** No person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the Parties' respective duties, responsibilities, and obligations under this Agreement.

3.04 **Termination.** This Agreement may be canceled with or without cause by either party during the term of this Agreement, upon thirty (30) days written notice to the other party of its desire to terminate this Agreement.



3.05 **Default.** In the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of any default that is not cured to the satisfaction of the non-defaulting party during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days written notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this Section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.6 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

3.7 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida, and shall be payable and performable in Broward County, Florida.

3.8 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.9 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC, if applicable.

3.12 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.13 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement, and shall not be construed to create a conflict with the provisions of this Agreement.

3.14 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses, or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable, or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable, or void sections, paragraphs, sentences, clauses, or provisions had never been included herein.

3.15 **Preparation of Agreement.** The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses the mutual intent of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one party than the other.

3.16 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto, or others delegated authority or otherwise authorized to execute same on their behalf.

3.17 **Waiver.** Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.18 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement, or obligation under this Agreement if such performance is prevented by a fire, hurricane, earthquake, explosion, war, sabotage, accident, flood, act of God, strike, or other labor disputes, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds by any party be deemed an event of Force Majeure.

3.19 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.20 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.21 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This Section shall survive the expiration or earlier termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.22 **Indemnification.** The Parties are state agencies or political subdivisions of the State of Florida subject to Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. This Section shall survive the expiration or earlier termination of each party's respective performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.23 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

3.24 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN **WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Abby M. Freedman, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel

**FOR CITY**

**CITY OF LAUDERDALE LAKES, FLORIDA**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

Title
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RESOLUTION 2017-045 ACCEPTING THE FISCAL YEAR 2015/2016 COMPREHENSIVE ANNUAL FINANCIAL REPORT PREPARED BY THE CITY'S AUDITORS, KEEFE, MCCULLOUGH & CO., LLP.
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Summary
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This Resolution accepts the City's Fiscal Year 2015/2016 Comprehensive Annual Financial Report.
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Staff Recommendation
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**Background:**

Staff recommends the City Commission accept the Fiscal Year 2015/2016 Comprehensive Annual Financial Report.

In accordance with Section 3.15 of the City of Lauderdale Lakes' Charter, the City Commission shall provide for an independent annual audit of all City accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or its officers.

**Funding Source:**

Not applicable.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO, Financial Services Director

**Meeting Date:** 4/11/2017

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Resolution 2017-045 - Fiscal Year 2016 CAFR	Resolution

## RESOLUTION 2017-045

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, FLORIDA, ACCEPTING THE FISCAL YEAR 2015/2016 COMPREHENSIVE ANNUAL FINANCIAL REPORT PREPARED BY THE CITY'S AUDITORS, KEEFE, MCCULLOUGH & CO., LLP; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Section 218.39, Florida Statutes, municipalities are required to have an annual audit performed by an independent certified public accounting firm, and

WHEREAS, the City has received its Fiscal Year 2015/2016 Comprehensive Annual Financial Report from its external auditors, Keefe, McCullough & CO., LLP, for the period of October 1, 2015 through September 30, 2016, and

WHEREAS, the City Commission would like to accept the Fiscal Year 2015/2016 Comprehensive Annual Financial Report,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. ACCEPTANCE OF AUDITOR'S REPORT: The City Commission of the City of Lauderdale Lakes hereby accepts the Fiscal Year 2015/2016 Comprehensive Annual Financial Report prepared by Keefe, McCullough & CO., LLP.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE  
LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

\_\_\_\_\_  
HAZELLE ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
SHARON HOUSLIN, CITY CLERK

JCB:jl

Sponsored by: SUSAN GOODING-LIBURD, MBA, CPA, CGFO, Financial Services  
Director

**VOTE:**

Mayor Hazelle Rogers	_____ (For)	_____ (Against)	_____ (Other)
Vice-Mayor Veronica Edwards Phillips	_____ (For)	_____ (Against)	_____ (Other)
Commissioner Sandra Davey	_____ (For)	_____ (Against)	_____ (Other)
Commissioner Gloria Lewis	_____ (For)	_____ (Against)	_____ (Other)
Commissioner Beverly Williams	_____ (For)	_____ (Against)	_____ (Other)



## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

Title
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RESOLUTION 2017-046 CREATING A BUDGET ADVISORY COMMITTEE FOR THE DEVELOPMENT OF THE FISCAL YEAR 2018 BUDGET
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Summary
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This Resolution creates a Budget Advisory Committee through September 30, 2017 to assist in the budget development for the FY 2018 Budget.
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Staff Recommendation
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**Background:**

The Budget Advisory Committee shall be charged with the responsibility of advising the City Commission, after deliberation and taking input from the public, as to:

1. Input regarding the taxpayers' perspectives in the development of the fiscal year 2018 annual operating and capital budget;
2. Projections and estimates from the City Manager regarding revenues and expenditures for the upcoming fiscal year;
3. Advice to the City Commission on service levels and priorities to maintain fiscal solvency;
4. Recommendations and findings presented to the City Commission, no later than July 10, 2017, regarding a budget for the upcoming fiscal year;
5. Review of the City budgetary practices, standards and recommendations, and
6. Such other undertakings as the City Commission may direct by resolution.

Staff recommends that the City Commission establish the Budget Advisory Committee (BAC) to assist in the FY 2018 budget development process and appoint board members.

The organizational meeting of the Committee is scheduled for Wednesday, May 3, 2017 at 6:00 p.m.

**Funding Source:**

Not applicable.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO, Financial Services Director

**Meeting Date:** 4/11/2017

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Resolution 2017-046 - Budget Advisory Committee	Resolution

## RESOLUTION 2017-046

A RESOLUTION CREATING A 2017 BUDGET ADVISORY COMMITTEE; PROVIDING FOR MEMBER QUALIFICATIONS; PROVIDING FOR REAPPOINTMENT; PROVIDING FOR REMOVAL; PROVIDING FOR MEETING DATES; PROVIDING FOR APPOINTMENT OF CHAIR AND VICE-CHAIR; PROVIDING FOR TERM; PROVIDING FOR REPORTING OF RECOMMENDATIONS; PROVIDING FOR USE OF CONSULTANTS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2017 Budget Advisory Committee ("Committee") is created as the City continues its path to financial resiliency, and

WHEREAS, the organizational meeting for the Committee is May 3, 2017, at 6:00 PM, and

WHEREAS, it is equally important to create a transparent process in connection with which the citizens will be well-advised concerning the City's economic affairs, and

WHEREAS, it is appropriate to encourage citizen participation in the budgetary process, by taking advantage of the talent and resources of the community, and

WHEREAS, the City Commission has determined to establish a Budget Advisory Committee which will bring the citizens' perspective to the Fiscal Year 2018 Budget Process and proposed budget document, and

WHEREAS, the Mayor and each of the members of the City Commission has nominated a member of the Committee, and the Commission is desirous of approving such nominations, to serve for the terms as contemplated in said Resolution,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. CREATION; TERM: The 2017 Budget Advisory Committee is hereby created and shall consist of five (5) members, each of whom shall serve at the pleasure of the appointing officer in accordance with Section 2-311(c) of the Code of Ordinances, but no longer than September 30<sup>th</sup> of the year of appointment.

Section 3. MEMBERSHIP QUALIFICATIONS: Members to be reappointed to the 2017 Budget Advisory Committee shall possess the following qualifications, each of which shall be deemed a condition precedent to appointment:

- a. A resident and citizen of the City for a period of one year preceding the date of appointment;
- b. A person who has filed a written application for the position on forms to be provided by the City Clerk;
- c. A person who has filed a written resume with the City Clerk;
- d. A person who possesses a diploma or certificate in economics, accounting, business administration, finance or management from an accredited academic institution, and
- e. A person who has been employed in the public or private sector in the practice of economics, accountancy, business administration, finance or management.

Section 4. MEMBERS APPOINTMENT APPROVAL OF APPOINTMENTS: The City Commission hereby appoints the following individuals to the 2017 Budget Advisory Committee, each to serve a term as provided in the empowering Resolution:

Mayor Hazelle Rogers.;	Appointee:
Vice-Mayor Veronica Phillips;	Appointee:
Commissioner Beverly Williams;	Appointee:
Commissioner Sandra Davey;	Appointee:
Commissioner Gloria Lewis;	Appointee:

Section 5. ORGANIZATIONAL MEETING; MEETINGS: The organizational meeting of the Committee shall be on May 3, 2017, at 6:00 p.m. Thereafter, the Committee shall determine its meeting schedule at City Hall or at such other place as shall facilitate the business of the meeting and the input of the public. A chairperson and a vice-chairperson shall

be elected in accordance with Section 2-317 of the Code of Ordinances. The chairperson so appointed shall preside at all meetings of the Committee and shall authenticate the minutes of the Committee's meeting and any actions taken by the Committee. In the absence or on account of inability of the chairperson to so preside, the vice-chairperson shall act in lieu of the chairperson, with all powers of such office. The Committee shall adopt an agenda on forms provided by the City Clerk and shall conduct its meetings in accordance therewith; provided, however, that the City Clerk shall post the same in accordance with law.

Section 6. MISSION; CHARGES: The 2017 Budget Advisory Committee shall be charged with the responsibility of advising the City Commission, after deliberation and taking input from the public, as to:

- A. Input regarding the taxpayers' perspectives in the development of Fiscal Year 2018 annual operating and capital budget;
- B. Projections and estimates from the City Manager regarding revenues and expenditures for the upcoming Fiscal Year;
- C. Advice to the City Commission on service levels and priorities to maintain fiscal solvency;
- D. Recommendations to the City Commission, no later than July 10, 2017, regarding a budget for the upcoming Fiscal Year;
- E. Budgetary best practices and standards, and
- F. Such other undertakings as the City Commission may direct by resolution.

Section 7. REPORTS OF THE COMMITTEE: The 2017 Budget Advisory Committee shall provide such reports as provided in Section 2-321 of the Code of Ordinances; provided, however, no less frequently than once a month, beginning thirty (30) days from the organizational meeting herein provided. Such reports shall be advisory only.

Section 8. USE OF CONSULTANTS: The 2017 Budget Advisory Committee shall have the right to use the consultants of the City, as the City Commission may, from time to time, designate and authorize.

Section 9. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

\_\_\_\_\_  
HAZELLE ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
SHARON HOUSLIN, CITY CLERK

JCB:jla

Sponsored by: SUSAN GOODING-LIBURD, MBA, CPA, CGFO, Financial Services Director

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: Yes

Contract Requirement: No

#### Title

RESOLUTION 2017-047 AWARDING RFP #17-1302-01R TO METRO EQUIPMENT SERVICES INC., FOR PHASE I - STORMWATER CONVEYANCE AND WATER QUALITY IMPROVEMENT PROJECT, AS THE MOST RESPONSIVE AND RESPONSIBLE PROPOSER, ON A REQUEST FOR PROPOSAL IN AN AMOUNT UP TO ONE MILLION FIVE HUNDRED FORTY-ONE THOUSAND TWO HUNDRED NINETY-TWO AND 55/100 DOLLARS (\$1,541,292.55)

#### Summary

This Resolution awards RFP #17-1302-01R to the most responsive and responsible proposer. The Purchasing Division and Evaluation Committee recommends to the Mayor and City Commission, Metro Equipment Services, Inc. The firm will provide construction services to repair and stabilize selected canal banks within the City. The scope of services includes the furnishing of all labor, materials, machinery, equipment, tools, and supervision necessary to perform the required tasks associated with the project.

#### Staff Recommendation

#### Background:

Staff recommends that the Mayor and City Commission accepts the recommended firm, Metro Equipment Services Inc. The firm was evaluated independently by an Evaluation Committee of three (3) members, which rated the firm an overall score of 294 out of a possible 300.

The scope of service includes construction services to repair and stabilize the City's canal banks in selected areas.

The term of the contract of one (1) year with an option to renew on a year-to-year basis for one additional year for a total of two (2) years. Effective date of the contract is May 1, 2017 through April 30, 2018.

The estimated cost of the project is \$1,541,292.55

#### Funding Source:

For FY 2017, there is adequate funding available in the Stormwater Conveyance and Water Quality Improvement Project. Future year budgets are subject to budget appropriation.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO / Director of Financial Services and Magsood M. Nasir, PE, City

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
<input type="checkbox"/> 2017-047; Stormwater Conveyance	Resolution
<input type="checkbox"/> Purchasing Memo and Committee Results	Backup Material
<input type="checkbox"/> Draft Contract	Exhibit
<input type="checkbox"/> RFP - Phase I Stormwater Conveyance & Water Quality Improvement Project	Backup Material
<input type="checkbox"/> Metro Equipment Services, Inc. Proposal	Backup Material

## RESOLUTUION 2017-047

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN CONTRACT PURSUANT TO RFP#17-1302-01R, BETWEEN THE CITY LAUDERDALE LAKES AND METRO EQUIPMENT SERVICES, INC. IN THE CONTRACT AMOUNT OF ONE MILLION FIVE HUNDRED FORTY-ONE THOUSAND TWO HUNDRED NINETY-TWO AND 55/100 DOLLARS (\$1,541,292.55), FOR LONG-TERM CANAL STABILIZATION, PURSUANT TO PHASE I STORMWATER CONVEYANCE AND WATER QUALITY IMPROVEMENT PROJECT (SELECTED AREAS OF THE CANALS 4, 5A, AND 9), A SUMMARY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, AND A FACSIMILE COPY OF WHICH CAN BE INSPECTED IN THE OFFICE OF THE CITY CLERK; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 5 and 12, 2016, the City publicized Request for Proposals #17-1302-01R, for Phase I Stormwater Conveyance and Water Quality Improvement Project, using the electronic bid system Demandstar.com, and

WHEREAS, one thousand five hundred ninety-nine (1,599) vendors were notified through DemandStar, and

WHEREAS, two (2) proposals were received and publically opened, and

WHEREAS, as a result of an extensive review by an evaluation committee, staff and administration, it was determined that Metro Equipment Services Inc., was the most responsive and responsible proposer, at a cost of One Million Five Hundred Forty-One Thousand Two Hundred Ninety-Two And 55/100 Dollars (\$1,541,292.55), and

WHEREAS, the proposals were evaluated, as follows:

Proposer	Responsive	Score
Metro Equipment Service, Inc.	Responsive	294
PAC Comm, Inc.	Responsive	195

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain contract with Metro Equipment Services, Inc. in the contract amount of One Million Five Hundred Forty-One Thousand Two Hundred Ninety-Two And 55/100 Dollars (\$1,541,292.55), for long-term canal stabilization, pursuant to Phase I stormwater conveyance and water quality improvement project (selected areas of the canals 4, 5A, 9), a summary of which is attached as **Exhibit A**, and a facsimile of which can be inspected in the offices of the City Clerk.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Metro Equipment Services, Inc., and with one to be directed to the Office of City Attorney.



Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

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HAZELLE ROGERS, MAYOR

ATTEST:

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SHARON HOUSLIN, CITY CLERK

JCB:jla

Sponsored by: SUSAN GOODING-LIBURD, Director of Financial Services

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)



**CITY OF LAUDERDALE LAKES  
INTEROFFICE MEMORANDUM  
FINANCIAL SERVICES DEPARTMENT**

**TO: Phil Alleyne, City Manager**

**DATE: March 31, 2017**

**FROM: Susan Gooding-Liburd, MBA, CPA,  
CGFO, Financial Services Director**

**SUBJECT: RFP No.: 17-1302-01R**

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The City of Lauderdale Lakes solicited qualified firms and competent Contractor to provide all necessary construction services and materials for the Phase I - Stormwater Conveyance and Water Quality Improvement Project (Canals 4, 5A, 6 and 9) in accordance with the construction plans and specification.

The solicitation for the Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project was advertised in the Sun-Sentinel, a newspaper of general paid circulation in the county, on November 5 and 12, 2016. It was also solicited in the City's electronic bid system, [Demandstar.com](http://Demandstar.com) from November 5, 2016 until December 6, 2016. The solicitation was provided to 1,599 firms, of which 51 downloaded the solicitation packet. In addition, the City held a non-mandatory pre-bid conference and site inspection on November 9, 2016 and there were three (3) firms in attendance. The solicitation was advertised in accordance with the requirements set forth in the City's procurement policies.

The solicitation was closed December 6, 2016 at 3:00 pm after being extended from its original closing date of November 21, 2016. At that time, the City received two (2) proposals, Pac Comm Inc. and Metro Equipment Service Inc.

An evaluation committee of three (3) members was assembled on December 12, 2016 to evaluate the RFP documents from the two (2) firms. The committee met to review the RFP documents January 10, 2017 and January 17, 2017 to further discuss the findings and to hear formal presentations from each firm.

The results of each committee member is provided as supporting documents and the summary of the results are shown below:

<b>Firm</b>	<b>Location</b>	<b>Score</b>
Metro Equipment Service Inc	Miami, FL	294
Pac Comm Inc	Miami, FL	195

Both contractors were evaluated on its experience and ability as well as price proposal. The top scoring firm was further selected to negotiate the scope of services with. The top scoring firm was rated an overall score of 294 out of a possible 300 points mostly due to its experience and abilities with the Shoresox© method of approach.

Negotiations between the City and the Metro Equipment Services commencement February 3, 2017 through February 10, 2017. Activities included in the negotiations involved follow-up site inspections and revision of the price and quantities based upon necessary repair required for Canal 5A, 4 and 9.

From the accepted negotiations, the estimated cost of the award for Phase I is \$1,541,292.55. This cost includes construction services to repair and stabilize the canal banks of approximately 28 properties.

Staff recommends awarding the contract Metro Equipment Service, Inc. in an amount up to \$1,541,292.55 for this phase of the project.

The term of contract is requested for a term of one (1) year to complete the project with an option to renew for one (1) additional year. City staff will present follow up recommendations for any future awards related to the long-term canal bank stabilization program.

If approved, City staff will commence mobilization activities upon acceptance and approval of all required documents.

Encl. (s)

1. Original bid tabulation
2. Committee results
3. Revised Pricing

**TABULATION SHEET**
**Solicitation Number: 17-1302-01R**
**Summary Description: Phase I Stormwater Conveyance and Water Quality Improvement**
**Closing date: December 6, 2016 @ 3pm**

**Lauderdale Lakes**

Vendor: PAC COMM Inc

Location: Miami, FL FEI/EIN: 56-2548965

Active Div of Corp (Y/N): Y

**Alternate 2/Shoresox©**

ITEM	SPEC	DESCRIPTION	UNIT	UNIT	QTY	SUBTOTAL	QTY	SUBTOTAL	QTY	SUBTOTAL	QTY	SUBTOTAL	QTY	SUBTOTAL
				PRICE	CANAL 4	CANAL 4	CANAL 5A	CANAL 5A	CANAL 6	CANAL 6	CANAL 9	CANAL 9	CANAL 10	CANAL 10
1	Gen. Cond.	MOBILIZATION	LS	\$ 211,000.00	1	\$ 211,000.00	1	\$ 211,000.00	1	\$ 211,000.00	1	\$ 211,000.00	1	\$ 211,000.00
2	Gen. Cond.	PROJECT SIGN	EA	\$ 935.00	1	\$ 935.00	1	\$ 935.00	1	\$ 935.00	1	\$ 935.00	1	\$ 935.00
3	1065	PROJECT PERMITS	LS	\$ 46,098.27	1	\$ 46,098.27	1	\$ 46,098.27	1	\$ 46,098.27	1	\$ 46,098.27	1	\$ 46,098.27
4	1570	MAINTENANCE OF TRAFFIC	LS	\$ 28,000.00	1	\$ 28,000.00	1	\$ 28,000.00	1	\$ 28,000.00	1	\$ 28,000.00	1	\$ 28,000.00
5	1320	CONSTRUCTON VIDEOS AND PHOTOGRAPHS	LS	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00
6	2050	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	\$ 25,164.00	1	\$ 25,164.00	1	\$ 25,164.00	1	\$ 25,164.00	1	\$ 25,164.00	1	\$ 25,164.00
7	2435	FLOATING TURBIDITY BARRIER	LF	\$ 27.56	101	\$ 2,783.56	60	\$ 1,653.60	191	\$ 5,263.96	32	\$ 881.92	87	\$ 2,397.72
8	2270	TRUCK WASH OUT	EA	\$ 4,358.40	1	\$ 4,358.40	1	\$ 4,358.40	1	\$ 4,358.40	1	\$ 4,358.40	1	\$ 4,358.40
9	2435	TURBIDITY MONITORING	Months	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00	1	\$ 1,868.00
10	2270	DUST CONTROL	DAY	\$ 340.00	33	\$ 11,220.00	33	\$ 11,220.00	33	\$ 11,220.00	33	\$ 11,220.00	33	\$ 11,220.00
11	02110, 02114, 02100	SITE PREPARATION AND CLEARING & GRUBBING	AC	\$ 28,300.00	1	\$ 28,300.00	3	\$ 84,900.00	1	\$ 28,300.00	0	\$ -	0	\$ -
12	2200	CHANNEL EXCAVATION	CY	\$ 124.09	1,171	\$ 145,309.39	2,821	\$ 350,057.89	987	\$ 122,476.83	396	\$ 49,139.64	164	\$ 20,350.76
13	2200	EMBANKMENT (FILL CONSTRUCTION)	CY	\$ 151.80	81	\$ 12,295.80	344	\$ 52,219.20	414	\$ 62,845.20	662	\$ 100,491.60	265	\$ 40,227.00
14	2221	IRRIGATION LINES RECONNECTIONS (SEE DETAIL)	EA	\$ 944.00	48	\$ 45,312.00	46	\$ 43,424.00	28	\$ 26,432.00	11	\$ 10,384.00	4	\$ 3,776.00
15	2272	GABION BASKET, 36" THICK	SY	\$ 444.00	40	\$ 17,760.00	48	\$ 21,312.00	60	\$ 26,640.00		\$ -		\$ -
15A	2280	BIOENGINEERING EROSION CONTROL (SHORESUX)	LF	\$ 395.15	2,367	\$ 935,320.05	3,963	\$ 1,565,979.45	3,708	\$ 1,465,216.20	558	\$ 220,493.70	309	\$ 122,101.35
16	2370	RIPRAP- RUBBLE, DITCH LINING OR BEDDING STONE	CY	\$ 247.00	1,473	\$ 363,831.00	13,056	\$ 3,224,832.00	1,950	\$ 481,650.00	963	\$ 237,861.00	426	\$ 105,222.00
17	2433	STORMWATER PIPES (INCLUDES CONCRETE COLLARS)	LF	\$ 800.00	40	\$ 32,000.00	42	\$ 33,600.00	40	\$ 32,000.00	8	\$ 6,400.00		\$ -
18	2486	SOD	SY	\$ 9.00	706	\$ 6,354.00	1,599	\$ 14,391.00	1,887	\$ 16,983.00	620	\$ 5,580.00	111	\$ 999.00
19	2821	FENCING RESET EXISTING (WOOD FENCE)	LF	\$ 342.00		\$ -	10	\$ 3,420.00		\$ -		\$ -		\$ -
20	2821	FENCING RESET EXISTING (CHAIN LINK)	LF	\$ 59.00	415	\$ 24,485.00	448	\$ 26,432.00	98	\$ 5,782.00		\$ -	119	\$ 7,021.00
21	2821	FENCING NEW	LF	\$ 30.00		\$ -		\$ -	10	\$ 300.00		\$ -		\$ -
ITEM	SPEC	DESCRIPTION	UNIT	UNIT PRICE	QTY CANAL 4	SUBTOTAL CANAL 4	QTY CANAL 5A	SUBTOTAL CANAL 5A	QTY CANAL 6	SUBTOTAL CANAL 6	QTY CANAL 9	SUBTOTAL CANAL 9	QTY CANAL 10	SUBTOTAL CANAL 10
22	3600	GROUT	CF	\$ 1,725.00	2	\$ 3,450.00		\$ -		\$ -		\$ -		\$ -
23	3700	CONCRETE	CY			\$ -		\$ -		\$ -		\$ -		\$ -
24	3700	SHEET PILE REPAIRS	LS			\$ -		\$ -		\$ -		\$ -		\$ -
25	2050	ACM (As Approved by the City)	lbs			\$ -		\$ -		\$ -		\$ -		\$ -
26		ALLOWANCE(As Approved by the City)		\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00

**\$ 1,967,712.47**
**\$ 5,772,732.81**
**\$ 2,624,400.86**
**\$ 981,743.53**
**\$ 652,606.50**


Vendor: Metro Equipment Service  
Location: Miami, FL      FEI/EIN: 65-0010248

Active Div of Corp (Y/N): Y      Alternate 2/Shoresox©

ITEM	SPEC	DESCRIPTION	UNIT	UNIT	QTY	SUBTOTAL	QTY	SUBTOTAL	QTY	SUBTOTAL	QTY	SUBTOTAL	QTY	SUBTOTAL
				PRICE	CANAL 4	CANAL 4	CANAL 5A	CANAL 5A	CANAL 6	CANAL 6	CANAL 9	CANAL 9	CANAL 10	CANAL 10
1	Gen. Cond.	MOBILIZATION	LS	\$ -	1	\$ 72,345.00	1	\$ 145,000.00	1	\$ 70,000.00	1	\$ 75,000.00	1	\$ 70,000.00
2	Gen. Cond.	PROJECT SIGN	EA	\$ 1,500.00	1	\$ 1,500.00	1	\$ 1,500.00	1	\$ 1,500.00	1	\$ 1,500.00	1	\$ 1,500.00
3	1065	PROJECT PERMITS	LS	\$ -	1	\$ -	1	\$ -	1	\$ -	1	\$ -	1	\$ -
4	1570	MAINTENANCE OF TRAFFIC	LS	\$ -	1	\$ 36,000.00	1	\$ 90,000.00	1	\$ 4,500.00	1	\$ 35,000.00	1	\$ 35,000.00
5	1320	CONSTRUCTON VIDEOS AND PHOTOGRAPHS	LS	\$ -	1	\$ 3,000.00	1	\$ 5,000.00	1	\$ 4,500.00	1	\$ 3,000.00	1	\$ 3,000.00
6	2050	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	\$ -	1	\$ 39,022.00	1	\$ 46,800.00	1	\$ 32,384.00	0	\$ -	0	\$ -
7	2435	FLOATING TURBIDITY BARRIER	LF	\$ 29.70	101	\$ 2,999.70	60	\$ 1,782.00	191	\$ 5,672.70	32	\$ 950.40	87	\$ 2,583.90
8	2270	TRUCK WASH OUT	EA	\$ 5,000.00	1	\$ 5,000.00	1	\$ 5,000.00	1	\$ 5,000.00	1	\$ 5,000.00	1	\$ 5,000.00
9	2435	TURBIDITY MONITORING	Months	\$ 9,000.00	1	\$ 9,000.00	1	\$ 9,000.00	1	\$ 9,000.00	1	\$ 9,000.00	1	\$ 9,000.00
10	2270	DUST CONTROL	DAY	\$ 1,500.00	33	\$ 49,500.00	33	\$ 49,500.00	33	\$ 49,500.00	33	\$ 49,500.00	33	\$ 49,500.00
11	02110, 02114, 02100	SITE PREPARATION AND CLEARING & GRUBBING	AC	\$ 203,025.00	1	\$ 203,025.00	3	\$ 609,075.00	1	\$ 203,025.00	1	\$ 203,025.00	1	\$ 203,025.00
12	2200	CHANNEL EXCAVATION	CY	\$ 100.00	1,171	\$ 117,100.00	2,821	\$ 282,100.00	987	\$ 98,700.00	396	\$ 39,600.00	164	\$ 16,400.00
13	2200	EMBANKMENT (FILL CONSTRUCTION)	CY	\$ 125.00	81	\$ 10,125.00	344	\$ 43,000.00	414	\$ 51,750.00	662	\$ 82,750.00	265	\$ 33,125.00
14	2221	IRRIGATION LINES RECONNECTIONS (SEE DETAIL)	EA	\$ 500.00	48	\$ 24,000.00	46	\$ 23,000.00	28	\$ 14,000.00	11	\$ 5,500.00	4	\$ 2,000.00
15	2272	GABION BASKET, 36" THICK	SY	\$ 594.25	40	\$ 23,770.00	48	\$ 28,524.00	60	\$ 35,655.00		\$ -		\$ -
15A	2280	BIOENGINEERING EROSION CONTROL (SHORESUX)	LF	\$ 242.00	2,367	\$ 572,814.00	3,963	\$ 959,046.00	3,708	\$ 897,336.00	558	\$ 135,036.00	309	\$ 74,778.00
16	2370	RIPRAP- RUBBLE, DITCH LINING OR BEDDING STONE	CY	\$ 128.00	1,473	\$ 188,544.00	13,056	\$ 1,671,168.00	1,950	\$ 249,600.00	963	\$ 123,264.00	426	\$ 54,528.00
17	2433	STORMWATER PIPES (INCLUDES CONCRETE COLLARS)	LF	\$ 325.00	40	\$ 13,000.00	42	\$ 13,650.00	40	\$ 13,000.00	16	\$ 5,200.00	0	\$ -
18	2486	SOD	SY	\$ 10.75	706	\$ 7,589.50	1,599	\$ 17,189.25	1,887	\$ 20,285.25	620	\$ 6,665.00	111	\$ 1,193.25
19	2821	FENCING RESET EXISTING (WOOD FENCE)	LF	\$ 10.00	0	\$ -	10	\$ 100.00	0	\$ -	0	\$ -	0	\$ -
20	2821	FENCING RESET EXISTING (CHAIN LINK)	LF	\$ 10.00	415	\$ 4,150.00	448	\$ 4,480.00	98	\$ 980.00	0	\$ -	119	\$ 1,190.00
21	2821	FENCING NEW	LF	\$ -	0	\$ -	0	\$ -	10	\$ -	0	\$ -	0	\$ -
22	3600	GROUT	CF	\$ 3,600.00	2	\$ 7,200.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -
23	3700	CONCRETE	CY	\$ 2,000.00	1	\$ 2,000.00	1	\$ 2,000.00	1	\$ 2,000.00	1	\$ 2,000.00	0	\$ -
24	3700	SHEET PILE REPAIRS	LS	\$ -	1	\$ 4,700.00	0	\$ -	0	\$ -	0	\$ -	0	\$ -
25	2050	ACM (As Approved by the City)	lbs	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -
26		ALLOWANCE(As Approved by the City)		\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00	1	\$ 20,000.00
						\$ 1,416,384.20		\$ 4,026,914.25		\$ 1,788,387.95		\$ 801,990.40		\$ 581,823.15

Units of Measure					
LS	Lump sum	CY	Cubic yard	lbs	pounds
LF	Linear foot	CF	Cubic foot		
EA	Each	SY	Square yard		
AC	Acre	SF	Square foot		

# RFP NO.: 17-1302-01R Phase I - Stormwater Conveyance and Water Quality Im Project

 <b>Lauderdale Lakes</b>		Max Score	Panel Members			Calculations		
			Thomas Totten	Fernando Leiva	Geeta Ramharry	Max Total/ Category	Actual Total / Category	Avg Score / Category
Category								
<u><b>PAC COMM Inc (Price Alt #1)</b></u>								
1	Price Proposal	60	30	30	30	180	90	30
2	Experience and Ability	30	30	20	28	90	78	26
3	Reference	10	10	8	9	30	27	9
Total Score		100	70	58	67	300	195	65
<u><b>PAC COMM Inc (Price Alt #2)</b></u>								
1	Price Proposal	60	30	30	30	180	90	30
2	Experience and Ability	30	30	20	28	90	78	26
3	Reference	10	10	8	9	30	27	9
Total Score		100	70	58	67	300	195	65
<u><b>Metro Equipment Services Inc (Price Alt #1)</b></u>								
1	Price Proposal	60	60	60	60	180	180	60
2	Experience and Ability	30	30	25	30	90	85	28
3	Reference	10	10	10	9	30	29	10
Total Score		100	100	95	99	300	294	98
<u><b>Metro Equipment Services Inc (Price Alt #2)</b></u>								
1	Price Proposal	60	60	60	60	180	180	60
2	Experience and Ability	30	30	25	30	90	85	28
3	Reference	10	10	10	9	30	29	10
Total Score		100	100	95	99	300	294	98

Contractor Rating Worksheet for Alternate Price Proposal #1

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PAC

Score: 50

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	30	> 10-15% price differential compared to other proposals.
2	Experience and Ability	30	20	Limited experience on stormwater installation.
3	References	10	0	
	Total Score	100	50	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: Fernando Lopez

Contractor Rating Worksheet for Alternate Price Proposal #2

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PAC

Score: 90

	Category	Points	Score	Comments
1	Price Proposal, Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	30	> 10-15% price differential compared to other proposals
2	Experience and Ability	30	20	LIMITED EXPERIENCE ON SHORBOX INSTALLATION.
3	References	10	8	
	Total Score	100	58	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: FERNANDO LOPEZ



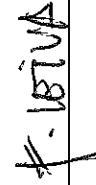
Contractor Rating Worksheet for Alternate Price Proposal #1

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: 

Score: 95

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	60	lowest cost proposal
2	Experience and Ability	30	25	shown experience & knowledge
3	References	10	10	provides comprehensive experience
	Total Score	100	95	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: 

Contractor Rating Worksheet for Alternate Price Proposal #2

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PERO

Score: 95

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	60	lowest cost proposal
2	Experience and Ability	30	25	shown experience & knowledge
3	References	10	10	providing comparable experience.
	Total Score	100	95	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: K. G. V. A.

Contractor Rating Worksheet for Alternate Price Proposal #1

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PAC COMM INC.

Score: 70

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	30	
2	Experience and Ability	30	30	
3	References	10	10	
	Total Score	100	70	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: THOMAS S. TOTTEN  
Thomas S. Totten

Contractor Rating Worksheet for Alternate Price Proposal #2

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PAC COMM INC.

Score: 70

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	30	
2	Experience and Ability	30	30	
3	References	10	10	
	Total Score	100	70	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: THOMAS S. TOTTEN  
Thomas S. Totten

Contractor Rating Worksheet for Alternate Price Proposal #1

**RFP#: 17-1302-01R**    **RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project**

**Contractor:** METRO EQUIPMENT SERVICE INC

**Score:** 100

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	60	
2	Experience and Ability	30	30	
3	References	10	10	
	Total Score	100	100	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: THOMAS S. TOTTEN  
Thomas Totten

Contractor Rating Worksheet for Alternate Price Proposal #2

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: METRO EQUIPMENT SERVICE INC

Score: 100

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	60	
2	Experience and Ability	30	30	
3	References	10	10	
	Total Score	100	100	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: THOMAS S. TOTTEN  
Thomas S Totten



Contractor Rating Worksheet for Alternate Price Proposal #1

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: Metro Equipment Services

Score: 99

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The follow instructions provided in the Evaluation Committee Guidelines.	60	60	Lowest Bidder; within the allocated Budget requirement
2	Experience and Ability	30	30	Knowledgeable of the Scope, requirements. Completed similar projects in FL using combination of both Gabions & ShoreSox materials.
3	References	10	9	
	Total Score	100	99	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: J. Pennington

**Contractor Rating Worksheet for Alternate Price Proposal #2**

**RFP#: 17-1302-01R**    **RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project**

**Contractor:** Metro Equipment Services

**Score:** 99

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The follow instructions provided in the Evaluation Committee Guidelines.	60	60	Lowest bidder; will coordinate with Subcontractor on all Shoresox installation work
2	Experience and Ability	30	30	Knowledgeable of the scope, requirements; completed similar projects in FL using combination of both Gabions and Shoresox materials.
3	References	10	9	
	Total Score	100	99	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: G. Hambury



Contractor Rating Worksheet for Alternate Price Proposal #1

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PAC Comm Inc.

Score: 67

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	30	Not Lowest Bidder
2	Experience and Ability	30	28	worked with both Gabion & Shoresox materials - Self performed or will higher subcontractor for Shoresox.
3	References	10	9	
	Total Score	100	67	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: G. Rumbaut

Contractor Rating Worksheet for Alternate Price Proposal #2

RFP#: 17-1302-01R RFQ Name: Phase I Stormwater Conveyance and Water Quality Improvement Project

Contractor: PAC Comm INC.

Score: 67

	Category	Points	Score	Comments
1	Price Proposal. Alternate 1 or 2. The following instructions provided in the Evaluation Committee Guidelines.	60	30	Not Lowest Bidder
2	Experience and Ability	30	28	worked with both Gabion & Shorecox materials - self performed or will higher Subcontractor for Shorecox.
3	References	10	9	
	Total Score	100	67	
	Oral Evaluations (If applicable) Scored Separately & Added			

Rater: GP Hambauer

**Solicitation Number: 17-1302-01R**

**Summary Description: Phase I Stormwater Conveyance and Water Quality Improvement**

**Closing date: December 6, 2016 @ 3pm**

**Revised prices**

Vendor: Metro Equipment Service

Location: Miami, FL FEI/EIN: 65-0010248

Active Div of Corp (Y/N): Y

Alternate 2/Shoresox©

ITEM	SPEC	DESCRIPTION	UNIT	UNIT	QTY	SUBTOTAL
				PRICE	CANALS	CANALS
1	Gen. Cond.	MOBILIZATION	LS	\$ 100,000.00	1	\$ 100,000.00
2	Gen. Cond.	PROJECT SIGN	EA	\$ 1,000.00	1	\$ 1,000.00
3	1065	PROJECT PERMITS	LS	\$ -	1	\$ -
4	1570	MAINTENANCE OF TRAFFIC	LS	\$ 45,000.00	1	\$ 45,000.00
5	1320	CONSTRUCTON VIDEOS AND PHOTOGRAPHS	LS	\$ 2,500.00	1	\$ 2,500.00
6	2050	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	\$ 25,400.00	1	\$ 25,400.00
7	2435	FLOATING TURBIDITY BARRIER	LF	\$ 29.70	60	\$ 1,782.00
8	2270	TRUCK WASH OUT	EA	\$ 5,000.00	1	\$ 5,000.00
9	2435	TURBIDITY MONITORING	Months	\$ -	1	\$ -
10	2270	DUST CONTROL	LS	\$ 30,000.00	1	\$ 30,000.00
11	02110, 02114, 02100	SITE PREPARATION AND CLEARING & GRUBBING	LS	\$ 305,000.00	1	\$ 305,000.00
12	2200	CHANNEL EXCAVATION	CY	\$ -	2821	\$ -
13	2200	EMBANKMENT (FILL CONSTRUCTION)	CY	\$ -	344	\$ -
14	2221	IRRIGATION LINES RECONNECTIONS (SEE DETAIL)	EA	\$ 500.00	26	\$ 13,000.00
15	2272	GABION BASKET, 36" THICK	SY	\$ -	48	\$ -
15A	2280	BIOENGINEERING EROSION CONTROL (SHORESUX)	LF	\$ 130.00	2630	\$ 341,900.00
16	2370	RIPRAP- RUBBLE, DITCH LINING OR BEDDING STONE	CY	\$ 128.00	4740	\$ 606,720.00
17	2433	STORMWATER PIPES (INCLUDES CONCRETE COLLARS)	LF	\$ 325.00	10	\$ 3,250.00
18	2486	SOD	SY	\$ 10.75	1650	\$ 17,740.55
19	2821	FENCING RESET EXISTING (WOOD FENCE)	LF	\$ -	10	\$ -
20	2821	FENCING RESET EXISTING (CHAIN LINK)	LF	\$ -	448	\$ -
21	2821	FENCING NEW	LF	\$ 30.00	700	\$ 21,000.00
22	3600	GROUT	CF	\$ 3,600.00	0	\$ -
23	3700	CONCRETE	CY	\$ 2,000.00	1	\$ 2,000.00
24	3700	SHEET PILE REPAIRS	LS	\$ -	0	\$ -
25	2050	ACM (As Approved by the City)	lbs	\$ -	0	\$ -
26		ALLOWANCE(As Approved by the City)		\$ 20,000.00	1	\$ 20,000.00

**\$ 1,541,292.55**

## LAUDERDALE LAKES CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT is made and entered into as of this 11th day of April, 2017, between the CITY OF LAUDERDALE LAKES FLORIDA, a Florida municipal corporation, (CITY), and Metro Equipment Services, Inc. (CONTRACTOR), (Parties).

WHEREAS, the CITY desires to retain a CONTRACTOR for the Project as expressed in its Request for Proposal No. **RFP#17 – 1302-01R** for Phase I Stormwater Conveyance and Water Quality Improvement Project, which closed on December 6, 2016; and

WHEREAS, the CONTRACTOR has expressed its willingness and capability to perform the necessary work to accomplish the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the Parties agree as follows:

### **ARTICLE 1 - DEFINITIONS**

Wherever used in this Agreement or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural forms:

- 1.1 **Agreement** - The written agreement between CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to or incorporated in the Agreement. Also referred to as "Contract".
- 1.2 **Change Order** - A document which is signed by the CITY and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Term or Compensation, issued on or after the Effective Date of the Agreement.
- 1.3 **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.4 **Contractor** – The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Agreement.
- 1.5 **Contract Documents** - The Contract Documents shall consist of the Drawings, Plans and Specifications, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the effective date of the Agreement.
- 1.6 **Drawings** - The drawings which show the character and scope of the Work to be performed and which are referred to in the Contract Documents.
- 1.7 **Engineer** - The CITY'S Engineer of the City of Lauderdale Lakes, Florida, or the authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.8 **Notice to Proceed** - A written notice given by CITY to CONTRACTOR fixing the date on which the Work shall commence and the CONTRACTOR begins to perform its obligations under the Contract Documents.
- 1.9 **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship regarding the project.
- 1.10 **Worksite** – Location(s) inclusive of each site described in the plans and/or specifications.

**ARTICLE 2 - CONTRACT DOCUMENTS****2.1 Enumeration of Contract Documents:**

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR and consist of the following:

- (1) This Agreement.
- (2) Construction performance bond.
- (3) Construction payment bond.
- (4) Insurance certificate(s) per RFP requirements.
- (5) Notice of Award and Notice to Proceed.
- (6) Request for Proposal and the Specifications prepared by the CITY (Exhibit 1)
- (7) CONTRACTOR's Response to the CITY's Request for Proposal No. RFP#17-1302-01R dated December 6, 2016 (Exhibit 2).
- (8) Schedule of Completion.
- (9) Standard General Conditions of the Construction contract for the City of Lauderdale Lakes Florida (Exhibit 3).

Any amendments executed by the CITY and the CONTRACTOR shall become part of this Agreement. Documents not included in this Article do not, and shall not, form any part of this Agreement. In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Commission (or designee).
- b. This Agreement dated April 11, 2017.
- c. Exhibit 1. Request for Proposal 17-1302-01R
- d. Exhibit 2. Proposal submitted December 6, 2016.
- e. Exhibit 3. Standard General Conditions of the Construction Contract.

**2.2 Conflict, Error or Discrepancy:**

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to the CITY, in writing at once and, before proceeding with the Work affected, shall obtain a written interpretation or clarification from CITY.

**2.3 Representation of CONTRACTOR:**

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the Work site and is familiar with the local conditions under which the Work is to be performed.

**ARTICLE 3 - SCOPE OF WORK****3.1** The CONTRACTOR shall perform all of the work required, implied and reasonably inferable from this Agreement including, but not limited to, the following:

**3.1.1** Construction of the Project in accordance with the approved plans and specifications;

**3.1.2** The furnishing of any required surety bonds and insurance;

**3.1.3** The provision of furnishing, and prompt payment for, labor, supervision, services, materials, supplies, equipment, fixtures, facilities, communication and security systems, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities and all necessary tree permit, building permits and other permits required for the construction of the Project;

**3.1.4** The preparation and submission to the CITY of detailed and comprehensive as-built drawings signed and sealed by a registered surveyor licensed by the State of Florida depicting all as-built construction. All as-built drawings shall be submitted to the CITY upon final completion of the Project

and receipt by the CITY shall be a condition precedent to final payment to the CONTRACTOR.

**3.2** In order to induce the CITY to execute this Contract, the CONTRACTOR makes the following express representations to the CITY:

**3.2.1** The CONTRACTOR is fully qualified to act as the CONTRACTOR for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the CONTRACTOR for the Project;

**3.2.2** The CONTRACTOR has become familiar with the Project site(s) and the local conditions under which the Project is to be constructed and operated; and

**3.2.3** The CONTRACTOR has received, reviewed and carefully examined all of the documents which make up this Agreement, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction.

**3.3** CONTRACTOR (or its agent or subcontractor) shall provide a minimum of inconvenience to the public and to local business activities.

**3.4** CONTRACTOR shall ensure that the public roadway and any improvements or appurtenant to the Work site remain open to the public and is fully operational whenever and wherever possible, and that sufficient signage as requested by the CITY is provided to direct the public or other invitees during performance of Work.

**3.5** CONTRACTOR shall maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient lighting for the prevention of accidents. The CONTRACTOR shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

**3.6** Any material or waste generated by CONTRACTOR or its employees, agents and subcontractors shall be removed and disposed of, as necessary, by the CONTRACTOR, at the CONTRACTOR's expense, to the satisfaction of the CITY.

**3.7** The CONTRACTOR shall also restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the CONTRACTOR during the performance of Work, and shall leave the work site and vicinity unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.

**3.8** The CONTRACTOR shall notify the CITY, in writing, of any pre-existing damage to surrounding roadways, swales and improvements prior to commencing any Work. Failure to notify the CITY of any damage shall result in the CONTRACTOR's duty to repair the damage at no additional expense.

**3.9** Storage of the materials shall be at a location approved by the CITY. CONTRACTOR shall obtain a no fee permit from the CITY, and shall pay the required county surcharges and fees. The CONTRACTOR shall be responsible for the replacement of any existing materials or structures damaged by the CONTRACTOR during the construction process, and any damage shall be restored to the acceptance of the CITY.

**3.10** The CONTRACTOR shall exercise due caution throughout this Work to minimize the possibility of damage to utilities resulting from its activities. The CONTRACTOR shall verify the location of all overhead and underground utilities prior to any excavation, including notifying the Underground Notification Center and the CITY's Public Works Department and Development Services Department of any proposed excavation locations.

**3.11** Whenever it is necessary to temporarily interrupt any local or surrounding activities, the CONTRACTOR shall notify the Owner or tenant or their designee prior to the interruption and again immediately before the service is resumed. Before disconnecting any underground or overhead utilities, the CONTRACTOR shall

shall make similar arrangements for their disconnection with the Owner, tenant or a designee. The CONTRACTOR shall be responsible for any damage caused by CONTRACTOR to such utilities, and shall restore them to service promptly as soon as the Work interruption has ended.

- 3.12** The CITY may, periodically, inspect the real property for the purpose of assuring compliance with this Agreement.
- 3.13** In the event the Owner or CONTRACTOR prevents the CITY from inspecting the Project for purposes of assuring compliance with this Agreement or with the contract documents, the CITY shall be entitled to immediately terminate this Agreement, retain all funds, seek reimbursement for any funds distributed for the Project and obtain other relief as permitted by the Agreement. Further, action by the Owner or CONTRACTOR to prevent or deny the CITY's inspection of the project will constitute a default of this Agreement, and the CITY shall be entitled to exercise any and all remedies at law or equity.
- 3.14** The CONTRACTOR shall at all times during the performance of the Work keep the work site free and clear of all rubbish and debris to the CITY's satisfaction, and within the applicable time frames specified under the general conditions in Exhibit "1". All sand, grit, solids and other material, accumulated rubbish or surplus materials shall be removed at the end of each work day.
- 3.15** After the CITY gives not less than 24-hour notice to the CONTRACTOR to clear the site of rubbish, debris and other work site materials or not less than 72-hour notice to restore or replace distributed, displaced or damaged property, and the CONTRACTOR fails to comply, the CITY may employ labor or equipment as it deems necessary to clear the site, impose the cost of the work, together with the cost of supervision, against the CONTRACTOR and deduct the cost from the compensation due to the CONTRACTOR.

#### **ARTICLE 4 - TERM**

The Work to be performed under this Agreement shall commence upon the date specified in the Notice to Proceed and, subject to authorized adjustments, shall be completed no later than One (1) year after the execution of this Agreement. CONTRACTOR agrees that all Work under this Agreement shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed term. Failure to achieve timely, substantial and/or final completion shall be regarded as a material breach of this Agreement, and shall be subject to the appropriate remedies including but not limited to liability for liquidated damages in accordance with Article 10.

#### **ARTICLE 5 - COMPENSATION**

CITY shall pay CONTRACTOR for the performance of all work, in accordance with Article 13, subject to additions and deductions by Change Order as provided in this Agreement, up to One Million Five Hundred Forty-One Thousand Two Hundred Ninety-Two and 55/100 Dollars (\$1,541,292.55) as full compensation for this Project only. Compensation for future performance and work must be approved by City Commission.

#### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

##### **6.1 Liability for Contracted Work:**

As an inducement for CITY to enter into this Agreement, CONTRACTOR has represented an expertise in professional construction of public construction projects by qualified and licensed general construction contractors. In reliance upon those representations, CITY hired CONTRACTOR to construct the Project. CONTRACTOR shall be liable for any defective or negligent work, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty.

##### **6.2 Shop Drawings and Samples:**

**6.2.1** CONTRACTOR shall submit to CITY for review and approval five (5) copies of all Shop Drawings

for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles seven (7) calendar days before the scheduled commencement of the construction work. The purpose of the Shop Drawing is to show the suitability, efficiency, technique of manufacture,

installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

**6.2.2** CONTRACTOR shall also submit to CITY, for review and approval, all samples required by the Contract Documents which shall clearly identify material, supplier, pertinent data such as catalog numbers and the intended use.

**6.2.3** Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

**6.2.4** At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall specifically note each variation on each Shop Drawing submitted for review and approval. Failure by the CITY to notice or identify CONTRACTOR's failure to make the notation shall not relieve CONTRACTOR from the responsibility to comply with the Contract Documents.

**6.2.5** Approval of the Shop Drawings by CITY shall be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the Work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings. No work called for by any Shop Drawing shall be done until the drawings have been approved by CITY.

### **6.3 Supervision:**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention and applying CONTRACTOR's best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall ensure that the finished Work complies accurately with the Contract Documents.

### **6.4 On Site Management:**

CONTRACTOR shall keep on the Work site at all times during its progress a competent on-site manager and any necessary personnel who shall not be replaced without written notice to CITY unless the personnel proves to be unsatisfactory to CONTRACTOR or to the CITY. The on-site Manager shall be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the on-site Manager shall be as binding as if given to CONTRACTOR.

### **6.5 Labor:**

**6.5.1** Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida. Suppliers shall be selected and paid by the CONTRACTOR; the CITY reserves the right to approve all suppliers and materials.

**6.5.2** CONTRACTOR shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the Work site. Except in connection with the safety or protection of persons, the Work, or property adjacent to the site, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during the hours of 7:30 a.m. and 5:00 p.m. CONTRACTOR will



not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without CITY's written consent.

**6.6 Materials:**

**6.6.1** Unless otherwise specified in this Agreement, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

**6.6.2** CONTRACTOR warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents.

**6.7 Subcontractors, Suppliers and Others:**

**6.7.1** Prior to the execution of this Agreement and in any event prior to the commencement of any work, CONTRACTOR shall furnish, in writing to the CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has an objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made an objection. If CITY objects to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes objection to the change.

**6.7.2** CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the CONTRACTOR, its employees, subcontractors, suppliers, other persons directly or indirectly employed by its subcontractors or suppliers, persons for whose acts any of them may be liable and any other persons or organizations performing or furnishing supplies under a direct or indirect Contract with CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

**6.7.3** All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of the Contract Documents for the benefit of CITY.

**6.8 Patent Fees and Royalties:**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use of the license 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.

**6.9 Permits:**

CONTRACTOR shall obtain and pay for all permits and licenses and all related costs for inspection and administration. There will be no cost for permits issued by the CITY.

**6.10 Compliance with Laws and Regulations:**

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR's compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents as observed by CONTRACTOR are at variance with applicable laws and regulations.

**6.11 Risk of Loss; Ownership:**

The risk of loss, injury or destruction shall be on CONTRACTOR until acceptance of the Work by CITY. Title to the Work shall pass to CITY upon acceptance of the Work by CITY.

**6.12 Taxes:**

CONTRACTOR shall pay all sales, consumer, use and other similar taxes. CONTRACTOR is responsible for reviewing the pertinent state laws and regulations involving such taxes and complying with all requirements.

**6.13 Use of Premises:**

**6.13.1** CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the work site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR shall assume full responsibility for any damage to any land or areas or to the owner or occupant of any contiguous land or areas, resulting from the performance of the Work. Should any owner or occupant because of the performance of the Work make any claim against CITY, CONTRACTOR shall promptly attempt to settle with the claimant by agreement or otherwise resolve the claim.

**6.13.2** During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents including fencing, parking lots and grounds.

**6.13.3** CONTRACTOR shall not permit any part of any structure or land to be treated in any manner that will endanger the structure or any land, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or processes that will endanger it.

**6.14 Access to Work:**

CONTRACTOR shall provide CITY, its consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for access and shall advise these authorized persons of CONTRACTOR's site safety procedures and programs.

**6.15 Safety and Protection:**

**6.15.1** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected. This paragraph applies to all the Work, materials and equipment, whether in storage on or off the site; and other property at the site or adjacent to the site.

**6.15.2** CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

## 6.16 Environmental

The CONTRACTOR has fully inspected the worksite and agrees to accept the worksite in an "as is" physical condition, without representation or warranty by the CITY of any kind, including, without limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the worksite. Further CONTRACTOR and all entities claiming by, through or under CONTRACTOR, releases and discharges the CITY from any claim, demand, or cause of action arising out of or relating to the CONTRACTOR's use, handling, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the worksite. The CONTRACTOR shall have no liability for any pre-existing claims or "contamination" on the worksite.

CONTRACTOR shall not use, handle, store, discharge, treat, remove, transport or dispose of Hazardous Substances including asbestos at, in, upon, under, to or from the worksite until receipt of instructions from the CITY. At such time, a CITY approved change order, which shall not include any profit, shall authorize the CONTRACTOR to perform such services.

CONTRACTOR shall immediately deliver to CITY complete copies of all notices, demands or other communications received by CONTRACTOR from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity on the worksite which is or could be dangerous to life, limb, property or the environment.

CONTRACTOR indemnifies and agrees to protect, defend, and hold harmless, the CITY and its respective employees, agents, successors, and assigns from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the CONTRACTOR's (or any of its employees, agents, invitees, contractors or sub-contractors) use, handling, storage, release, threatened release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of a Hazardous Substance on, under, from, to or about the worksite or any other activity carried on or undertaken on or off the worksite by the CONTRACTOR or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transportation, decontamination, cleanup, disposal and/or presence or any Hazardous Substance located, transported, or present on, undue, from, to, or about the worksite. This indemnity is intended to be operable under 42 U.S.C. section 9607, as amended, and any successor section.

The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (i) the costs of removal or remedial action incurred by the United States government or the State of Florida or response costs incurred by any other person, or damages from injury to, destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, response costs, or penalties which arise from the provisions of any other statute, law, regulation, code, ordinance, or legal requirement, state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

The indemnification obligations contained herein are supported by separate consideration of \$10.00 which the proposer acknowledges as adequate.

**6.17 Indemnification:**

- 6.17.1** In addition to, CONTRACTOR shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential including but not limited to fees and charges of engineers, architects, attorneys, consultants and other professionals and court costs arising out of or in consequence of the performance of this Agreement at all trial and appellate levels. Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) the negligent or defective design of the project and Work of this Agreement; (b) any act, omission or default of the CONTRACTOR, its Subcontractors, agents, servants or employees; (c) any and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (f) the use of any improper materials; (g) any construction defect including both patent and latent defects; (h) failure to timely complete the work; (i) the violation of any federal, state, county or city laws, ordinances or regulations by CONTRACTOR, its subcontractors, agents, servants, independent contractors or employees; (j) the breach or alleged breach by CONTRACTOR of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.
- 6.17.2** CONTRACTOR agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.
- 6.17.3** CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs at trial and appellate levels.
- 6.17.4** If any Subcontractor, supplier, laborer, or materialmen of CONTRACTOR or any other person directly or indirectly acting for or through CONTRACTOR files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the CITY to CONTRACTOR or from CONTRACTOR to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, CONTRACTOR agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) calendar days of the filing of or from receipt of written notice from the CITY.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by CONTRACTOR, all monies due to CONTRACTOR, or that become due to CONTRACTOR before the lien or claim is satisfied, removed or otherwise discharged, shall be held by CITY as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If CONTRACTOR shall fail to do so, CITY shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means CITY chooses at the entire and sole cost and expense of CONTRACTOR which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to CONTRACTOR. In the event the amount due CONTRACTOR is less than the amount required to satisfy CONTRACTOR'S obligation under this, or any other section of the Agreement, the CONTRACTOR shall be liable for the deficiency due the CITY.

**6.18 Survival of Obligations:**

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

**6.19 Correction or Removal of Defective Work:**

If required by CITY, CONTRACTOR shall promptly correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs for the correction or removal of defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals).

If the work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion, 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 or any other party.

**6.20 Force Majeure:**

No party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

No party shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable by force majeure to carry out its obligation, but the obligation of the party or parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The CONTRACTOR further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within two (2) hours after such an occurrence.

**ARTICLE 7 - CITY'S RESPONSIBILITIES**

**7.1** CITY shall furnish data required of CITY under the Contract Documents.

**7.2** CITY shall make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

**7.3 Technical Clarifications and Interpretations:**

**7.3.1** CITY shall issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should CONTRACTOR fail to request interpretation of questionable items in the Contract Documents, CITY shall not entertain any excuse for failure to execute the work in a satisfactory manner.

**7.3.2** CITY shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other party but in no event later than five (5) days after the occurrence of the event, and written supporting data will be submitted to the other party within five (5) calendar days after such occurrence. All written decisions of the CITY on any claim or dispute will be final and binding.

**ARTICLE 8 - BONDS AND INSURANCE****8.1 Payment and Performance Bonds:**

**8.1.1** Prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond, in a form approved by the CITY and as provided by state law, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+.

**8.1.2** The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of this Agreement. The performance bond shall be conditioned that the CONTRACTOR performs the contract in the time and manner prescribed in the Agreement. The payment bond shall be conditioned that the CONTRACTOR promptly makes payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the performance of the Work provided for in this Agreement and any change orders and shall provide that the surety shall pay the amount not exceeding the sum provided in the bonds, together with interest at the maximum rate allowed by law and that the CONTRACTOR and surety shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the performance of this Agreement which the CITY may be required to make by law.

**8.1.3** Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, the CONTRACTOR shall record the payment and performance bonds in the public records of Broward County, at its own expense.

**8.2 Bonds, Reduction After Final Payment:**

The performance and payment bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of these bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Agreed Compensation, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Agreement, upon notification by the CITY.

**8.3 Duty to Substitute Surety:**

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within three (3) days substitute another bond and surety, both of which must be acceptable to CITY. The CITY shall have the right to disapprove any CONTRACTOR or subcontractor selected by any surety.

**8.4 Insurance:**

**8.4.1** At the time of execution of the Agreement, the CONTRACTOR shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the CITY is an additional, named, first party insured with respect to the required coverage and the operations of the CONTRACTOR under the Agreement. The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that the insurance is as required by Article 8 and its subparts of this Agreement. CONTRACTOR shall not commence work under this Agreement until after CONTRACTOR has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by CITY. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, CONTRACTOR shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. CONTRACTOR shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

- 8.4.2** Insurance Companies selected by CONTRACTOR must be acceptable to the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) Calendar days written notice has been given to CITY by certified mail.
- 8.4.3** The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of this Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:
- (a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
  - (b) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CONTRACTOR in the performance of the Work with the following minimum limits of liability:  
\$1,000,000.00 - Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence
- Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability Policy without restrictive endorsements, as filed with the Florida Department of Insurance and shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:
- 1. Premises and Operations;
  - 2. Independent Contractors;
  - 3. Product and Completed Operations Liability;
  - 4. Broad Form Property Damage;
  - 5. Broad Form Contractual Coverage applicable to this Agreement and specifically confirming the indemnification and hold harmless provision in this Agreement; and
  - 6. Personal Injury coverage with employment contractual exclusions removed and deleted.
- (c) Builder's Risk Insurance in an amount not less than the replacement cost for the construction of the Work. Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value with a deductible of not more than Five Thousand Dollars (\$5,000.00) per claim.
- 8.4.4** CONTRACTOR shall maintain the Products and Completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish CITY with evidence of the continued insurance coverage at the time of final payment.
- 8.4.5** The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.
- 8.4.6** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 8.4.7** The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they have no recourse against CITY for payment or assessments in any form on any policy of insurance.
- 8.4.8** The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence to the Insurer within fifteen (15) working days of CITY's actual notice of such an event.
- 8.4.9** The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance described and the CITY's approved.

- 8.4.10** The CONTRACTOR agrees to perform the work under the Agreement as an independent CONTRACTOR, and not as a subcontractor, agent or employee of CITY.
- 8.4.11** CONTRACTOR shall require each of its subcontractors to maintain the insurance required for each category, and CONTRACTOR shall provide verification to CITY upon its request.
- 8.4.12** Violation of the terms of this paragraph and its subparts shall constitute a material breach of the Agreement, and CITY, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONTRACTOR shall cease and terminate.
- 8.4.13** CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others performing the Work. CITY specifically reserves all statutory and common law rights and immunities. Nothing contained in this Agreement is intended to limit or waive any rights or immunities including, but not limited to, the procedural and substantive provisions of Chapter 768, Florida Statutes.

## **ARTICLE 9 - WARRANTIES: TESTS AND INSPECTIONS: CORRECTION OF DEFECTIVE WORK**

### **9.1 Warranty of Title:**

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided and that there are no pending liens, claims or encumbrances against the equipment and materials.

### **9.2 Warranty of Specifications:**

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

### **9.3 Warranty of Merchantability:**

CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.

### **9.4 Correction Period:**

CONTRACTOR warrants all material and workmanship for a minimum of two (2) year(s) from date of acceptance by the CITY. If, within two (2) year(s) after the date of final completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY's written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with Work that is not defective and that is satisfactorily correct, and remove and replace any damage to other Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR.

**9.4.1** Where defective Work (and damage to other work) has been corrected, removed or replaced under this Article, the correction period with respect to such Work will be extended for an additional period of two (2) year(s) after such correction, removal or replacement has been satisfactorily completed.

**9.4.2** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of two (2) year(s) as described in above paragraph relates only to the specific obligation



of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to the CONTRACTOR's obligation other than specifically to correct the Work.

- 9.5** CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under this Agreement.
- 9.6** CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.
- 9.7** CONTRACTOR warrants to the CITY that the performance of the work provided for in the Contract Documents will not result in the breach of any term or provision, or constitute a default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.
- 9.8** CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the Work of the Agreement.
- 9.9** No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

**9.10 Tests and Inspections:**

- 9.10.1** CONTRACTOR shall give CITY timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part unless otherwise specified.
- 9.10.2** Neither CITY nor other inspectors shall have authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Agreement by failure to inspect the materials and work with reasonable promptness.
- 9.10.3** The payment of any compensation, the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly, is strictly prohibited and punishable to the full extent of the law, and any such action on the part of the CONTRACTOR will constitute a termination of this Agreement.

**9.11 Warranty Information**

The CONTRACTOR shall deliver to the CITY and the CITY shall execute all applicable product and equipment registration, manuals, instructions, keys, accessories and warranty documents in accordance with manufacturers' policies and procedures. CONTRACTOR shall facilitate any necessary warranty claims free of charge.

**ARTICLE 10 - LIQUIDATED DAMAGES**

If the awarded Proposer fails to complete the project by the completion date stated on the Proposal Form, it is understood that five-hundred dollars (\$500.00) per calendar day will be deducted as liquidated damages, for each day beyond the substantial completion time and two-hundred fifty dollars (\$250.00) per calendar day will be deducted as liquidated damages, for each day beyond the final completion time unless time extension is approved by the City Manager, it being agreed that the damage suffered by the CITY for such delay(s) cannot be specifically ascertained.

**ARTICLE 11 - CHANGES IN THE WORK**

- 11.1** One or more changes to the work within the general scope of this Agreement may be ordered by Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict

accordance with the Contract Documents and the terms and conditions described in this Article.

- 11.2** A Change Order shall mean a written order to the CONTRACTOR executed by the parties after execution of this Agreement, directing a change in the work and may include a change in the agreed compensation in accordance with Article 12 or the time for the CONTRACTOR's performance.
- 11.3** The execution of a Change Order by the CONTRACTOR shall constitute conclusive evidence of the CONTRACTOR's agreement to the ordered changes in the work and the CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order.
- 11.4** The CONTRACTOR shall notify and obtain the consent and approval of the CONTRACTOR's surety with reference to all Change Orders if such notice, consent or approval is required by the CONTRACTOR's surety or by law. The CONTRACTOR's execution of the Change Order shall constitute the CONTRACTOR's warranty to the CITY that the surety has been notified of, and consents to, such Change Order and the respective increase in the Performance bond amount commensurate with the Change Order(s). Furthermore, upon the CONTRACTOR's execution of the Change Order(s), the surety shall be conclusively deemed to have been notified of such Change Order by the CONTRACTOR in the increase in the required Performance Bond amount, and to have expressly consented.

## **ARTICLE 12 - CHANGE IN COMPENSATION**

Change orders approved by CITY shall be computed as follows:

### **12.1 Cost of the Work:**

The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, these costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 12.2:

- 12.1.1** 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. 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 limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.
- 12.1.2** Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.
- 12.1.3** Supplemental costs including the following:
- 12.1.3.1** 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.
- 12.1.3.2** Rentals of all construction equipment and machinery and the parts whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY, and the costs of transporting, loading, unloading, installing, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work.

- 12.1.3.3 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by laws or regulations.
- 12.1.3.4 Royalty payments and fees for permits or licenses.
- 12.1.3.5 The cost of utilities, fuel and sanitary facilities at the Work site.
- 12.1.3.6 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.
- 12.1.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

## 12.2 Not Included in the Cost of the Work:

The term "cost of the Work" shall not include any of the following.

- 12.2.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.1.1, all of which are to be considered administrative costs covered by CONTRACTOR's fee.
- 12.2.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 12.2.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 12.2.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain them.
- 12.2.5 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.
- 12.2.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.1.

## 12.3 Cost Breakdown Required:

Whenever the cost of any Work is to be determined pursuant to this Article, CONTRACTOR will submit in form acceptable to the CITY an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown as follows:

- (a) The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.
- (b) Whenever a change involves the CONTRACTOR and one (1) or more subcontractors and the change is an increase in the agreed compensation, the overhead and profit percentage for the CONTRACTOR and each subcontractor shall be itemized separately.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK**

### 13.1 Progress Payments:

- 13.1.1 CONTRACTOR may request payments for work completed during the project at intervals of not more than once a month. The CONTRACTOR's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or

properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR's previous applications for payment, and any other supporting documentation as may be required by the CITY, the ENGINEER or Contract Documents. Each requisition shall be submitted in triplicate to the CITY for approval. The CITY shall make payment to the CONTRACTOR within thirty (30) calendar days after approval of the CONTRACTOR's requisition for payment. Any rejection by the CITY of any specific item (s) shall result in CONTRACTOR being notified of the rejection within five (5) Business days of the rejection.

**13.1.2** Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until the work is totally completed and accepted by the CITY.

### **13.2 Inspection:**

CITY shall make an inspections as necessary and notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take the necessary measures to remedy any deficiencies within five (5) calendar days of the inspection.

### **13.3 Final Application for Payment:**

After CONTRACTOR has completed all corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, warranties, guarantees, bonds, certificates of inspection, marked up record documents and other documents required by the Contract Documents or requested by the CITY, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR's receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lien or who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR shall furnish a bond satisfactory to CITY to indemnify CITY against any lien, or the CITY may directly pay any subcontractor or supplier and deduct that amount due to CONTRACTOR.

In addition, CONTRACTOR shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by a professional surveyor licensed by the State of Florida. Final payment to CONTRACTOR shall not be made until the shop drawings have been reviewed and approved by the CITY. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of CITY they do not represent correct or accurate "As-Built" drawings.

### **13.4 Final Payment and Acceptance:**

**13.4.1** If, on the basis of observing the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation, the CITY is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, CITY will give written notice to CONTRACTOR that the Work is acceptable. Otherwise, the Application will be returned to CONTRACTOR indicating in writing the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, the amount will become due and will be paid by CITY to CONTRACTOR.

**13.4.2** If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and the occurrence is confirmed, CITY shall, upon receipt of CONTRACTOR's final Application for Payment, 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, 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 the CITY 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 held by the CITY.

**13.5** Final payment, constituting the entire unpaid balance of the agreed compensation, shall be paid by the CITY to CONTRACTOR when the work has been completed, the Contract fully performed, and a final certificate for payment has been issued by the CITY ENGINEER. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

- (1) Faulty or defective work and latent defects discovered after acceptance.
- (2) Failure of the work to comply with the requirements of the contract documents.
- (3) Terms of special warranties required by those contract documents.
- (4) Any of CONTRACTOR's continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR or the subcontractor for materials and supplies shall constitute a waiver of claims except those previously made in writing and identified as unsettled at the time of final application for payment.

**13.6 CITY's Right to Withhold Payment:**

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

**13.6.1** Defective work not remedied.

**13.6.2** Claims filed or evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

**13.6.3** Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.

**13.6.4** Damage to another contractor, subcontractor or supplier not remedied.

**13.6.5** Liability for liquidated damages has been incurred by the CONTRACTOR.

**13.6.6** Evidence that the Work cannot be completed for the unpaid balance of the agreed compensation.

**13.6.7** Evidence that the work will not be completed within the Agreement's term.

**13.6.8** Failure to carry out the Work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

**ARTICLE 14 - TERMINATION OF THE CONTRACT**

The CITY retains the right to terminate this Agreement without cause, with thirty (30) days prior written notice. Additionally, the CITY may also terminate this Agreement upon fifteen (15) days notice upon the occurrence of any one or more of the following events:

**14.1** If CONTRACTOR commences a voluntary case or a petition is filed against CONTRACTOR, under any chapter of the Bankruptcy Code, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

**14.2** If CONTRACTOR makes a general assignment for the benefit of creditors.

**14.3** If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors.

**14.4** If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.

**14.5** If CONTRACTOR disregards any local, state or federal laws or regulations.

**14.6** If CONTRACTOR otherwise violates any provisions of this Agreement.

Further, CONTRACTOR may be excluded from the Work site and the CITY take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use them 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 this instance, CONTRACTOR shall not be entitled to receive any further compensation until the Work is finished.

**14.7** If CONTRACTOR commits a default due to its insolvency or bankruptcy, the following shall apply:

**14.7.1** Should this Agreement be entered into and fully executed by the parties, funds released and the CONTRACTOR (Debtor) files for bankruptcy, the following shall occur:

- a. In the event the Debtor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the CITY. The Debtor further agrees that in the event of this default, the CITY shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The CITY shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Debtor agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Debtor acknowledges that such waiver is done knowingly and voluntarily
- b. Alternatively, in the event the CITY does not seek stay relief, or if stay relief is denied, the CITY shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361. The monthly adequate protection payments shall each be in an amount determined in accordance with the Note and Mortgage executed by the Debtor in favor of the CITY.
- c. In the event the Debtor files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Debtor agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and Mortgage. Additionally, the Debtor shall agree that the CITY is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the CONTRACTOR has less than five (5) years of payments remaining on the Note, the CONTRACTOR agrees that the treatment afforded to the claim of the CITY under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

**14.7.2** Should this Agreement be entered into and fully executed by the parties, and the compensation has not been forwarded to Debtor, the following shall occur:

In the event the Debtor files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Debtor acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The CONTRACTOR acknowledges that the Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c) (2), unless the CITY expressly consents in writing to the assumption. In the event the CITY consents to the assumption, the Debtor agrees to file a motion to assume the Agreement within ten (10) days after receipt of written consent from the CITY, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Debtor further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

**ARTICLE 15 – OWNERSHIP OF DOCUMENTS**

All documents, as-built plans and specifications resulting from the Project under this Agreement shall be deemed the sole property of the CITY, and the CITY shall have all rights incident to the sole ownership.

The CONTRACTOR shall agree to indemnify and hold harmless the CITY, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR.

**ARTICLE 16 - NOTICE**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the CONTRACTOR:

To the CITY:

City Manager  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

With a copy to:

City Engineer  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

**ARTICLE 17 - LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement, so that its liability never exceed the agreed sum of \$1,000.00. CONTRACTOR expresses its willingness to enter into this Agreement with CONTRACTOR'S recovery from the City for any action or claim arising from this Agreement to be limited to \$1,000.00.

Accordingly, and notwithstanding any other term or condition of this Agreement, CONTRACTOR agrees that the City shall not be liable to CONTRACTOR for damages in an amount in excess of \$1,000.00, for any action or claim of the CONTRACTOR or any third party arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

**ARTICLE 18 – MISCELLANEOUS**

- 18.1** The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY 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. This Article will be as effective as if repeated specifically in the Contract Documents will survive final payment and termination or completion of the Agreement.
- 18.2** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests. The obligations undertaken by CONTRACTOR pursuant to the Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Article shall constitute a material breach of Agreement by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR which shall immediately cease and terminate.
- 18.3** CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties.
- 18.4** CITY reserves the right to audit the records of CONTRACTOR relating in anyway to the work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract.
- 18.5** The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or later existing at law or in equity.
- 18.6** This Agreement shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.
- 18.7** Should any part, term or provision of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

As to the CONTRACTOR on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CONTRACTOR**

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

By: \_\_\_\_\_  
Company/Contractor

Name/Title: \_\_\_\_\_

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

**CITY OF LAUDERDALE LAKES**

ATTEST:

City Clerk

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

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

APPROVED AS TO FORM:

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

Dated: \_\_\_\_\_

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT  
FOR  
THE CITY OF LAUDERDALE LAKES, FLORIDA**



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## GENERAL CONDITIONS

### ARTICLE I - DEFINITIONS

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Wherever used in the Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

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

1.2. **Application for Payment** - The form accepted by the CITY which is to be used by CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.3. **Bid** - The offer of the BIDDER submitted on the prescribed form setting forth the prices for the WORK.

1.4. **BIDDER/PROPOSER** - One who submits a Bid or Proposal directly to the CITY.

1.5. **Bid Documents** - Includes the Invitation to Bid/Request for Proposal, Instructions to Bidders, Bid Form, and proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.6. **Bonds** - Bid, Performance and Payment bonds and other instruments of security, per Florida Statutes.

1.7. **Change Order** - A document recommended by CITY, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion, or revision in the WORK or an adjustment in the Contract Price or Contract Time, issued on or after the Effective Date of the Contract.

1.8. **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.

1.9. **Contract** - The written agreement between CITY and CONTRACTOR covering the WORK to be performed. Also referred to as Agreement.

1.10. **Contract Documents** - The Contract Documents establish the rights and obligations of the parties and include the Contract, 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 Tentative Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Technical Specifications, and the Drawings as the same are more specifically identified in the Contract, together with all Written Amendments, Change Orders, Field Orders, and CITY'S written interpretations and clarifications issued on or after the Effective Date of the Contract. 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.

1.11. **Contract Price** - The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Document.

1.12. **Contract Time** - The number or numbers of successive days or dates stated in the Contract Documents for the completion of the WORK.

1.13. **CONTRACTOR** - The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Contract.

1.14. **Day** - A calendar day of 24 hours measured from midnight to the next midnight.

1.15. **Defective WORK** - WORK that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or WORK that has been damaged prior to the CITY'S recommendation of final payment.

1.16. **Drawings** - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the WORK, which have been prepared or approved by CITY are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

1.17. **Effective Date of the Contract** - The date indicated in the Contract, but if no such date is indicated it means the date on which the Contract is signed by the last of the two parties to sign the Contract.

1.18. **Field Order** - A written order issued by CITY which orders minor changes in the WORK but which does not involve a change in the Contract Price or the Contract Times.

1.19. **General Requirements** - See Technical Specifications attached to the plan.

1.20. **Laws and Regulations; Laws or Regulations** - Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

1.21. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

1.22. **Notice of Tentative Award** - The official written notice by the CITY to the apparent successful BIDDER stating that upon compliance by the apparent successful BIDDER with the conditions precedent enumerated therein within the time specified, the CITY may enter into a Contract.

1.23. **Partial Utilization** - Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the WORK.

1.24. **Project** - The total construction of which the WORK to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.25. **Resident Project Representative (RPR)** - The authorized representative of the CITY who is assigned to the Site or any part thereof.

1.26. **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the WORK, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the CONTRACTOR to illustrate material or equipment for some portion of the WORK.

1.27. **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK and certain administrative details applicable thereto.

1.28. **Sub-BIDDER** - One who submits a Bid to a BIDDER.

1.29. **SUB-CONTRACTOR** - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUB-CONTRACTOR for the performance of a part of the WORK at the Site.

1.30. **Substantial Completion** - The WORK (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY'S definitive certificate of Substantial Completion, all conditions and requirements accordance with the Contract Documents, so that the WORK (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any WORK refer to Substantial Completion thereof. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.

1.31. **SUCCESSFUL BIDDER** - The lowest, qualified, responsible and responsive BIDDER to whom CITY (on basis of CITY'S evaluation as hereinafter provided) makes an award.

1.32. **Supplementary General Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

1.33. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.34. **Surety** - Any person, firm or corporation which is bound by bid or contract bond with and for the CONTRACTOR.

of permits and regulatory agencies have been satisfied and the WORK is sufficiently complete, in Unit Price WORK - WORK to be paid for on the basis of unit prices.

1.35. **Utilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above ground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

1.36. **WORK** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. WORK includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Document.

1.37. **Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract and signed by the CITY, ordering an addition, deletion or revision in the WORK, or which references an emergency or unforeseen physical conditions under which the WORK is to be performed. A Work Change Directive may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work 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 Time.

1.38. **Written Amendment** - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non- technical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2 - PRELIMINARY MATTERS

### 2.1. DELIVERY OF BONDS AND INSURANCE CERTIFICATES:

2.1.1. When the CONTRACTOR delivers the signed Contracts to the CITY, the CONTRACTOR shall also deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents. The aforementioned documents must be submitted to the CITY prior to any WORK being performed.

### 2.2. COPIES OF DOCUMENTS:

2.2.1. The CITY shall furnish to CONTRACTOR ONE (1) copy (unless additional copies exist) of the Contract Documents for the execution of the WORK. CONTRACTOR shall be responsible for procuring additional copies.

### 2.3. NOTICE TO PROCEED:

2.3.1. The Contract Times will commence to run on the date stated in the Notice to Proceed.

## 2.4. STARTING THE WORK:

2.4.1. CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, NO WORK shall be done at the Site prior to said commencement date.

2.4.2. 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 pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CITY any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CITY before proceeding with any WORK affected thereby; however, CONTRACTOR shall not be liable to CITY for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

## 2.5. PRECONSTRUCTION CONFERENCE:

2.5.1. The CONTRACTOR is required to attend a preconstruction conference within twenty (20) days after the Contract Times start to run, but before any WORK at the site is started. This conference will be attended by the CITY, and others as appropriate in order to discuss the WORK.

2.5.2. The CONTRACTOR'S initial schedule for shop drawings submittals, obtaining permits and Plan of Operation and CPM Schedule will be reviewed and finalized. As a minimum, the CONTRACTOR'S representatives should include its project manager and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings will be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment will be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

## 2.6. FINALIZING SCHEDULES:

2.6.1. Within ten (10) days of receiving the Notice to Proceed the CONTRACTOR will submit the final schedule approved by the CITY. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the WORK to completion within the Contract Time, but such acceptance will neither impose on the CITY responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the CITY as to form and substance.

## ARTICLE 3 – USE OF CONTRACT DOCUMENTS

## 3.1. INTENT:

3.1.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the WORK. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed

in accordance with the laws of the State of Florida with venue in Broward County, Florida.

3.1.2. It is the intent of the Contract Documents to describe the WORK, functionally complete, 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.

## 3.2. REFERENCE TO STANDARDS:

3.2.1. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids/Proposals, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties or responsibilities of the CITY, CONTRACTOR or any of their agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

## 3.3. REVIEW OF CONTRACT DOCUMENTS

3.3.1. If, during the performance of the WORK, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so notify the CITY, in writing, at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification, except in an emergency as authorized by paragraph 6.13.

## 3.4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

3.4.1. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Change Order
2. Construction Contract
3. Addenda, with later date having greater priority
4. Bid/Proposal Form
5. Supplemental General Conditions
6. Invitation to Bid/Request for Proposal
7. Instructions to Bidders/Proposers
8. General Conditions
9. Technical Specifications
10. Contract Drawings

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to assist in locating and reading the provisions hereof.

3.4.2. With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/Change Order drawings govern over any other drawings
4. Drawings govern over standard drawings

3.4.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5, 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:

1. The provisions of any such standard, specification, manual, code or instruction (whether or note specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such 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).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or any of their SUB-CONTRACTORS, agents or employees from those set forth in the Contract Documents, no shall it be effective to assign to CITY or any of CITY's agents or employees any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.10. or any other provision of the Contract Documents.

### 3.5. AMENDING CONTRACT DOCUMENTS:

3.5.1. The Contract Documents may be amended to provide for additions, deletions and revisions in the WORK or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10).

3.5.2. Additionally, the requirements of the Contract Documents may be supplemented and variations and deviations in the WORK may be authorized, in one or more of the following ways:

- 3.5.2.1. a Field Order (pursuant to paragraph 9.5)

- 3.5.2.2. CITY'S approval of a Shop Drawing or sample (pursuant to paragraphs 6.14), or

- 3.5.2.3. CITY'S written interpretation or clarification (pursuant to paragraph 9.4).

### 3.6. REUSE OF DOCUMENTS:

3.6.1. Neither CONTRACTOR nor any Sub-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the WORK under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents, drawings, technical specifications or other documents used on the WORK; and, they shall not reuse any of them on extensions of the Project or any other project without prior written consent of the CITY.

## ARTICLE 4 – SITE OF THE WORK

### 4.1. AVAILABILITY OF LANDS:

4.1.1. The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.1.2. Occupying Private Land: The CONTRACTOR shall not enter upon nor use any property not under the control of the CITY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner(s), and a copy of said easement furnished to the CITY prior to said use; and, the CITY will not be liable for any claims or damages resulting from the CONTRACTOR'S trespass on or use of any such properties. The CONTRACTOR shall provide the CITY with a signed release from the property owner(s) confirming that the lands have been satisfactorily restored upon completion of the WORK.

4.1.3. WORK in State, County and CITY Rights-of-Way and Easements: When the WORK involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the CONTRACTOR shall (as the WORK progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance as part of the contract.

4.1.4. WORK Adjacent to Telephone, Power, Cable TV and Gas Company Structures: In all cases where WORK is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the CONTRACTOR shall provide written notification to the respective companies of the areas of which WORK is to be performed, prior to the actual performance of any WORK in these areas.

4.1.5. Use of Public Streets: The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. The CONTRACTOR shall remove any earth or excavated materials spilled from trucks and clean the streets to the satisfaction of the CITY, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

### 4.2. REPORTS OF PHYSICAL CONDITIONS:

4.2.1. **Subsurface Explorations:** Where applicable, reference is made in the technical specifications, for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CITY in preparation of the Contract Documents.



4.2.2. **Existing Structures:** Where applicable, reference is made to the technical specifications, for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 herein) which are at or contiguous to the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.3 The CITY does not make any representation as to the completeness of the reports or drawings referred to in Paragraph 4.2.1. or 4.2.2. above or the accuracy of any data or information contained therein. CONTRACTOR may rely upon the general accuracy of the technical data contained in such reports and drawings but not for the completeness thereof for CONTRACTOR'S purposes including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. However, the CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.2.4 Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new WORK, the CONTRACTOR shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There shall be no additional cost to the CITY for CONTRACTOR'S failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR.

#### 4.3. PHYSICAL CONDITIONS -- UNDERGROUND FACILITIES:

4.3.1. **Indicated:** The information and data indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site is based on information and data furnished to the CITY by the owners of such Underground Utilities or by others.

4.3.1.1. The CITY shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 The CONTRACTOR shall notify the Underground Service Alert (USA) System, Phone No. 1-800-227-2600, and Sunshine State One Call Services (1-800-432-4770) at least 48 hours in advance of the commencement of WORK at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities.

4.3.1.3. The CONTRACTOR acknowledges that some (or all) of the utility companies with facilities shown on the drawings may not be members of the USA System or Sunshine State One Call Services; and, therefore, not automatically contacted by the above referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the USA System or Sunshine State One Call Services, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall be responsible for notifying all of the utilities at least 48 hours in advance of the commencement of

WORK at any site to allow the utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also be responsible for verifying that each utility has responsibly responded to such notification.

4.3.1.4. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. Further, the CONTRACTOR shall be responsible for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordination of the WORK with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.10, and repairing any damage thereto resulting from the WORK, the cost of all of which will be considered as having been included in the Contract Price.

4.3.1.5. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, shall be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR shall notify the CITY or occupant of such facilities both 48 hours before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR shall obtain permission from the CITY and shall make suitable arrangements for the disconnection. The CONTRACTOR shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly, as part of the work, as soon as the WORK has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new WORK are shown, but are to be verified in the field by the CONTRACTOR prior to performing the WORK. The CONTRACTOR shall uncover these pipes, ducts, cables, etc., carefully, prior to installing his WORK. Any discrepancies or differences found shall be immediately brought to the attention of the CITY in order that necessary changes may be made to permit installation of the WORK.

4.3.2. **Not Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown on the plan, nor located by the CITY and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK affected thereby (except in an emergency as permitted by paragraph 6.13), identify the CITY of such Underground Facility and give written notice thereof to that CITY. The CITY will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.12.

#### 4.4. DIFFERING SITE CONDITIONS

4.4.1. The CONTRACTOR shall notify the CITY, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than 7 days after their discovery) and

before they are disturbed:

4.4.1.1. Subsurface or latent physical conditions at the Site of the WORK differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Paragraph 4.2 and 4.3; and

4.2.3.2. Any unknown physical conditions and the Site of the WORK of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, including those reports and documents discussed in Paragraph 4.2 and 4.3.

4.4.2. CITY will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the CITY in writing (with a copy to the CONTRACTOR) of CITY'S findings and conclusions.

4.4.3. If CITY concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.

4.4.4. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Article 11 and 12.

4.4.5. The CONTRACTOR'S failure to give notice of differing Site conditions within 7 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

#### 4.5. REFERENCE POINTS:

4.5.1. The CITY shall provide, if available, engineering surveys to establish reference points for construction, which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the WORK.

4.5.2. CONTRACTOR shall be responsible for laying out the WORK (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR shall report to the CITY whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

#### ARTICLE 5 -- BONDS AND INSURANCE

##### 5.1. BONDS:

5.1.1. CONTRACTOR shall upon delivery of the executed Contract or receipt of a Notice of Tentative Award to the CITY furnish Performance and Payment Bonds, each in an amount at least ONE HUNDRED PERCENT (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. Said bonds must be provided to the CITY within ten (10) business days of the Notice of Tentative

Award or delivery of a contract to CONTRACTOR to execute, or the CITY, at its sole discretion and option may terminate the contract. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. Each Bond shall be furnished in an amount equal to ONE HUNDRED PERCENT 100% of the amount of the Contract award. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.2 The CONTRACTOR shall provide a Maintenance and Guaranty Bond in the amount of 50% of the Performance and Payment Bonds to provide a guarantee against defects in the WORK occurring during the year following the one-year correction period. The Bond shall be payable to the CITY, and be at the sole cost of the CONTRACTOR. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.3. The Surety shall be a nationally recognized Surety Company acceptable to the CITY, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, for projects not exceeding (\$500,000) five hundred thousand dollars and meet the other requirements of Florida Statutes Section 287.0935 (1989). For projects exceeding five hundred thousand dollars, all bonds shall be placed with sureties with a Best Rating of no less than A-IX. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties.

5.1.4. If the CONTRACTOR is a partnership, the Bond should be signed by each of the individuals who are partners; if a corporation, the Bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties; (b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where bond is executed by agent, officer or other representative of CONTRACTOR or Surety; (c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

5.1.5. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 5.1.2., CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 5.1.2. Under no circumstances shall the successful CONTRACTOR begin WORK until he/she has supplied to the CITY Performance and Payment Bonds and Affidavit for Bond using the CITY form, and the CITY has approved the bond.

## 5.2. INSURANCE:

5.2.1. CONTRACTOR shall purchase and maintain the insurance required under this Paragraph. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided herein. All insurance shall be maintained continuously during the life of the Contract up to the date of Substantial Completion and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing *Defective Work* in accordance with Paragraph 13.6. the CONTRACTOR'S liabilities under this Contract shall not be deemed limited in any way to the insurance coverage required.

5.2.2. All insurance required by the Contract Documents to be purchased and maintained by the CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized to issue insurance policies for the limits and coverages so required in the State of Florida. Such insurance companies shall have a current Best's Rating of at least an "A" (Excellent) general policy holder's rating and a Class VII financial size category and shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2.3. Before starting the WORK, the CONTRACTOR shall furnish the CITY, with copies to each additional insured who is indicated in the Supplementary General Conditions, with certificates and original endorsements showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice has been given the CITY and additional insureds by certified mail. All such insurance required herein (except for worker's compensation and employer's liability) shall name the CITY, and CITY'S officers, directors, agents, and employees as "additional insureds" under the policies. The CONTRACTOR shall purchase and maintain the following insurance:

5.2.3.1. **Workers' Compensation and Employer's Liability:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. CONTRACTOR shall require each SUB-CONTRACTOR similarly to maintain workers compensation during the term of the Contract and up to the date of final acceptance. CONTRACTOR shall defend, indemnify and save the CITY harmless from any damage resulting to them for failure of either CONTRACTOR or any SUB-CONTRACTOR to take out or maintain such insurance.

- a. Employers' Liability with Statutory Limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate.
- b. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and/or Jones Act if applicable.

5.2.3.2. **Comprehensive or Commercial General Liability:** Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy or Commercial General Liability filed by the Insurance Services Office, and must include:

- a. Minimum Limits of total coverage shall be \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability, the basic policy to be in said form with any excess coverage (and the carrier) to meet \$2,000,000 minimum to be acceptable to the CITY.

5.2.3.3. **Business Auto Policy.** Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Service Office and must include:

- a. Minimum limit of \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

- b. Owned Vehicles

- c. Hired and Non-Owned Vehicles

- d. Employee Non-Ownership

5.2.3.4. **SUB-CONTRACTOR's Public Liability and Property Damage Insurance and vehicle Liability Insurance:** The CONTRACTOR shall either require each of the Sub-CONTRACTORS to procure and to maintain SUB-CONTRACTOR's public liability and property damage insurance and vehicle liability insurance of the type and in the amount indicated above in Paragraph 5.2.3.1., 5.2.3.2. and 5.2.3.3.

5.2.3.5. **Products and/or Completed Operations:** CONTRACTOR shall maintain in force until at least three (3) years after completion of all services required under the Contract, coverage for products and completed operations, including Broad Form Property Damage.

5.2.3.6. **All Risk Property Insurance:** When Applicable, coverage must include real and personal property and in an amount equal to the replacement cost of all real and personal property of the CITY'S for which the CONTRACTOR is responsible and over which he exercises control. Builders Risk insurance must be provided to cover Property under construction and an Installation Floater must cover all machinery, vessels, air conditioners or electric generators to be installed. This insurance shall include a waiver of subrogation as to the CITY, the CONTRACTOR, and their respective officers, agents, employees, and SUB-CONTRACTORS.

- a. Coverage to be provided on a full replacement cost basis.
- b. Losses in excess of ten thousand dollars (\$10,000) shall be jointly payable to the CONTRACTOR and the CITY.
- c. Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the CITY will not occupy the building(s), addition(s) or structure(s).
- d. Maximum Deductible - \$5,000 each claim.
- e. Flood Insurance. When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the CONTRACTOR and the CITY must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance

coverage available under the National Flood Program.

5.2.4. All policies shall also specify that the insurance provided by the CONTRACTOR will be considered primary and not contributory to any other insurance available to the CITY.

## ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

### 6.1. SUPERVISION AND SUPERINTENDENCE:

6.1.1. The CONTRACTOR has the obligation to deliver to the CITY the completed job in a good and workmanlike condition. CONTRACTOR shall supervise and direct the WORK completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents. The CONTRACTOR shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Final Acceptance. The supervision of the execution of this contract is vested wholly in the CONTRACTOR.

6.1.2. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.

### 6.2. LABOR, MATERIALS AND EQUIPMENT:

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey, prepare the WORK and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all WORK at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime WORK or the performance of WORK on Saturday, Sunday or any legal holiday without the CITY'S written consent (which shall not be unreasonably withheld) given after prior written notice to CITY. The CONTRACTOR is hereby informed, and understands that unless otherwise approved by the CITY, the CITY restricts the WORK between the hours of 5:00 p.m. and 7:30 a.m., unless emergency conditions exist that are endangering life or property as may be determined by the CITY. If the CONTRACTOR is authorized to operate equipment twenty-four (24) hours per day, the engines shall be provided with residential type silencers approved by the CITY. The CONTRACTOR shall receive no additional compensation for overtime WORK. However, additional compensation will be paid to the CONTRACTOR for overtime WORK only in the event extra WORK is ordered by the CITY and the change order specifically authorizes the use of overtime WORK and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime WORK of a similar nature in the same locality. All costs of inspection and testing performed by the CITY during overtime WORK by the CONTRACTOR which is allowed solely for the

convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The CITY shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.

6.2.2. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and final completion of the WORK.

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CITY, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY, or any of the CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

### 6.3. SCHEDULE:

6.3.1. CONTRACTOR shall submit to CITY for review and comment (to the extent indicated in paragraph 2.6.) proposed adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. All approved changes shall be memorialized as change orders.

### 6.4. SUBSTITUTES OR "OR-EQUAL" ITEMS:

6.4.1. The technical specifications shall govern the use of substitute or "or-equal" items. The procedure for review by CITY will include the following as supplemented in the technical specifications. Requests for review of substitute items of material and equipment will not be accepted by CITY from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY for acceptance thereof, certifying that the proposed substitute will perform equally or better the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the WORK will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for WORK on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with

the WORK is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs and cost savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by CITY in evaluating the proposed substitute. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

6.4.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to CITY, if CONTRACTOR submits sufficient information to allow CITY to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by CITY will be similar to that provided in paragraph 6.4.1 as applied by CITY and as may be supplemented in the Technical Specifications.

6.4.3. CITY will be allowed a reasonable time within which to evaluate each proposed substitute. CITY will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CITY'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

#### 6.5. CONCERNING SUB-CONTRACTORS, SUPPLIERS AND OTHERS:

6.5.1. CONTRACTOR shall not employ any SUB-CONTRACTOR, Supplier or other person or organization (including those acceptable to the CITY as indicated in paragraph 6.5.2), whether initially or as a substitute, against whom the CITY may have reasonable objection. CONTRACTOR shall not be required to employ any SUB-CONTRACTOR, Supplier or other person or organization to furnish or perform any of the WORK against whom CONTRACTOR has reasonable objection.

6.5.2. If the Technical Specifications or Contract Documents require the identity of certain SUB-CONTRACTORS, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) shall be submitted to the CITY for acceptance by the CITY, and if CONTRACTOR has submitted a list thereof, the CITY'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid documents or the Contract Documents) of any such SUB-CONTRACTOR, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. If after bid opening and prior to the award of the contract, the CITY objects to certain suppliers or SUB- CONTRACTORS, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the contract price or contract time. If the contract price or contract time is increased, the CITY may return the bid bond and award the contract to the next qualified, competent BIDDER. If after the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY shall permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the

CITY. No acceptance by the CITY of any such SUB-CONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of the CITY to reject defective WORK.

6.5.3. CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the SUB-CONTRACTORS, Suppliers and other persons and organizations performing or furnishing any of the WORK under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such SUB-CONTRACTOR, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such SUB-CONTRACTOR, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.5.4. The divisions and sections of the Technical Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the WORK among SUB-CONTRACTORS or Suppliers or delineating the WORK to be performed by any specific trade.

6.5.5. All WORK performed for CONTRACTOR by a SUB-CONTRACTOR will be pursuant to an appropriate agreement between CONTRACTOR and the SUB-CONTRACTOR which specifically binds the SUB-CONTRACTOR to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

#### 6.6. PATENT FEES AND ROYALTIES:

6.6.1. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of WORK or the incorporation in the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the WORK and if to the actual knowledge of the CITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to other, the existence of such rights shall be disclosed by the CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless the CITY and anyone directly or indirectly employed by the CITY from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### 6.7. PERMITS:

6.7.1. CONTRACTOR shall obtain and pay for all construction permits and licenses without limitation as required by Laws or Regulations. The CITY shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for prosecution of the WORK, which are applicable at the time of opening of Bids. There will be no cost for permits issued by the CITY. CONTRACTOR shall pay all charges for utility connections to the WORK.

**6.8. LAWS AND REGULATIONS:**

6.8.1. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to furnishing and performance of the WORK. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, the CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any Laws, ordinances, rules or regulations.

6.8.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws, ordinances, rules or regulations, CONTRACTOR shall give CITY prompt, written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.5. If CONTRACTOR performs any WORK knowing or having reason to know that it is contrary to such laws, ordinances, rules or regulations, and without such notice to the CITY, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations unless they are at variance with construction practices recognized as industry standards.

**6.9. TAXES:**

6.9.1. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws, ordinances and regulations of the place of the Project which are applicable during the performance of the WORK.

**6.10. USE OF PREMISES:**

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits and easements, and shall not reasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the CITY or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against the CITY by any such CITY or occupant because of the performance of the WORK, CONTRACTOR shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. CONTRACTOR shall, to the fullest extent permitted by laws and regulations, indemnify and hold the CITY harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK.

6.10.2. During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other and other debris resulting from the WORK. At the completion of the WORK CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.10.3. 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.

**6.11. RECORD DOCUMENTS:**

6.11.1. CONTRACTOR shall maintain in accordance with the Technical Specifications in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. The record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the CITY for reference. Upon completion of the WORK, these record documents, samples, and Shop Drawings will be delivered to the CITY.

**6.12. SAFETY AND PROTECTION:**

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

6.12.1.1. all employees on the WORK and other persons and organizations who may be affected thereby;

6.12.1.2. all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.12.1.3. 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.

6.12.2. CONTRACTOR shall comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the WORK and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.12.1.2. or 6.12.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUB-CONTRACTOR,

Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK for anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and CITY has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 14.6. that the WORK is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.12.3. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

6.12.4. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of an accident in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

6.12.5. Safety Representative: CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

6.12.6. Hazard Communication Programs: 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 employees at the Site in accordance with Laws and Regulations.

#### 6.13. EMERGENCIES AND PRECAUTIONS DURING ADVERSE WEATHER:

6.13.1. In emergencies affecting the safety or protection of persons or the WORK or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the WORK or variations from the Contract Documents have been caused thereby. If CITY determines that a change in the Contract Documents is required because of the action taken in response to an emergency, or Change Order will be issued to document the consequences of the changes or variations.

6.13.2. During adverse weather, and against the possibility thereof, the CONTRACTOR shall take all

necessary precautions to ensure that the WORK shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The CONTRACTOR shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he shall take such precautions and procure such additional insurance as he deems prudent. The CITY may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

#### 6.14. SUBMITTALS: SHOP DRAWINGS AND SAMPLES:

6.14.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to CITY for review in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.5.2.), ordinances, rules and all Shop Drawings which will bear the stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CITY may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

6.14.2. CONTRACTOR shall also submit to CITY for review and approval with such promptness as to cause no delay in WORK, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended. Please note – samples may not be returned by CITY. Samples are to be supplied at no expense to the CITY and CONTRACTOR is hereby put on notice that said samples may not be returned.

6.14.3. Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the WORK and the Contract Documents.

6.14.4. At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition shall cause a specific notation to be made on each Shop Drawing submitted to CITY for review and approval of each such variation.

6.14.5. CITY will review within ten days of receipt thereof, Shop Drawings and samples but CITY'S review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or

procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by CITY, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CITY on previous submittals. CITY will review one (1) re-submittal for each shop drawing or product data. All costs of reviewing additional submittals shall be at the CONTRACTOR'S expense.

6.14.6. CITY'S review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CITY'S attention to each such variation at the time of submission as required by paragraph 6.14.4 and CITY has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any review by CITY relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.14.3.

6.14.7. Where a Shop Drawing or sample is required by the Specifications, any related WORK performed prior to CITY'S review and acceptance of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

#### 6.15. CONTINUING THE WORK:

6.15.1. CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the CITY. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 15 or as CONTRACTOR and the CITY may otherwise agree in writing.

#### 6.16. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

6.16.1. CONTRACTOR warrants and guarantees to CITY that all work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.16.1.1. Abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, SUB-CONTRACTORS or Suppliers; or

6.16.1.2. Normal wear and tear under normal usage.

6.16.2. 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:

6.16.2.1. observations by CITY;

6.16.2.2. recommendation of any progress or final payment by CITY;

6.16.2.3. the issuance of a certificate of Substantial Completion or any payment by CITY to CONTRACTOR under the Contract Documents;

6.16.2.4. use or occupancy of the WORK or any part thereof by CITY;

6.16.2.5. any acceptance by CITY or any failure to do so;

6.16.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by CITY pursuant to paragraph 14.10;

6.16.2.7. Any inspection, test or approval by others; or

6.16.2.8. Any correction of *defective* WORK by CITY.

#### 6.17. INDEMNIFICATION:

6.17.1. In consideration of ten dollars (\$10.00) and other valuable consideration, the CONTRACTOR shall defend, indemnify and save harmless the CITY, its officers, agents and employees, from or on account of any claims, losses, injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding the sole negligence of the CITY), in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the said CONTRACTOR or his SUB-CONTRACTORS, agents, servants or employees. CONTRACTOR agrees to defend, indemnify and save harmless the CITY, its officers, agents and employees, against any liability arising from or based upon the violation of any Federal, State, County or CITY laws, by-laws, ordinances or regulations by the CONTRACTOR, his SUB-CONTRACTORS, agents, servants or employees.

6.17.2. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

6.17.3. The indemnification provided above shall obligate the CONTRACTOR to defend at his own expense or to pay for such defense, at the CITY'S option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY which may result from the operations and activities under this Contract whether the construction operations be performed by the CONTRACTOR, his SUB-CONTRACTOR or by anyone directly or indirectly employed by either.

6.17.4. This indemnification includes all costs and fees including attorney's fees and costs at trial and appellate levels. The CITY will pay to the CONTRACTOR the specific



consideration of ten dollars and other good and valuable consideration as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06 of the Florida Statutes. Furthermore, the CONTRACTOR acknowledges that the bid price includes said consideration for the indemnification provision.

#### ARTICLE 7 -- OTHER WORK

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##### 7.1. RELATED WORK AT SITE:

7.1.1. The CITY may perform other WORK related to the Project at the site by the CITY'S own forces, let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other WORK is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other WORK; and, if CONTRACTOR believes that such performance will involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. If the performance of additional WORK by other CONTRACTOR or the CITY is noted in the Contract Documents, no additional adjustment of time or compensation shall be considered.

7.1.2. CONTRACTOR shall afford the CITY and other CONTRACTORS who are a party to such a direct contract (or the CITY, if the CITY is performing the additional WORK with the CITY'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such WORK, and shall properly connect and coordinate the WORK with theirs. CONTRACTOR shall do all cutting, fitting and patching of the WORK that may be required to make its several parts come together properly and integrate with such other WORK. CONTRACTOR shall not endanger any WORK of others by cutting, excavating or otherwise altering their WORK and will only cut or alter their WORK with the written consent of the CITY and the others whose WORK will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and other CONTRACTORS to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and other CONTRACTORS.

7.1.3. If any part of CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other CONTRACTOR other than CONTRACTOR'S OWN SUB-CONTRACTOR, (or the CITY), CONTRACTOR shall inspect and promptly report to CITY in writing any delays, defects or deficiencies in such other WORK that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR'S WORK. CONTRACTOR'S failure to report will constitute an acceptance of the other WORK as fit and proper for integration with CONTRACTOR'S WORK except for latent defects and deficiencies in the other WORK.

##### 7.2. COORDINATION:

7.2.1. If the CITY contracts with others for the performance of other WORK on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime CONTRACTORS will be identified in the Technical Specifications and the specific matters to be covered by such authority and responsibility will be itemized, and the

extent of such authority and responsibilities will be provided in the Technical Specifications. Unless otherwise provided in the Technical Specifications, the CITY shall not have any authority or responsibility in respect of such coordination.

#### ARTICLE 8 -- THE CITY'S RESPONSIBILITIES

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##### COMMUNICATIONS TO CONTRACTOR:

8.1.1. CITY shall issue all communications to CONTRACTOR through CITY'S Project Manager.

##### 8.2. FURNISH DATA:

8.2.1. CITY shall promptly furnish the data required of the CITY under the Contract Documents.

##### 8.3. PAYMENTS:

8.3.1. CITY shall make payments to CONTRACTOR promptly when they are due as provided in Sections 14.5 and 14.10.

##### 8.4. LANDS, EASEMENTS: REPORTS AND TESTS:

8.4.1. The CITY'S duties in respect of providing lands and easements and providing engineering surveys, if available, to establish reference points are set forth in paragraphs 4.1.1 and 4.5.1.

8.4.2. The CITY will identify and make available to CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures that have been utilized in preparing the Contract Documents as set forth in Paragraph 4.22 and 4.2.3.

##### 8.5. CHANGE ORDERS

8.5.1. The CITY is obligated to execute Change Orders as indicated in Article 10.

##### 8.6. SUSPENSION OF WORK

8.6.1. In connection with the CITY'S right to stop WORK or suspend WORK see paragraph 13.5 and 15.1. Paragraph 15.2 deals with the CITY'S right to terminate services of CONTRACTOR.

#### ARTICLE 9 -- CITY'S STATUS DURING CONSTRUCTION:

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##### 9.1. CITY'S REPRESENTATIVE:

9.1.1. The City's Project Manager will be the CITY'S representative during the construction period. The duties and responsibilities and the limitations of authority of CITY'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the CITY.

##### 9.2. VISITS TO SITE:

9.2.1. After written notice to proceed with the WORK, the CITY shall make visits to the site at intervals

appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the Contract Documents; he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction and he will not be responsible for the CONTRACTOR'S failure to perform the construction WORK in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the WORK; and during such visits and on the basis of his on-site observations, as an experienced and qualified engineering professional, he will keep the CITY informed of the progress of the WORK, will endeavor to guard the CITY against defects and deficiencies in the WORK of the CONTRACTOR and may reject WORK as failing to conform to the Contract Documents.

### 9.3. PROJECT REPRESENTATION:

9.3.1. A Resident Project Representative may be assigned to assist CITY in carrying out his responsibilities to CITY at the site. Resident Project Representative is CITY'S agent at site, will act as directed by and under the supervision of CITY, and will confer with CITY regarding Resident Representative's actions. Resident Project Representative's dealing in matters pertaining to the on-site WORK shall in general be with CITY and CONTRACTOR keeping the CITY advised as necessary. Resident Project Representative's dealings with SUB-CONTRACTORS shall only be through or with the full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with the CITY.

9.3.2. Resident Project Representative shall where applicable:

9.3.2.1. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with CITY concerning its general acceptability.

9.3.2.2. Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

9.3.2.3. Working principally through CONTRACTOR'S superintendent, assist CITY in serving as the CITY's liaison with CONTRACTOR, when CONTRACTOR'S operations affect the CITY's on-site operations.

9.3.2.4. Assist in obtaining from the CITY additional details or information, when required for proper execution of the WORK.

9.3.2.5. Record date of receipt of Shop Drawings and samples.

9.3.2.6. Receive samples which are furnished at the site by CONTRACTOR, and notify the CITY of availability of samples for examination.

9.3.2.7. Advise the CITY and CONTRACTOR of the commencement of any WORK requiring a Shop Drawing if the submittal has not been approved by the CITY.

9.3.2.8. Conduct on-site observations of the WORK in progress to assist the CITY in determining if the WORK is, in general, proceeding in accordance with the Contract Documents.

9.3.2.9. Report to the CITY whenever Residential Project Representative believes that any WORK is unsatisfactory, faulty or *defective* or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the CITY of WORK that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein shall relieve the CONTRACTOR or the CITY from the duties imposed by contract.

9.3.2.10. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to the CITY appropriate details relative to the test procedures and startups.

9.3.2.11. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the CITY.

9.3.2.12. Report to CITY when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by the CITY.

9.3.2.13. Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the CITY. Transmit to CONTRACTOR decisions as issued by the CITY.

9.3.2.14. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, CITY'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

9.3.2.15. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the CITY.

9.3.2.16. Record all names, addresses and telephone numbers of the CONTRACTOR, all SUB-CONTRACTORS and major suppliers of material and equipment.

9.3.2.17. Furnish the CITY periodic reports as required of progress of the WORK of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

9.3.2.18. Consult with the CITY in advance of schedule major tests, inspections or start of important phases of the WORK.

9.3.2.19. Draft proposed Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to the CITY, Change Orders, Work Change Directives, and Field Orders.

9.3.2.20. Report immediately to the CITY upon the occurrence of any accident.

9.3.2.21. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the CITY, noting particularly the relationship of the payment requested to the schedule of values, WORK completed and materials and equipment delivered at the site but not incorporated in the WORK.

9.3.2.22. During the course of the WORK, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the CITY for review and forwarding to CITY prior to final payment for the WORK.

9.3.2.23. Before the CITY issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

9.3.2.24. Conduct final inspection in the company of the CITY and the CONTRACTOR and prepare a final list of items to be completed or corrected.

9.3.2.25. Observe that all items on final list have been completed or corrected and make recommendations to the CITY concerning acceptance.

9.3.3. The Resident Project Representative shall not:

9.3.3.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment.

9.3.3.2. Exceed limitations of the CITY'S authority as set forth in the Contract Documents.

9.3.3.3. Undertake any of the responsibilities of CONTRACTOR, SUB-CONTRACTORS, or CONTRACTOR'S superintendent.

9.3.3.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

9.3.3.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the WORK.

9.3.3.6. Accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.

9.3.3.7. Authorize the CITY to occupy the Project in whole or in part.

9.3.3.8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the CITY.

#### 9.4. CLARIFICATIONS AND INTERPRETATIONS:

9.4.1. The CITY will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CITY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification of interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

#### 9.5. AUTHORIZED VARIATIONS OF WORK:

9.5.1. CITY may authorize variations in the WORK from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field Order and will be binding on the CITY, and also on CONTRACTOR who shall perform the WORK involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 9.6. REJECTING DEFECTIVE WORK

9.6.1. The CITY will have authority to disapprove or reject WORK which CITY believes to be *defective* or believes to be in nonconformance with the intent of the contract documents, and will also have authority to require special inspection or testing of the WORK as provided in Section 13.3, whether or not the WORK is fabricated, installed or completed.

#### 9.7. SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

9.7.1. In connection with CITY'S responsibility for Shop Drawings and samples, see Sections 6.11 and 6.14.

9.7.2. In connection with CITY'S responsibilities as to Change Orders see Article 10, 11, and 12.

9.7.3. In connection with CITY'S responsibilities in respect of Applications for Payment, etc., see Article 14.

#### 9.8. DETERMINATIONS FOR UNIT PRICES:

9.8.1. CITY will verify the actual quantities and classifications of Unit Price WORK performed by CONTRACTOR. CITY will review with CONTRACTOR CITY'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CITY'S written decisions thereon will be final and binding upon the CITY or CONTRACTOR unless, within ten days after the date of any such decision, either the CITY or CONTRACTOR delivers to the other party

to the Contract and to CITY written notice of intention to appeal from such a decision.

#### 9.9. DECISIONS ON DISPUTES:

9.9.1. The CITY 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 or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the WORK and claims under Article 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to CITY in writing with a request for a formal decision in accordance with this paragraph, which CITY will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to CITY and the other party to the Contract promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to CITY and the other party within thirty (30) days after such occurrence unless CITY allows an additional period of time to ascertain more accurate data in support of such claim, dispute or other matter.

9.9.2. The opposing party shall submit any response to CITY and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless CITY allows additional time). CITY will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. CITY's written decision on such claim, dispute or other matter will be final and binding upon CITY and CONTRACTOR unless: (i) an appeal from CITY's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between CITY and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from

CITY's written decision is delivered by CITY or CONTRACTOR to the other and to CITY within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction 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 within sixty (60) days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.3 When functioning as interpreter and judge under paragraphs 9.8.1, 9.9.1 and 9.9.2, CITY will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by CITY pursuant to paragraphs 9.8.1, 9.9.1 and 9.9.2 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 14.11.) 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 pursuant to Article 16.

#### 9.10. LIMITATIONS ON CITY:

9.10.1. Neither CITY'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by CITY either to exercise or not exercise such authority shall give rise to any duty or responsibility of CITY to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, or any other person or organization performing any of the WORK, or to any surety for any of them.

9.10.2. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the WORK, it is intended that such requirement, direction, review or judgment will be solely to evaluate the WORK for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

9.10.3. CITY will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CITY will not be responsible to CONTRACTOR for CONTRACTOR'S failure to perform or furnish the WORK in accordance with the Contract Documents.

9.10.4. CITY will not be responsible for the acts or omissions of CONTRACTOR or of any SUB-CONTRACTOR, any Supplier, or of any other person or organization performing or furnishing any of the WORK.

#### ARTICLE 10 -- CHANGES IN THE WORK

##### 10.1. AUTHORIZED CHANGES IN THE WORK

10.1.1. Without invalidating the Contract and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the WORK; these will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the WORK involved that will be performed under the applicable conditions of the Contract Documents, except as otherwise specifically provided.

10.1.2. If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.

##### 10.2. UNAUTHORIZED CHANGES IN THE WORK

10.2.1. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Section 3.2, except in the case of an emergency as provided in

paragraph 6.13.1 and except in the case of uncovering WORK as provided in paragraph 13.4.2.

### 10.3. EXECUTION OF CHANGE ORDERS

10.3.1. The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.3.1.1. Changes in the WORK, which are ordered by the CITY pursuant to paragraph 10.1.1, are required because of acceptance of *defective* WORK under paragraph 13.7.4 or correcting *defective* WORK under paragraph 13.9.3, or are agreed to by the parties.

10.3.1.2. Changes in the Contract Price or Contract time which the parties agree to.

10.3.1.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CITY pursuant to paragraph 9.9.1; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the WORK and adhere to the progress schedule as provided in paragraph 6.15.1.

10.3.2. **Surety.** It is distinctly agreed and understood that any changes made in the Contract Documents for this WORK (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR shall in no way annul, release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the WORK or the provisions of the Contract Documents (including, but not limited to, Contract Price or contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.3.3. Notwithstanding, anything to the contrary contained within the contract documents, all change orders involving additional cost or extensions of time, shall be governed by the ordinances of the City of Lauderdale Lakes.

## ARTICLE 11 -- CHANGE OF CONTRACT PRICE

### 11.1. GENERAL

11.1.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the WORK. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.1.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting

data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by CITY in accordance with paragraph 9.9.1 if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.1.2.

11.1.3. The value of any WORK covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.1.3.1. Where the WORK involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Section 11.5, inclusive).

11.1.3.2. By mutual acceptance of a lump sum (which shall include an allowance for overhead and profit in accordance with paragraph 11.3.1.2.a).

11.1.3.3. On the basis of the Cost of the WORK (determined as provided in Section 11.2, inclusive) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Section 11.3, inclusive).

### 11.2. COST OF THE WORK:

11.2.1. **General.** The term Cost of the WORK means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.2.2:

11.2.1.1. **Labor.** Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the WORK under schedules of job classification agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the CITY.

11.2.1.2. **Materials and Equipment.** Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and

equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.

11.2.1.3. SUB-CONTRACTOR. Payments made by CONTRACTOR to the SUB-CONTRACTORS for WORK performed by SUB-CONTRACTORS. If required by the CITY, CONTRACTOR shall obtain competitive bids from SUB-CONTRACTORS acceptable to CONTRACTOR and shall deliver such bids to the CITY who will then determine, with the advice of the CITY, which bids will be accepted. If a subcontract provides that the SUB-CONTRACTOR is to be paid on the basis of Cost of the WORK Plus a Fee, the SUB-CONTRACTOR's Cost of the WORK shall be determined in the same manner as CONTRACTOR'S Cost of WORK. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.2.1.4. Costs of special CITY's (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the WORK.

11.2.1.5. Supplemental costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers, which are consumed in the performance of WORK, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

b. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front end loaders, backhoes, and tractors, or other equipment, required for the economical performance of the authorized WORK, the CONTRACTOR shall receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate blue book for Construction Equipment, published by Equipment Guide Book Co., reduced by 25 percent. Equipment cost shall be calculated based upon the actual time the equipment is used in the WORK. If said WORK required the use of machinery not on the WORK or not to be used on the WORK, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the WORK shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract.

c. Sales, consumer, use or similar taxes related to the WORK and for which CONTRACTOR is liable, imposed by laws and regulations.

d. Royalty payments and fees for permits and licenses.

e. The site costs of utilities, fuel and sanitary facility.

f. Cost of premiums for additional bonds and insurance required because of changes in the WORK.

11.2.2. The term Cost of the WORK shall not include any of the following:

11.2.2.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.2.1.1 or specifically covered by paragraph 11.2.1.4 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

11.2.2.2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

11.2.2.3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the WORK and charges against CONTRACTOR for delinquent payments.

11.2.2.4. Cost of premiums for all Bonds and for all Insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.2.1.5f above).

11.2.2.5. Costs due to the negligence or intentional acts of the CONTRACTOR, any SUB-CONTRACTOR, or anyone whose acts any of them may be liable, including but not limited to, the correction of *defective* WORK, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.2.2.6. Costs associated with fringe benefits that are greater than actual costs; i.e., where worker hours exceed a typical 8-hour day and 40-hour workweek.

11.2.2.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.2.

### 11.3. CONTRACTOR'S FEE:

11.3.1. The CONTRACTOR'S Fee for overhead and profits shall be determined as follows:

11.3.1.1. A mutually acceptable fixed fee; or if none can be agreed upon,

11.3.1.2. A fee based on the following percentages of the various portions of the Cost of the WORK:

a. For costs incurred under paragraphs 11.2.1.1 and 11.2.1.2, the CONTRACTOR'S Fee shall be five (5%) percent;

b. For costs incurred under paragraph 11.2.1.3, the CONTRACTOR'S Fee shall be five percent; and if a subcontract is on the basis of Cost of the WORK Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all SUB-CONTRACTORS shall be five (5%) percent;

c. No fee shall be payable on the basis of costs itemized under paragraphs 11.2.1.4, 11.2.1.5 and 11.2.2;

d. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in accordance with paragraphs 11.3.1.2a through 11.3.1.2d, inclusive.

11.3.2. Whenever the cost of any WORK is to be determined pursuant to paragraph 11.2.1 or 11.2.2, CONTRACTOR will submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

#### 11.4. CASH ALLOWANCES:

11.4.1. 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 done by such SUB-CONTRACTORS or Suppliers and for such sums within the limit of the allowances as may be acceptable to the CITY, CONTRACTOR agrees that:

11.4.1.1. 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

11.4.1.2. 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. No demand for additional payment on account of any thereof will be valid.

11.4.1.3. Prior to final payment, an appropriate Change order will be issued as recommended by CITY to reflect actual amounts due CONTRACTOR on account of WORK covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.5. UNIT PRICE WORK:

11.5.1. Where the Contract Documents provide that all or part of the WORK is to be Unit Price WORK, initially the Contract Price will be deemed to include for all Unit Price WORK an amount equal to the sum of the established unit prices for each separately identified item of Unit Price WORK times the estimated quantity of each item as indicated in the Contract. 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 CITY in accordance with Paragraph 9.8.

11.5.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

11.5.3. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

11.5.4. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CITY believes that CONTRACTOR has incurred reduced expense as a result thereof, CITY may make a claim for a decrease in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such decrease.

#### 11.6. OMITTED WORK:

11.6.1. The CITY may at any time, by written order, without Notice to the Sureties, require omission of such contract WORK as it may find necessary or desirable. An order for omission of WORK shall be valid only by an executable change order. All WORK so ordered must be omitted by the CONTRACTOR. The amount by which the contract price shall be reduced shall be determined as follows:

11.6.1.1. By such applicable unit prices, or rates for WORK of a similar nature or character as set forth in the contract; or,

11.6.1.2. By the appropriate lump sum price set forth in the Contract; or,

11.6.1.3. By the reasonable and fair estimated cost of such omitted WORK and profit percentage as determined by the CONTRACTOR and the CITY, and approved by the CITY.

#### ARTICLE 12 -- CHANGE OF CONTRACT TIME

##### 12.1 GENERAL

12.1.1. The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an extension or shortening of the Contract time shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment of the Contract Time shall be determined by CITY in accordance with Section 9.9 if the CITY and CONTRACTOR cannot otherwise agree.

No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.1.

12.1.2. All time limits stated in the Contract Documents are of the essence of the Contract.

12.1.3. 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 therefore as provided in paragraph 12.1.1. 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. Delays attributable to and within the control of a SUB-CONTRACTOR or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.1.4. 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. In no event shall CITY be liable to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other CONTRACTORS performing other work as contemplated by Article 7.

12.1.5 Liquidated Damages. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph 2.3 of the General Conditions and the Notice To Proceed, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with a certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.3 of the General Conditions, and paragraph 3.1 of the Construction Contract for substantial completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 2.3 of the General Conditions and paragraph 3.1 of the construction contract for completion and readiness for final payment.

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

### 13.1. NOTICE OF DEFECTS:

13.1.1. Prompt notice of all defects for which CITY has actual knowledge will be given to CONTRACTOR. All defective WORK, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

13.1.2. Un-remedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment, which are remedied as a result of obligations of the guarantee, shall subject the remedied portion of the WORK to an extended guarantee period of one year after the defect has been remedied. The Surety shall be bound with and for the CONTRACTOR in the CONTRACTOR's faithful observance of the guarantee.

### 13.2. ACCESS TO WORK:

13.2.1 CITY and CITY'S representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the WORK at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### 13.3. TESTS AND INSPECTIONS:

13.3.1. CONTRACTOR shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals.

13.3.2. If Laws or Regulations of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the CITY'S requirements or CITY'S acceptance of a Supplier of materials or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the WORK.

13.3.3. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the CITY.

13.3.4. If any WORK (including the WORK of others) that is to be inspected, tested or approved is covered without written concurrence of CITY, it must, if requested by CITY, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CITY timely notice of CONTRACTOR'S intention to cover the same and CITY has not acted with reasonable promptness in response to such notice.



13.3.5. Neither observations by CITY nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligation's to perform the WORK in accordance with the Contract Documents.

#### 13.4. UNCOVERING WORK:

13.4.1. If any WORK is covered contrary to the request of CITY, it must, if requested by CITY, be uncovered for CITY'S observation and replaced, at CONTRACTOR'S expense.

13.4.2. If CITY considers it necessary or advisable that covered WORK be observed by CITY or inspected or tested by others, CONTRACTOR, at CITY'S request shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the WORK in question, furnishing all necessary labor, material and equipment. If it is found that such WORK is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such WORK is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 13.5. CITY MAY STOP THE WORK:

13.5.1. If the WORK is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the Contract Documents, the CITY may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the WORK shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

#### 13.6. CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.6.1. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective WORK, whether or not fabricated, installed or completed, or, if the WORK has been rejected by CITY, remove it from the site and replace it with non-*defective* WORK. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### 13.7. ONE-YEAR CORRECTION PERIOD:

13.7.1. If within one year after the date of Acceptance of WORK or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable

special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any WORK is found to be *defective*, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such *defective* WORK, or, if it has been rejected by the CITY, remove it from the site and replace it with non-*defective* WORK.

13.7.2. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the *defective* WORK corrected or the rejected WORK removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

13.7.3. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance 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.

13.7.4. Nothing herein shall be deemed a waiver of the statute of limitations as provided in Florida Law.

13.7.5. Where *defective* WORK (and damage to other WORK resulting therefrom) has been corrected, removed or replaced under this paragraph 13.7., 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.

#### 13.8. ACCEPTANCE OF DEFECTIVE WORK:

13.8.1. If, instead of requiring correction or removal and replacement of *defective* WORK, CITY (and, prior to CITY's recommendation of final payment, also CITY) prefers to accept it, CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY'S evaluation of and determination to accept such *defective* WORK (such costs to be approved by CITY as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

13.8.2. If any such acceptance occurs prior to CITY'S recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, CONTRACTOR will pay an appropriate amount to the CITY.

#### 13.9. CITY MAY CORRECT DEFECTIVE WORK:

13.9.1. If CONTRACTOR fails within thirty days (30) after written notice of CITY to proceed to correct and to correct *defective* WORK or to remove and replace rejected WORK as required by CITY in accordance with paragraph 13.7.1, or if CONTRACTOR fails to perform the WORK in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

13.9.2. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the WORK, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, the CITY'S representative, agents and employees such access to the site as may be necessary to enable the CITY to exercise the rights and remedies under this paragraph.

13.9.3. All direct, indirect and consequential costs of the CITY in exercising such rights and remedies will be charged against CONTRACTOR by CITY and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and/or replacement of WORK of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective WORK. CONTRACTOR shall also be responsible for restoring any other sites affected by such repairs or remedial work at no cost to CITY. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the WORK attributable to the exercise by the CITY of the CITY'S rights and remedies hereunder.

#### ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

##### 14.1. SCHEDULE OF VALUES

14.1.1. The schedule of values established as provided in paragraph 2.6.1 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY.

##### 14.2. UNIT PRICE BID SCHEDULE

14.2.1. Progress payments on account of Unit Price WORK will be based on the number of units completed.

##### 14.3. APPLICATION FOR PROGRESS PAYMENTS:

14.3.1. Unless otherwise prescribed by law, at the end of each month, the CONTRACTOR shall submit to the CITY for review, an Application for Progress Payment filled out and signed by the CONTRACTOR covering the WORK completed as of the date of the Application and accomplished by such supporting documentation as is required by the Contract Documents.

14.3.2. The Application for Progress Payment shall identify, as a subtotal, the amount of the CONTRACTOR'S Total Earnings to Date, plus the Value of Materials Stored which have not yet been incorporated in the WORK, less a deductive adjustment for materials stored which have been

installed which were not previously incorporated in the WORK, but for which payment was allowed.

14.3.3. The Net Payment Due to the CONTRACTOR shall be the above- mentioned subtotal from which shall be deducted the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by the CONTRACTOR. Retainage shall be calculated based upon the above- mentioned subtotal.

The above calculation in tabular form is as follows:

Total Earnings to Date . . . . .	\$
Value of Materials Stored . . . . .	\$
Less Value of Materials Stored for which payment was allowed and which have been installed . . . . .	(\$ )
Sub Total	\$
Less Retainage (based on sub total)	(\$ )
Less total of all previous approved Applications for Progress Payment	(\$ )
NET PAYMENT DUE	\$

14.3.4. The Value of Materials Stored shall be an amount equal to the specified percent of the value of same as set forth in the Contract or Schedule of Values. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the WORK but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the WORK and is planned for installation within the following thirty (30) days. The Application for Progress Payment shall also be accompanied by a Bill of Sale, paid invoice, or other documentation warranting that the CITY has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY'S interest therein, all of which shall be satisfactory to the CITY.

##### 14.4. CONTRACTOR'S WARRANTY OF TITLE:

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

##### 14.5. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

14.5.1. CITY will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CITY'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Thirty days after receipt of the Application for Payment by the CITY with CITY'S recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.5.4) become due and when due will be paid by the CITY to CONTRACTOR.

14.5.2. CITY'S recommendation of any

payment requested in the application for payment shall not prohibit the CITY from withholding payment or prohibit the CITY from paying additionally sums regarding other matters or issues between the parties.

14.5.3. CITY'S recommendation of final payment will constitute an additional representation by CITY's Project Manager that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.10 have been fulfilled.

14.5.4. CITY may refuse to recommend the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such representations to the CITY. The CITY may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CITY'S opinion to protect the CITY from loss, including but not limited to:

14.5.4.1. The WORK is *defective*, or completed WORK has been damaged requiring correction or replacement.

14.5.4.2. The Contract Price has been reduced by a Written Amendment or Change Order.

14.5.4.3. The CITY has been required to correct *defective* WORK or complete WORK in accordance with paragraph 13.9.1, or

14.5.4.4. Of CITY'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1.1 through 15.2.1.9 inclusive.

14.5.5. The CITY may refuse to make payment of the full amount recommended by the CITY because claims have been made against the CITY on account of CONTRACTOR'S performance or furnishing of the WORK, or there are other items entitling the CITY to credit against the amount recommended, but the CITY must give CONTRACTOR written notice (with a copy to CITY) stating the reasons for such action.

#### 14.6. SUBSTANTIAL COMPLETION:

(60) When the CONTRACTOR considers the entire WORK ready for its intended use, the CONTRACTOR shall notify the CITY in writing that the WORK is substantially complete and request that the CITY prepare a Certificate of Substantial Completion. For construction projects having an estimated cost of less than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK shall make an inspection of the WORK within thirty (30) calendar days after the notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. For construction projects having an estimated cost of more than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK within thirty (30) calendar days unless otherwise extended by contract not to exceed sixty calendar days after notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. If the CITY does not consider the WORK substantially complete, the CITY shall notify the CONTRACTOR in writing giving the reasons therefor. If the CITY considers the WORK to be

substantially complete, the CITY will prepare and deliver to the CITY for its execution and recordation the Certificate of Substantial Completion signed by the CITY and CONTRACTOR, which shall fix the Date of Substantial Completion.

14.6.1. The CITY shall have the right to exclude CONTRACTOR from the WORK after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the "punch list".

#### 14.7. PARTIAL UTILIZATION:

14.7.1. Use by the CITY of any finished part of the WORK, which has specifically been identified in the Contract Documents, or which the CITY and CONTRACTOR agree constitutes a separately functioning and useable part of the WORK that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the WORK, may be accomplished prior to Substantial Completion of all WORK subject to the following:

14.7.1.1. The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the WORK which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to the CITY that said part of the WORK is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. CONTRACTOR at any time may notify the CITY in writing that CONTRACTOR considers any such part of the WORK ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. Within a reasonable time after either such request, the CITY, CONTRACTOR and CITY shall make an inspection of that part of WORK to determine its status of completion. If CITY does not consider that part of the WORK to be substantially complete, CITY will notify the CITY and CONTRACTOR in writing giving the reasons therefor. If CITY considers that part of the WORK to be substantially complete, the provisions of paragraphs 14.6.1 and 14.6.2 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.

14.7.1.2. The CITY may at any time request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the WORK although it is not substantially complete. A copy of such request will be sent to CITY and within a reasonable time thereafter the CITY, CONTRACTOR and CITY shall make an inspection of that part of the WORK to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY that such part of the WORK is not ready for separate operation by the CITY will finalize the list of items to be completed or corrected and will deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the WORK which will become binding upon the CITY and CONTRACTOR at the time when

the CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed CITY). During such operation and prior to Substantial Completion of such part of the WORK, the CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related WORK.

#### 14.8. FINAL INSPECTION:

14.8.1. Upon written notice from CONTRACTOR that the entire WORK or an agreed portion thereof is complete, CITY will make a final inspection with the CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the WORK is incomplete, defective, or not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### 14.9. FINAL APPLICATION FOR PAYMENT:

14.9.1. After CONTRACTOR has completed in writing all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 14.6) and other documents--all as required by the Contract Documents, and after CITY has indicated in writing that the WORK is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the WORK.

#### 14.10. FINAL PAYMENT AND ACCEPTANCE:

14.10.1. Upon receipt of written notice from the CONTRACTOR that the WORK has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment, Final Receipt and Release of Lien and accompanying documentation, the CITY shall promptly examine the WORK and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed WORK by a properly qualified and experienced Professional CITY, shall satisfy himself that the CONTRACTOR'S statement appears to be correct and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled. He shall then inform the CITY in writing that he has examined the WORK and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the WORK for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY does not in any way relieve the CONTRACTOR from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CITY liable for any faulty WORK done

or defective materials or equipment used by the CONTRACTOR.

14.10.2. The CITY will then make a final estimate of the value of all WORK done and will deduct all previous payments which have been made. The CITY will report such estimate to the CITY together with the recommendation as to the acceptance of the WORK or his findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CITY'S estimate and recommendation, the CITY will make final payment to the CONTRACTOR of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including, but not limited to, Liquidated Damages, as applicable. Title passes and warranty begins at final acceptance.

14.10.3. All prior estimates are subject to correction in the final estimate. Thirty days after approval by the CITY of the application for final payment, the amount recommended by CITY shall become due and will be paid to CONTRACTOR.

#### 14.11. WAIVER OF CLAIMS:

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

14.11.1.1. 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 14.8, 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

14.11.1.2 a waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and still unsettled.

### ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

#### CITY MAY SUSPEND WORK:

15.1.1. The CITY may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CITY 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 increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

#### 15.2. CITY MAY TERMINATE

15.2.1. Upon the occurrence of any one or more of the following events:

15.2.1.1. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to the bankruptcy or

insolvency;

15.2.1.2. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.1.3. If CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.1.4. If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

15.2.1.5. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.1.6. If CONTRACTOR fails to perform the WORK in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.6 as revised from time to time);

15.2.1.7. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.1.8. If CONTRACTOR disregards the authority of CITY; or

15.2.1.9. If CONTRACTOR otherwise violates any provisions of the Contract Documents;

the CITY may, after giving CONTRACTOR and Surety seven days written notice of any default and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the WORK and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere, and finish the WORK as the CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the Contract Price exceeds the expense of completing the WORK including compensation for additional managerial and administrative services, plus the CITY'S direct, indirect and consequential losses, damages and costs because of the CONTRACTOR'S default (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) such excess will be paid to CONTRACTOR. If such expenses and costs plus the CITY'S losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly on demand. Such costs incurred by the CITY will be approved as to reasonableness by CITY and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the CITY shall not be required to obtain the lowest price for the WORK performed.

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

15.2.3. The CITY may terminate this Contract without cause by giving seven (7) days prior written notice to the CONTRACTOR, and in such event, the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination, plus reasonable termination expenses. The CITY also will reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of the WORK and paid directly by the CONTRACTOR, not including overhead, general expenses or profit. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to SUB-CONTRACTORS or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY shall reimburse the CONTRACTOR for major materials or equipment purchased before termination if the CONTRACTOR can show proof of said purchases prior to notice of termination) inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same.

#### 15.3. CONTRACTOR MAY STOP WORK OR TERMINATE:

15.3.1. If, through no act or fault of CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or CITY fails to act on any Application for Payment within thirty (30) days after it is submitted, or the CITY fails for sixty (60) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to the CITY, terminate the Contract and the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination plus reasonable termination expenses. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same. In addition and in lieu of terminating the Contract, if CITY has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven days written notice to the CITY stop the WORK until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.13 to

carry on the WORK in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

#### ARTICLE 16 – DISPUTE RESOLUTION

16.1. All claims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.11) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to CITY initially for the decision in accordance with paragraph 9.9 will be made until the earlier of (a) the date on which CITY has rendered a written decision or (b) the thirty-first (31<sup>st</sup>) day after the parties have presented their evidence to CITY if a written decision has not been rendered by CITY before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty (30) days after the date on which CITY has rendered a written decision in respect thereof in accordance with paragraph 9.9; and the failure to demand arbitration within said thirty (30) days' period will result in CITY's decision being final and binding upon CITY and CONTRACTOR. If CITY renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of CITY rendered in accordance with paragraph 9.8 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.8.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration, and a copy will be sent to CITY for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph, 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including CITY and the officers, directors, agents, employees or any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceeding, and

16.4.3. the written consent of the other person or entity sought to be included and of CITY and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between CITY and CONTRACTOR involves the Work of a SUB-CONTRACTOR, either CITY or CONTRACTOR may join such SUB-CONTRACTOR as a party to the arbitration between CITY and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.5.5 a specific provision whereby the SUB-CONTRACTOR consents to being joined in arbitration between CITY and CONTRACTOR involving the Work of such SUB-CONTRACTOR. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of SUB-CONTRACTOR and against CITY that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. CITY and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in questions between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

#### ARTICLE 17 -- MISCELLANEOUS

##### 17.1. GIVING NOTICE:

17.1.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### 17.2. COMPUTATION OF TIME:

17.2.1. 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.

### 17.3. NOTICE OF CLAIM:

17.3.1. Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### 17.4. CUMULATIVE REMEDIES:

17.4.1. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to the CITY thereunder, are in addition to , and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy to which they apply. All representations warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract.

### 17.4. ACCIDENT AND PREVENTION:

17.4.1. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of and in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

### 17.5. NATIONAL EMERGENCY

17.5.1. In the event the CITY is prevented from proceeding with any or all of this WORK as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, CITY, Town, or County regulations, orders, restrictions, or due to circumstances beyond the CITY'S control, then the CITY

herein reserves the right to either suspend the WORK to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the WORK herein has already been commenced, then the CITY herein shall be liable for only the cancellation or suspension without the addition of prospective profits or other changes whatsoever.

### 17.6. FLORIDA PRODUCTS AND LABOR:

17.6.1. The CONTRACTOR'S attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

### 17.7. EMPLOYEES:

17.7.1. All labor described in these specifications or indicated on the Drawings and the WORK specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.7.2. Any person employed on the WORK who fails, refuses or neglects to obey the instructions of the CONTRACTOR in anything relating to this WORK or who appears to the CITY to be disorderly, intoxicated, insubordinate, or incompetent, shall upon the order of the CITY, be at once discharged and not again employed in any part of the WORK. Any interference with, or abuse or threatening conduct toward the CITY or their inspectors by the CONTRACTOR or his employees or agents, shall be authority for the CITY to annul the Contract and re-let the WORK. No intoxicating substance shall be allowed on the WORK site.

### 17.8. NON-DISCRIMINATION:

17.8.1. The CONTRACTOR shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The CONTRACTOR will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all SUB-CONTRACTORS and it is the responsibility of the SUB-CONTRACTOR compliance.

### 17.9. DRUG-FREE WORKPLACE:

17.9.1. The CITY requires all prospective CONTRACTORS to maintain a drug free work place and have their Drug Free Workplace policy posted in their offices and available for inspection by the CITY.

### 17.10. PUBLIC ENTITY CRIMES:

17.10.1. Pursuant to F.S. 287.133, as amended: a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not

submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a CONTRACTOR, supplier, SUB-CONTRACTOR, or CITY under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO or higher for a period of 36 months from the date of being placed on the convicted vendor list.

17.11. ASSIGNMENT:

17.11.1. This Contract, nor any monies due hereunder, or any part thereof, shall not be assigned, or transferred, by CONTRACTOR, nor shall the CITY be liable to any assignee or transferee, without the written consent of the CITY, to the assignment, or transfer. The CITY shall not release or discharge CONTRACTOR from any obligation hereunder. The CITY shall not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

17.12. VENUE:

17.12.1. This Contract shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Contract is fixed in Broward County, Florida.

17.13. ASBESTOS:

17.13.1. If the CONTRACTOR during the course of the WORK observes the existence of asbestos in any structure, building or facility, the CONTRACTOR shall promptly notify the CITY. The CITY shall consult with the CITY regarding removal or encapsulation of the asbestos material and the CONTRACTOR shall not perform any WORK pertinent to the asbestos material prior to receipt of special instructions from the CITY.

17.14. RIGHT TO AUDIT:

17.14.1. If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR'S books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR'S plants, or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all SUB-CONTRACTORS. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR'S normal business hours at the office of the CONTRACTOR. The accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the CITY.

(END)





# **REQUEST FOR PROPOSALS**

## **PHASE I - LAUDERDALE LAKES STORMWATER CONVEYANCE AND WATER QUALITY IMPROVEMENT PROJECT**

**RFP# 17-1302-01R**

**CITY OF LAUDERDALE LAKES**

**DEPARTMENT OF FINANCIAL SERVICES  
4300 N W 36<sup>TH</sup> STREET LAUDERDALE  
LAKES, FLORIDA 33319-5599 (954) 535-2828**

**REQUEST FOR PROPOSALS (RFP)****RFP# 17-1302-01R**

The City of Lauderdale Lakes is requesting sealed proposals for the Phase I - Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project at the City of Lauderdale Lakes as listed in Request For Proposal # 17-1302-01R to be received at the Department of Financial Services, City of Lauderdale Lakes, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, Florida 33319-5599, **until 3:00 p.m. Local Time, on Monday, November 21, 2016,** at which time this RFP will be publicly declared closed.

A **non-mandatory** pre-proposal conference will be held at the City of Lauderdale Lakes City Hall, 2<sup>nd</sup> Floor, Alfonso A. Gereffi conference room located at 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, Florida, at **3:00PM, Wednesday, November 9, 2016**. There will be a **non-mandatory** site visit following this pre-proposal conference.

**Note:** The Federal Davis-Bacon and Related Acts – contractors and subcontractors must pay for work classifications laborers and mechanics employed under this contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area are required and must be complied with. Fringe benefits must be added to the prevailing hourly rates where applicable. Grant required reporting, and audit requirements apply.

**Solicitation documents shall be obtained by contacting DemandStar by Onvia at [www.demandstar.com](http://www.demandstar.com) or toll-free: 1-800-711-1712. Vendors who obtain solicitation documents from other sources than DemandStar.com are cautioned that the solicitation package may be incomplete. Furthermore, all addendums will be posted and disseminated by DemandStar.**

Proposers shall submit **ONE (1) MARKED ORIGINAL AND FIFTEEN (15) PHOTOCOPIES OF THE COMPLETED RFP PACKAGE** in a sealed envelope. The Proposer shall also include in the package a CD with the RFP submittal information. The Proposal Name, RFP Number, and time and date of the RFP closing shall be clearly marked on the outside of the sealed envelope. Facsimile or digital responses shall not be accepted.

All RFP submittals shall be in sealed envelopes addressed to the Department of Financial Services, City of Lauderdale Lakes, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, Florida 33319-5599, and plainly marked on the outside:

RFP #: 17-1302-01R  
RFP Name: Phase I - Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project  
RFP Closing Date: **Monday, November 21, 2016 @ 3:00PM**

Proposers may not withdraw their RFP submittals for a period of ninety (90) calendar days after the day set for the opening of Proposals.

The City of Lauderdale Lakes reserves the right to waive informalities, to reject any and all RFP submittals, and to accept any RFP submittals or any combination of RFP submittals, which in its sole judgment will best serve the public interest.

Advertisement Date

***City of Lauderdale Lakes***

November 5, 2016  
November 12, 2016

By: \_\_\_\_\_  
Sharon Houslin, City Clerk



## SPECIAL INSTRUCTIONS TO PROPOSERS

### DEFINITIONS

Whenever the following terms appear in the Proposal, the intent and meaning shall be interpreted as follows:

- 1.1 **“Request For Proposal” (RFP), or “Proposal”:** terms used interchangeably in this Request For Proposal while retaining the same meaning.
- 1.2 **CITY OR Owner:** City of Lauderdale Lakes, Florida, the public body, agency or instrumentality for which a Contract is to be performed. In all respects hereunder, CITY’s performance is pursuant to CITY’s position as the owner of a construction project. In the event CITY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to CITY’s authority as a governmental body and shall not be attributable in any manner to CITY as a party to the Contract.
- 1.3 **Consultant:** The individual(s), firm(s), partnership, corporation, limited-liability Company, or other legal entity licensed for engineering practice.
- 1.4 **Contract:** The written agreement for performance of the Scope of Work entered into between the City and the successful Proposer.
- 1.5 **Contract Administrator:** The City Engineer/CIP Administrator or some other employee expressly designated as Contract Administrator in writing by the City Manager, who is the representative of the CITY concerning the Contract Documents.
- 1.6 **Contract:** A single contract with a Contractor for the construction of a public construction project in substantially in the same form and content as reflected in the "SAMPLE CONTRACT" attached hereto.
- 1.7 **Contractor:** A partnership, corporation, or other legal entity that is certified under F.S § 489.119, to engage in contracting through a certified or registered general contractor or certified or registered building contractor as the qualifying agent.
- 1.8 **Guaranteed Maximum Price:** The not-to-exceed dollar amount negotiated by the CITY and the successful Proposer as payment for the complete construction of the Project, which amount shall include, but not be limited to, all profit, overhead, on-site and off-site conditions (known and unknown) costs, and administrative costs. The total maximum price payable by the CITY to the successful Proposer shall be no more than the guaranteed maximum price.
- 1.9 **Notice to Proceed:** A written notice to the Firm(s) authorizing the commencement of work according to the contract.
- 1.10 **Plans and/or Drawings:** The official graphic representations of the construction Project.
- 1.11 **Proposer:** Any individual(s), firm(s), partnership, corporation, limited-liability Company, or other legal entity submitting a proposal in response to this RFP for this project, acting directly or through a duly authorized representative.



**PHASE I - LAUDERDALE LAKES STORMWATER CONVEYANCE AND WATER QUALITY  
IMPROVEMENT PROJECT  
REQUEST FOR PROPOSAL #: 17-1302-01R**

**1.0 PURPOSE & SCOPE**

The City of Lauderdale Lakes, Florida desires to retain a qualified and competent Contractor to provide all necessary construction services for the Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project (Canal 4, 5A, 6 and 9) in accordance with the construction documents.

The scope for the City of Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project shall be in accordance with the plans and specifications as provided by the City. The construction documents which show character, location, nature, extent and scope of the WORK, which have been prepared or approved by CONSULTANT are included as Exhibit –A in the RFP.

The Contractor is responsible for any permits related to project, including but not limited to disposal of materials, tree removal and City permits. Any costs for trees that require removal shall be included in the pay item for Site Preparation and Clearing and Grubbing including the tree removal permit. The permit fees will be reimbursed as part of pay item Project Permits. Contractor shall provide payment receipt prior to being reimbursed. The City will obtain the US Army Corp of Engineers and Broward County Aquatic and Wetland Resource License.

The bedding stone for gabions is included in the gabions specification. The bedding stone used as riprap to stabilize the canal slopes is part of the Riprap specifications. Bedding stone per FDOT section

530-2.1.4 can also be used. Tree trimming as required is part of Section 02114 of the project specifications and the cost shall be included in item Site Preparation and Clearing and Grubbing.

Contractor will require to prepare construction flyer and shall distribute to the residents within the vicinity of the construction area at least 72 hours before the commencement of the construction activities. The flyer shall be approved by the City before the distribution to the resident.

Interested firms or individuals shall be qualified pursuant to the law. The selected firm must be currently licensed to practice in the State of Florida and copies of said license must be provided with proposal.

**2.0 EXAMINATION OF SITE. CONSTRUCTION DOCUMENTS**

The Proposer is required, before submittal of his/her proposal, to visit the sites of the proposed work and become familiar with any local conditions which may in any manner affect the work to be done or affect the equipment, materials, and labor required. The Proposer is also required to examine carefully, the construction documents as described upon Exhibit A, attached hereto, and to acquaint itself thoroughly regarding the conditions and requirements that may in any manner affect the WORK to be performed under the contract. No allowances will be made due to lack of knowledge to these conditions.

**3.0 CONSTRUCTION STANDARDS Weekly Meetings**

The Contractor shall conduct weekly Project Progress meetings throughout the duration of construction. The first progress meeting will be scheduled the first week after the start of construction.

**Permits:** Contractor is responsible to submit and obtain all applicable permits.



**Utilities:** The Contractor shall identify utility facilities and secure agreements, utility work schedules, and plans from the Utility Agency Owners (UAO) ensuring no conflicts exist between utility facilities and the construction project.

**Ownership and Disposal of Existing Material:** The Contractor shall take ownership and dispose of all materials that are not designated as the property of other parties in structures designated for removal. The Contractor is responsible to determine if any existing materials are the property of others and so indicate it on the plans prior to the commencement of construction. Additionally, it is the Contractor's responsibility to coordinate with the applicable property owner for proper removal and storage to perform the work. During construction, Contractors are cautioned that on-site containers for the collection of waste materials, debris and rubbish, must be sourced from Waste Management based on an exclusive franchise agreement with the City.

**Final Cleaning up of Right-of-Way:** Upon completion of the WORK, and before the City accepts the WORK and makes final payment, Contractor shall remove from the right-of-way and adjacent property, all falsework, equipment, surplus and discarded materials, rubbish and temporary structures; restore in an acceptable manner all property, both public and private that has been damaged during the prosecution of the WORK; and leave the waterways unobstructed and the roadway/work area in a neat and presentable condition throughout the entire length of the work under contract. Do not dispose of materials of any character, rubbish or equipment, on abutting property, with or without the consent of the property owners. The City will allow the Contractor to temporarily store equipment, surplus materials, usable forms, etc. on a well-kept site owned or leased by the Contractor, adjacent to the project. However, do not place or store discarded equipment, materials, or rubbish on such a site.

Remove all debris from the work area and clear zone of the project before work ends for the day. Pick up and remove trash from the job daily.

#### **4.0 REQUIREMENTS OF PROPOSAL**

Proposers interested in this project shall clearly describe all aspects of the project to be proposed. Include details of your approach and work plans. A brief statement must be included which explains why your proposal would be the most effective and beneficial to the City of Lauderdale Lakes.

The proposal must address a commitment to completing the project within the allocated budget requirements and provide a time table for the completion of the project.

A listing providing all prime, sub-contractors, and additional qualification information should be provided as to the experience of the team.

Identify the contact person and supervisory personnel who will work on the project. A resume of each person shall be provided with emphasis on their experience with similar work. Proposers must also submit copies of Contractors License.

#### **5.0 SUBMISSION OF PROPOSAL**

**A. Incurred Expenses:**

The City is not responsible for any expenses which Proposers may incur by preparing and submitting proposals called for in the Request for Proposal.

**B. Interviews/Presentations:**

The City reserves the right to conduct personal interviews or required presentations on all Proposers prior to selection. The City will not be liable for any costs incurred by the Proposer in connection with such interviews/presentations (i.e. travel, accommodations, etc.)



- C. Proposal Acknowledge:  
By submitting a proposal, the Proposer certifies that it has fully read and understands the proposal method and has full knowledge of the scope, nature, and quality of work to be performed.
- D. Request for Additional Information:  
The Proposer shall furnish such additional information as the City of Lauderdale Lakes may reasonably require. This includes information which indicates financial resources as well as ability to provide the system and/or services. The City reserves the right to make investigations of the qualifications of the Proposer as it deems appropriate, including but not limited to, a background investigation conducted by the Broward Sheriff's Office.
- E. Proposals Binding:  
All Proposals submitted shall be binding for ninety (90) calendar days following the closing of the solicitation.

## **6.0 CONDITIONS OF PROPOSALS:**

- 6.1.1 Late Proposals – Proposals received by the City after time specified for receipt will not be considered. Proposers shall assume full responsibility for timely delivery at the location designated for receipt of proposals.
- 6.1.2 Completeness – All information required by this RFP must be supplied to constitute an acceptable proposal.
- 6.1.3 Public Closing – All proposals will be publicly closed at the time and place specified.
- 6.1.4 Award Presentation – The City Manager will present to the City Commission for acceptance and final award, one or more of the proposals, or reject all proposals, within ninety (90) calendar days from the date of the closing of the proposals.

## **7.0 TERMS AND CONDITIONS OF CONTRACT**

The contract to be entered into with the successful Proposer(s) will include, but not be limited to, the following terms and conditions:

The Proposer shall agree to indemnify and hold harmless and pay on behalf of the City, for any liability and/or legal costs arising out of any claims or litigation related to the services provided, including any actions that may arise from allegations regarding determination of appropriateness or inappropriateness of care or any acts, errors or omissions relating to the service provided.

The City shall have the option of terminating the contract by giving the Contractor thirty (30) days written notice.

## **8.0 EVALUATION METHODOLOGY/CRITERIA**

The evaluation of Proposals will be undertaken on behalf of the City by the Evaluation Team. The Evaluation Team may consult with others including City staff members, third party consultants and references, as the Evaluation Team may in its discretion decide is required. The Evaluation Team will rank the responsive & responsible PROPOSERS using the scoring system.

Proposal(s) that satisfy the minimum requirements will be scored as follows:

Price Proposal .....	60 points
Experience.....	30 points
Reference.....	10 points

---



**EVALUATION CRITERIA**

The Evaluation Team will compare and evaluate all Proposals to determine the PROPOSERS strength and ability to provide the Services in order to determine the most responsive and responsible PROPOSER per the following criteria:

**(a) PRICE PROPOSAL**

The City will consider the PROPOSERS price proposal in terms of accuracy, completeness, value, local market and substantiated industry standards. The proposed price must be total lump sum price in accordance with the construction documents. The price shall include any required permit for the contractor including tree permit. All proposed items shall include costs for all materials, equipment, labor, supervision, permit fees, taxes, insurance, bonds, miscellaneous costs and Contractor's overhead and profit. Costs for materials and equipment shall be included where applicable. Items in each canal bank stabilization lump sum cost shall include mobilization, turbidity barriers, maintenance of traffic, removal of excess vegetation and obstructions, installation of canal bank stabilization, finish grading and sodding, and General Condition costs. The proposed price must be in accordance with the attached proposed set of plans and specifications. The proposed price shall be submitted using proposed price sheet as included in exhibit B. This is a **unit price project** and will be paid as indicated on the pay item notes, Sheet 10 of the plans (Bid Set Part 1). The Proposers are required to provide prices on both (Alternate 1 and 2) as shown in the proposed item list and as indicated in the drawings.

**(b) EXPERIENCE**

The City will consider the PROPOSERS past experience in undertaking similar projects in type, scope, and budget.

At a minimum, the proposal should contain the following information:

- Business Organization - State the full name, address, phone number and fax number of your business and whether you operate as an individual, partnership, or corporation. Also indicate if you are a female or minority owned and/or operated business.
- List of business' experience with federal, state, county, or municipal programs pertaining to Canals. If applicable, also identify other services performed for federal, state, county or municipal programs.
- Fee Schedule - Please state your standard fee schedule according to the standard formats of compensation.
- Proof of appropriate state certifications - Provide proof that you are licensed to operate in Florida and are lead certified.
- Management Summary - Include a brief narrative description of the proposed services that will be delivered and the equipment available to perform the services.
- Qualifications - Please indicate completed projects of similar nature. Also indicate a contact person for each reference cited.
- List of firm's insurance policies, the insurer, policy numbers and amount pertaining to required services.

**(c) REFERENCES:**

References from at least three (3) clients preferably municipalities/Counties/Water Management Districts for whom your company has provided similar services within the



last ten (10) years. The references should include the project name, construction cost, date, client contact with contact person's name, title, mailing address, email address and telephone number for each reference cited.

The City reserves the right to reject any and all proposals, and to waive minor irregularities in the proposal.

## **9.0 ADDITIONAL INFORMATION/CLARIFICATION**

Information provided by the City is to facilitate proposals. Effort was made to provide necessary and accurate information when this request was prepared, but the City is not to be penalized for any lack of completeness. Accuracy of this data is not guaranteed. It is the sole responsibility of the Proposers to assure that they have all information necessary for submission of their proposals.

## **10.0 ADDENDA**

Any addenda or answers to written questions supplied by the City to participating Proposers become part of this Request for Proposals and the resulting contract. All addenda should be acknowledged, signed by an authorized company representative, dated and returned with your firm's submittal.

No negotiations, decisions, or actions shall be initiated or executed by the Proposer as a result of any discussions with any City employee. Only those communications that are in writing from the City Manager or designee may be considered as a duly authorized expression. Also, only communications from Proposers that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of the Proposer.

## **11.0 SUBMITTAL PACKAGE**

In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified. The information must be tabbed in the manner shown below:

Tab 1: Title Page:

Name of Proposer's company/corporation, address, telephone number, fax number, e-mail address, name of Project Manager, date, and the subject **RFP#17-1302-01R** Phase I - Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project.

Tab 2: Letter of Transmittal:

Limit to one or two pages. Briefly state the Proposer's positive commitment and understanding of the work to be performed.

Tab 3: General Information:

State if business(es) is/are local, national, or international; and indicate the business legal status (corporation, partnership, etc.)

Give the date business was organized and/or incorporated, and place of corporation.

Tab 4: Give a description of the PROPOSER'S team structure, clearly describing who the prime and subcontractor(s).





Provide a diagram of the proposed team structure, clearly describing who the prime responsible firms and individuals are, as well as the roles and responsibilities of each individual of the proposed sub-contractors.

Provide a summary of the firms' financial resources.

State if the business is licensed, permitted and/or certified to do business in the State of Florida, attach copies of all such licenses issued to the business entity.

Tab 5: Specific Information:

Professional resumes of proposed firms' individuals in charge, the actual working principal project manager, and all other key members of the anticipated project team.

Tab 6: Insurance Requirements:

Proposers must submit their RFP submittal, proof of insurance meeting or exceeding the following requirements:

1. Contractor's and Sub-Contractor's Insurance:  
The Contractor shall not be awarded work under this contract unless the insurance required under this section has been obtained. The Contractor shall not permit any sub-contractor to commence work on a sub-contract unless like insurance has been obtained by the sub-contractor. The insurance required shall contain a thirty (30) day written notice to the City of Lauderdale Lakes, C/O: City Manager, 4300 NW 36th Street, City of Lauderdale Lakes, FL-33319 of cancellation, non-renewal or material change in coverage. The Contractor will provide a current Certificate of Insurance.
2. Worker's Compensation Insurance:  
The Contractor shall procure and maintain during the life of this contract Worker's Compensation Insurance as required by law for all of his/her employees to be engaged in work on the project under this contract, and in case any such work is sub-let, the Contractor shall require the sub-contractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work in the statutory amount required.
3. Contractor's Public Liability and Property Damage Insurance:  
The Contractor shall procure and maintain during the life of this contract, Contractor's Public Liability Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) for injuries, including accidental death, each occurrence and Contractor's Property Damages Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) for each occurrence.
4. Contractor's Motor Vehicle Bodily Injury and Property Damage Insurance:  
The Contractor shall procure and shall maintain during the life of this contract, Motor Vehicle Bodily Injury Insurance (comprehensive form) in an amount of not less than One Million Dollars (\$1,000,000.00) for injuries, including accidental death to each person; and in an amount of not less than One Million Dollars (\$1,000,000.00) for each occurrence, and property



damage in an amount of not less than One million Dollars (\$1,000,000.00) for each occurrence. The Contractor shall procure and maintain, during the life of this contract, Hired and Non-Ownership Motor Vehicle Bodily Injury and Property Damage Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) for injuries, including accidental death, to each person; and in an amount of not less than One Million Dollars (\$1,000,000.00) for each occurrence and property damage in an amount of not less than One Million Dollars (\$1,000,000.00) for each occurrence.

5. Owner's and Contractor's Protective Public Liability and Property Damage Insurance:

The Contractor shall procure and maintain, during the life of this contract, Owner's and Contractor's Protective Public Liability and Property Damage Insurance in the name of the City in an amount of not less than One Million Dollars (\$1,000,000.00) for injuries, including accidental death for each occurrence and property damage in an amount of not less than One Million Dollars (\$1,000,000.00) for each occurrence. Such insurance shall include motor vehicle exposure.

6. City of Lauderdale Lakes as Additional Insured:

The City of Lauderdale Lakes, including elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, shall be named specifically as an Additional Insured with respect to the operations of the Contractor and/or sub-contractor for the City of Lauderdale Lakes and a copy of an Endorsement to this effect shall be supplied for each policy involved.

To the fullest extent permitted by law and regulations, the Contractor shall indemnify, defend, save and hold harmless the City, its officers, elected officials, agents and employees, harmless from any and all claims, damages, losses, liabilities, and expenses, direct, indirect, or consequential arising out of or inconsequential arising of the products, goods or services furnished by or operations of the Contractor or their subcontractors, agents, officers, employees or independent Contractor pursuant to the contract, specifically including but not limited to those caused by or arising out of the following:

- a) Any act, omission, or default of the Contractor and/or their subcontractors, agents, servants or employees in the provision of the goods and/or services under the contract;
- b) Any and all bodily injuries, sickness, disease or death;
- c) Injury to or destruction of tangible property, including the loss of use resulting there from;
- d) The use of any improper materials;
- e) A defective condition in any goods provided pursuant to the contract, whether patent or latent;
- f) The violation of any federal, state, county or municipal laws, ordinances or regulations by the Contractor, their subcontractors, agents, servants, independent Contractor or employees; and



g) The breach or alleged breach of the Contractor of any term, warranty or guarantee of the contract.

Tab 7: Submittal of AIA documents.

Tab 8: Non-Collusion Form, Questionnaire, Certification and Cashier's Check.

**Note: Place cashier's check in a separate envelope marked "Cashier's Check"**

The indemnification obligations contained herein are supported by separate consideration of \$100.00 which the proposer acknowledges as adequate.

## **12.0 LIQUIDATED DAMAGES:**

If the awarded Proposer fails to complete the project by the completion date stated on the Proposal Form, it is understood that five-hundred dollars (\$500.00) per calendar day will be deducted as liquidated damages, for each day beyond the substantial completion time and two-hundred fifty dollars (\$250.00) per calendar day will be deducted as liquidated damages, for each day beyond the final completion time unless time extension is approved by the City Manager, it being agreed that the damage suffered by the City for such delay(s) cannot be specifically ascertained.

## **13.0 PROPOSAL/PERFORMANCE AND PAYMENT BONDS:**

All proposals must be accompanied by a Cashier's Check in the amount of ten- thousand dollars (\$10,000) made payable to the City of Lauderdale Lakes, as a guarantee that the Proposer, if awarded the contract, will within fourteen (14) consecutive calendar days after being notified of the award, enter into a contract with the City of Lauderdale Lakes in accordance with the specifications and provide the necessary bond requirements. The Cashier's Check of all unsuccessful Proposers will be returned after contract award. The successful Proposer will be required to furnish to the City of Lauderdale Lakes, a Performance Bond and Payment Bond for 100% of the total proposal submitted. A bond written by a surety company authorized to do business in the State of Florida and shall comply with State Statute 287.0935, or an irrevocable Letter of Credit. If the Letter of Credit is chosen, it must be written from a bank located in Broward County. It must be in the amount of the contract and should clearly and expressly state that it cannot be revoked until express written approval has been given by the City of Lauderdale Lakes. The City, to draw on same, would merely have to give written notice to the bank with a copy to the successful Proposer.

## **14.0 CONFLICT OF INTEREST AND CODE OF ETHICS:**

The award of any contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. Proposers must disclose with their RFP submittal, the name of any officer, director, partner, proprietor, associate, or agent who is also an officer or employee of the

City or any of its agencies. Further, all Proposers must disclose the name of any officer or employee of the City who owns directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches or affiliate companies.

## **15.0 ANTI-DISCRIMINATION:**

The Proposer certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex,

**NON-COLLUSION PROPOSAL CERTIFICATE**

STATE OF FLORIDA  
COUNTY OF BROWARD

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ (Authorized Officer), who being by me duly sworn, deposes and says:

1. That he/she is the \_\_\_\_\_ of the corporation/partnership known and styles as \_\_\_\_\_, duly formed under the laws of the State of \_\_\_\_\_, on \_\_\_\_\_, 2016, he/she is duly authorized to represent such corporation/partnership in the making of this Affidavit and certification. That \_\_\_\_\_

(corporation/partnership) has not, within six (6) months next preceding the date of this affidavit, entered into any combination, contract, obligation, or agreement to create or that may tend to create or to carry out any restriction on secret, competitive proposal on the "Project" known as Phase I - Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project, Lauderdale Lakes, Florida; to fix, maintain, increase, or reduce the price set out in the Proposal on the Project; to fix or maintain any standard or figure whereby the price in the Proposal is or has been in any manner affected, controlled, or established; or in any other manner to prevent or lessen competition in the submitting the proposal for the Project.

2. That \_\_\_\_\_ (corporation/partnership) has not, during such time, entered into, executed, or carried out any contract, obligation, or agreement with any person, corporation, or association of persons not to submit a proposal on this Project below a common standard or figure, to keep the price thereof at fixed or graded figures, to preclude a fair and unrestricted competition in the submitting of the proposal of this Project, to regulate, fix or limit the proposal on the Project, or to abstain from engaging in the submittal on the Project, or any portion thereof.

3. That \_\_\_\_\_ (corporation/partnership) has not within six (6) months next preceding the date of this Affidavit, either directly or through the instrumentality of trustees or otherwise, acquired assets shares, bonds, franchise, or other rights in or physical properties of any other corporation or partnership for the purpose of preventing or lessening, or in a manner that tends to affect or lessen, competition in the proposal submittal on this Project.

4. That \_\_\_\_\_ (corporation/partnership) has not within six (6) months next preceding the date of this Affidavit entered into any agreement or understanding to refuse to buy from or sell to any other person, corporation, firm, or association of person which submits a proposal on the Project.

5. That no officer of \_\_\_\_\_ has, within Affiant's knowledge, during such six (6) months made on behalf of it or for its benefit any such contract or agreement as is specified in this Affidavit.

6. That these representations and warranties will be true at the time of the proposal opening.

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

Its: \_\_\_\_\_

Authority Warranted

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Notary Public  
My Commission Expires: \_\_\_\_\_



### **QUESTIONNAIRE INSTRUCTIONS**

- A. All questions are to be answered in full, without exception. If copies of other documents will answer the question completely, they may be attached and clearly labeled. If additional space is needed, additional pages may be attached and if so added and attached, each must be clearly labeled.
- B. The City of Lauderdale Lakes shall be entitled to contact each and every person/company listed in response to this questionnaire. The Proposer, by completing this questionnaire, expressly agrees that any information concerning the Proposer in possession of said entities may be made available to the City.
- C. Only complete and accurate information shall be provided by the Proposer. The Proposer hereby warrants that, to the best of its knowledge and belief, the responses contained herein are true, accurate, and complete. The Proposer also acknowledges that the City is relying on the truth and accuracy of the responses contained herein. If it is later discovered that any material information given in response to a questions was provided by the Proposer, knowing it was false, it shall constitute grounds for immediate disqualification, termination, or rescission by the City of any subsequent agreement between the City and the Proposer.
- D. If there are any questions concerning the completion of this form, the Proposer is encouraged to contact Susan Gooding-Liburd, Financial Services Director, e-mail: [susangl@lauderdalelakes.org](mailto:susangl@lauderdalelakes.org) or Bobbi Williams, Budget and Management Analyst, [bobbiiw@lauderdalelakes.org](mailto:bobbiiw@lauderdalelakes.org), or fax: (954) 535-1892.

**QUESTIONNAIRE**

Proposer's Name: \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

\_\_\_\_\_

Official Representative: \_\_\_\_\_

Individual

Partnership ( Circle One)

Corporation

If a Corporation, answer this:

When Incorporated: \_\_\_\_\_

In what State: \_\_\_\_\_

If Foreign Corporation:**Date of Registration with:**

Florida Secretary of State: \_\_\_\_\_

Name of Resident Agent: \_\_\_\_\_

Address of Resident Agent: \_\_\_\_\_

President's Name: \_\_\_\_\_

Vice President's Name: \_\_\_\_\_

Treasurer's Name: \_\_\_\_\_

Members of Board of Directors: \_\_\_\_\_

If a Partnership:

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

General or Limited Partnership\*: \_\_\_\_\_

Name and Address of Each Partner:

NameAddress

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

\*Designate general partners in Limited Partnership

1. Number of years of relevant experience in operating similar business:\_\_\_\_\_
2. Have any similar agreements held by Proposer for a similar project to the proposed project ever been canceled?  
  
Yes (   )                                  No (   )  
  
If yes, give details on a separate sheet.
3. Has the Proposer or any principals of the applicant organization failed to qualify as a responsible Proposer, refused to enter into a contract after an award has been made, failed to complete a contract during the past years, or been declared to be in default in any contract in the last years?  
  
If yes, please explain:
4. Has the Proposer or any of its principals ever been declared bankrupt or reorganized under Chapter 11 or put into receivership?  
  
If yes, give date, court jurisdiction, action taken, and any other explanation deemed necessary.
5. Person or persons interested in the proposal and Questionnaire Form \_\_\_\_\_(have)\_\_\_\_\_(have not) been convicted by a Federal, State, County or Municipal Court of any violation of law, other than traffic violations. To include stockholders over ten percent (10%). (Strike out inappropriate words).  
  
Explain any convictions on a separate sheet.
6. Lawsuits (any) pending or completed involving the corporation, partnership or individuals with more than ten percent (10%) interest:  
  
A. List all pending lawsuits:  
  
  
  
  
B. List all judgments from lawsuits in the last five years:  
  
  
  
  
C. List any criminal violations and/or convictions of the Proposer and/or any of its principals:
7. List and describe all successful Performance and Payment Bond claims made to your surety(ies) during the last three years. The list and descriptions should include claims against the bond of the Proposer and its predecessor organization(s).
8. Conflicts of Interest. The following relationships are the only potential, actual or perceived conflicts of interest in connection with this proposal: (If none, so state).

The Proposer understands that information contained in this Questionnaire will be relied upon by the City of Lauderdale Lakes in awarding the proposed Agreement and such information is warranted by the Proposer to be true. The undersigned Proposer agrees to furnish such additional information, prior to acceptance of any proposal relating to the qualifications of the Proposer, as may be required by the City.

*The Proposer further understands that the information contained in this questionnaire may be confirmed through a background investigation conducted by the Broward County Sheriff's Office. By submitting this questionnaire, the Proposer agrees to cooperate with this investigation, including but not necessarily limited to fingerprinting and providing information for credit check.*



I certify that the information and responses provided on this Questionnaire are true, accurate and complete. The Owner of the Project or its representatives may contact any entity or reference listed in this Questionnaire. Each entity or reference may make any information concerning the Contractor available to the Owner.

Dated \_\_\_\_\_, 2016

PROPOSER:

\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Sworn to me before this \_\_\_\_\_ day of 2016, by \_\_\_\_\_ (name of affiant). He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

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

My Commission Expires:

\_\_\_\_\_





## PROPOSER'S CERTIFICATION

I have carefully examined the Request for Proposal, General Information, Specifications, proposed agreement and any other documents accompanying or made a part of this Request for Proposal.

I hereby propose to furnish the goods or services specified in the Request for Proposal. I agree that my proposal will remain firm for a period of up to 90 days in order to allow the City of Lauderdale Lakes adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the City of Lauderdale Lakes or any other Proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 278.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

\_\_\_\_\_  
Name of Business

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title, Typed or Printed

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number Email Address

\_\_\_\_\_  
Facsimile Number

Sworn to and subscribed before me  
This \_\_\_\_\_ day of  
\_\_\_\_\_, 2016

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

State of \_\_\_\_\_



**PROPOSAL FORM FOR PHASE I - LAUDERDALE LAKES STORMWATER CONVEYANCE AND WATER  
QUALITY IMPROVEMENT PROJECT  
RFP # 17-1302-01R**

SUBMITTED TO:       ATTN: Financial Services Department  
                              City of Lauderdale Lakes  
                              4300 NW 36<sup>th</sup> Street  
                              Lauderdale Lakes, Florida 33319

- A.   The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into an Agreement with CITY to perform and furnish all work as specified or indicated in the Proposal and Contract Documents for the Contract price and within the Contract time indicated in the Proposal and in accordance with the other terms and conditions of the Proposal and Contract Documents.
- B.   Proposer accepts and hereby incorporates by reference in this Proposal Form all of the terms and conditions of the Request for Proposals, including without limitation those pertaining to the disposition of Proposal Security.
- C.   The Proposer has examined the site(s) of the project and has become fully informed concerning the local conditions, and nature and extent of work, and has examined all Contract Documents and bond and insurance requirements.
- D.   Proposer has given the City Manager written notice of all conflicts, errors or discrepancies that it has discovered in the Contract and/or Proposal documents and the written resolution thereof by the City Manager is acceptable to Proposer.
- E.   Proposer proposes to furnish all labor, construction services, materials, equipment, machinery, tools, transportation, supplies, services, and supervision and construction of the Phase I - Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project.
- F.   Proposer will complete the work for the following prices: please complete and attach **Exhibit B**.



## Exhibit A

1. PROPOSER proposes to furnish the WORK in conformity with the drawings and specifications for Canals 4, 5A, 6 & 9 and at the Unit Price Proposal listed in Exhibit B. The Unit Price Proposal shall be derived from the quantities estimated by the CONSULTANT and Unit Prices quoted by the PROPOSER in Exhibit B. Unit Prices are fixed and firm and shall be paid to PROPOSER for the successful completion of its obligation as specified in the Proposal Documents and in accordance with the actual quantities executed as part of this project.

This project is a Unit Price Work Contract for the complete project as specified on the construction documents as listed below and the project technical specifications. By submitting a proposal for this project, the PROPOSER represents that it has reviewed and agreed that all items required to complete this entire project are included in the Unit Price Proposal. PROPOSER shall include all materials, labor and miscellaneous items to provide a complete project. It is the PROPOSER's responsibility to review the documents and submit any questions prior to submitting a proposal and in accordance with the proposal specifications. By submitting a proposal for this project, the PROPOSER acknowledges and agrees that the drawings and specifications are complete and provide all necessary information to provide a complete project. The PROPOSER shall provide a complete Schedule of Values including unit costs for all deliverable items. **(Items are provided as an attachment)**

Drawings:

### INDEX OF SHEETS

PAGE/ SHEET #	SHEET TITLE
1	COVER SHEET & LOCATION MAP
2	PROJECT LAYOUT
3	GENERAL NOTES
4-6	TYPICAL SECTION
7-9	TYPICAL SECTION DETAILS
10	PAY ITEMS NOTES
11	SUMMARY OF PAY ITEMS
12-26	SITE PLANS
27-75	CROSS SECTIONS
76-90	DEMOLITION PLANS
91-93	MISCELLANEOUS DETAILS
94-95	WALL REPAIR DETAILS
96-97	STORMWATER POLLUTION PREVENTION PLAN
S1-S5	CONTROL SURVEY



**EXHIBIT B**  
**PRICE PROPOSAL SHEET**

**City of Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project**

**RFP NO: 17-1302-01R**

**PRICE PROPOSAL SCHEDULE**

All proposed items shall include costs for all materials, equipment, labor, supervision, permit fees, taxes, insurance, bonds, miscellaneous costs and Contractor's overhead and profit. Costs for materials and equipment shall be included where applicable. Items in each canal bank stabilization cost shall include mobilization, turbidity barriers, maintenance of traffic, removal of excess vegetation and obstructions, installation of canal bank stabilization, finish grading and sodding, General Condition costs and other related cost. The proposal price must be in accordance with the attached proposed set of plans and specifications for Canals 4, 5A, 6 and 9. This is a unit price project and will be paid as indicated on the pay item notes, Sheet 12 of the plans. The contractor can propose on both as shown in the proposed items listed in Exhibit B and as indicated in the drawings. The summation of the allowance for Canals 4, 5A, 6 and 9 is not exceed \$100,000.00 and it is a contingency item and is to be used at the discretion of the City and only if approved by the City.

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ITEM	SPEC	DESCRIPTION	UNIT	QTY CANAL	SUBTOTAL CANAL 6	QTY CANAL	SUBTOTAL CANAL 9	QTY CANAL 10	SUBTOTAL CANAL 10
1	Gen.	MOBILIZATION	L	1	\$	1	\$	1	\$
2	Gen.	PROJECT SIGN	E	1	\$	1	\$	1	\$
3	0106	PROJECT PERMITS	L	1	\$	1	\$	1	\$
4	0157	MAINTENANCE OF TRAFFIC	L	1	\$	1	\$	1	\$
5	0132	CONSTRUCTON VIDEOS AND	L	1	\$	1	\$	1	\$
6	0205	REMOVAL OF STRUCTURES AND	L	1	\$	1	\$	1	\$
7	0243	FLOATING TURBIDITY BARRIER	L	19	\$	32	\$	87	\$
8	0227	TRUCK WASH OUT	E	1	\$	1	\$	1	\$
9	0243	TURBIDITY MONITORING	Months	1	\$	1	\$	1	\$
1	0227	DUST CONTROL	DA	33	\$	33	\$	33	\$
1	0211	SITE PREPARATION AND	A	1.0	\$	0.37	\$	0.12	\$
1	0220	CHANNEL EXCAVATION	C	98	\$	396	\$	164	\$
1	0220	EMBANKMENT (FILL	C	41	\$	662	\$	265	\$
1	0222	IRRIGATION LINES	E	28	\$	11	\$	4	\$
1	0227	GABION BASKET, 36" THICK	S	172	\$	372	\$	144	\$
1	0237	RIPRAP- RUBBLE, DITCH LINING	C	195	\$	963	\$	426	\$
1	0243	STORMWATER PIPES (INCLUDES	L	40	\$	8	\$		\$
1	0248	SOD	S	188	\$	620	\$	111	\$
1	0282	FENCING RESET EXISTING (WOOD	L		\$		\$		\$
2	0282	FENCING RESET EXISTING (CHAIN	L	98	\$		\$	119	\$
2	0282	FENCING NEW	L	10	\$		\$		\$
2	0360	GROUT	C		\$		\$		\$
2	0370	CONCRETE	C		\$		\$		\$
2	0370	SHEET PILE REPAIRS	L		\$		\$		\$
2	0205	ACM	lb		\$		\$	375	\$
2		ALLOWANCE(As Approved by the		1	\$	1	\$	1	\$
6		City)							
TOTAL ALT. 1					\$		\$		\$

ITEM	SPEC	DESCRIPTION	UNIT	UNIT PRICE	QTY CANAL 4	SUBTOTAL CANAL 4	QTY CANAL 5A	SUBTOTAL CANAL 5A
1	Gen.	MOBILIZATION	LS	\$	1	\$	1	\$
2	Gen.	PROJECT SIGN	EA	\$	1	\$	1	\$
3	01065	PROJECT PERMITS	LS	\$	1	\$	1	\$
4	01570	MAINTENANCE OF TRAFFIC	LS	\$	1	\$	1	\$
5	01320	CONSTRUCTION VIDEOS AND	LS	\$	1	\$	1	\$
6	02050	REMOVAL OF STRUCTURES AND	LS	\$	1	\$	1	\$
7	02435	FLOATING TURBIDITY BARRIER	LF	\$	101	\$	60	\$
8	02270	TRUCK WASH OUT	EA	\$	1	\$	1	\$
9	02435	TURBIDITY MONITORING	Months	\$	1	\$	1	\$
10	02270	DUST CONTROL	DAY	\$	33	\$	33	\$
11	02114	SITE PREPARATION AND CLEARING &	AC	\$	0.88	\$	2.84	\$
12	02200	CHANNEL EXCAVATION	CY	\$	1171	\$	2821	\$
13	02200	EMBANKMENT (FILL)	CY	\$	81	\$	344	\$
14	02221	IRRIGATION LINES RECONNECTIONS	EA	\$	48	\$	46	\$
15	02272	GABION BASKET, 36" THICK	SY	\$	40	\$	48	\$
15A	02280	BIOENGINEERING EROSION	LF	\$	2367	\$	3963	\$
16	02370	RIPRAP- RUBBLE, DITCH LINING OR	CY	\$	1473	\$	13056	\$
17	02433	STORMWATER PIPES (INCLUDES	LF	\$	40	\$	42	\$
18	02486	SOD	SY	\$	706	\$	1599	\$
19	02821	FENCING RESET EXISTING (WOOD	LF	\$		\$	10	\$
20	02821	FENCING RESET EXISTING (CHAIN	LF	\$	415	\$	448	\$
21	02821	FENCING NEW	LF	\$		\$		\$
22	03600	GROUT	CF	\$	1.5	\$		\$
23	03700	CONCRETE	CY	\$		\$		\$
24	03700	SHEET PILE REPAIRS	LS	\$		\$		\$
25	02050	ACM	lbs	\$		\$		\$
26		ALLOWANCE(As Approved by the City)		\$	1	\$	1	\$
			TOTAL ALT. 2			\$		\$

ITEM	SPEC	DESCRIPTION	UNIT	QTY CANAL 6	SUBTOTAL CANAL 6	QTY CANAL 9	SUBTOTAL CANAL 9	QTY CANAL 10	SUBTOTAL CANAL 10
1	Gen.	MOBILIZATION	LS	1	\$	1	\$	1	\$
2	Gen.	PROJECT SIGN	EA	1	\$	1	\$	1	\$
3	0106	PROJECT PERMITS	LS	1	\$	1	\$	1	\$
4	0157	MAINTENANCE OF TRAFFIC	LS	1	\$	1	\$	1	\$
5	0132	CONSTRUCTON VIDEOS AND	LS	1	\$	1	\$	1	\$
6	0205	REMOVAL OF STRUCTURES AND	LS	1	\$	1	\$	1	\$
7	0243	FLOATING TURBIDITY BARRIER	LF	191	\$	32	\$	87	\$
8	0227	TRUCK WASH OUT	EA	1	\$	1	\$	1	\$
9	0243	TURBIDITY MONITORING	Months	1	\$	1	\$	1	\$
1	0227	DUST CONTROL	DAY	33	\$	33	\$	33	\$
1	0211	SITE PREPARATION AND CLEARING	AC	1.05	\$	0.37	\$	0.12	\$
1	0220	CHANNEL EXCAVATION	CY	987	\$	396	\$	164	\$
1	0220	EMBANKMENT (FILL	CY	414	\$	662	\$	265	\$
1	0222	IRRIGATION LINES RECONNECTIONS	EA	28	\$	11	\$	4	\$
1	0227	GABION BASKET, 36" THICK	SY	60	\$		\$		\$
15A	0228	BIOENGINEERING EROSION	LF	3708	\$	558	\$	309	\$
1	0237	RIPRAP- RUBBLE, DITCH LINING OR	CY	1950	\$	963	\$	426	\$
1	0243	STORMWATER PIPES (INCLUDES	LF	40	\$	8	\$		\$
1	0248	SOD	SY	1887	\$	620	\$	111	\$
1	0282	FENCING RESET EXISTING (WOOD	LF		\$		\$		\$
2	0282	FENCING RESET EXISTING (CHAIN	LF	98	\$		\$	119	\$
2	0282	FENCING NEW	LF	10	\$		\$		\$
2	0360	GROUT	CF		\$		\$		\$
2	0370	CONCRETE	CY		\$		\$		\$
2	0370	SHEET PILE REPAIRS	LS		\$		\$		\$
2	0205	ACM	lbs		\$		\$	375	\$
2		ALLOWANCE(As Approved by the		1	\$	1	\$	1	\$
6		City)			\$		\$		\$
TOTAL ALT. 2					\$		\$		\$



**Alternate 1 Price from Proposal Price Item List:**

<b>Canals</b>	<b>Total Price</b>
Canal-4	
Canal-5A	
Canal-6	
Canal-9	
Canal-10	

**Alternate 2 Price from Proposal Price Item List:**

<b>Canals</b>	<b>Total Price</b>
Canal-4	
Canal-5A	
Canal-6	
Canal-9	
Canal-10	

- A. Acknowledgment is hereby made of the following Addendum (identified by number) received since issuance of the Request for Proposals:

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

- B. Proposer accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

- C. The following documents are attached to and made as a condition to this Proposal:

- a. Proper's Certification
- b. Non-Collusion Affidavit
- c. Qualifications Statement
- d. Certificate of Insurance

- D. The correct legal name of Proposer is: \_\_\_\_\_



E. Communications concerning this Proposal shall be addressed to:

\_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Submitted on: \_\_\_\_\_, 2016

B. Proposer accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

C. The following documents are attached to and made as a condition to this Proposal:

- a. Proper's Certification
- b. Non-Collusive Affidavit
- c. Qualifications Statement
- d. Certificate of Insurance

D. The correct legal name of Proposer is: \_\_\_\_\_

E. Communications concerning this Proposal shall be addressed to:

\_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Submitted on: \_\_\_\_\_, 2016



**AFFIDAVIT FOR INDIVIDUAL**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn, deposes and says that:

- A. The foregoing financial statements are a true and accurate statement of his/her financial position as of the date thereof; and the answers to the interrogatories contained therein are true;
- B. The statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- C. He/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- D. The City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial of submitting a proposal for City construction projects or the suspension or revocation of existing work or contracts being performed by the Contractor for the City of Lauderdale Lakes, Florida.

\_\_\_\_\_  
(Applicant)

(name of affiant).

Sworn to me before this \_\_\_\_\_ day of 2016, by \_\_\_\_\_

He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
(Notary)

SEAL

**AFFIDAVIT FOR CO-PARTNERSHIP**

State of \_\_\_\_\_  
County of \_\_\_\_\_

\_\_\_\_\_ is a member of the firm of \_\_\_\_\_, being duly sworn  
deposes and says that:

- A. the foregoing financial statements are a true and accurate statement of the financial position of said firm as of the date thereof and the answers to the interrogatories contained therein are true;
- B. the statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- C. he/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- D. the City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial of submitting a proposal for City construction projects or the suspension or revocation of existing work or contracts being performed by Contractor for the City of Lauderdale Lakes, FL.

\_\_\_\_\_  
(Member of Firm)

(name of affiant).

Sworn to me before this \_\_\_\_\_ day of 2016, by \_\_\_\_\_

He/she is personally known to me or has produced \_\_\_\_\_ (type of  
identification) as identification.

\_\_\_\_\_  
(Notary)

SEAL

**AFFIDAVIT FOR CORPORATION**

State of \_\_\_\_\_  
County of \_\_\_\_\_

\_\_\_\_\_ is \_\_\_\_\_ (title) of the  
\_\_\_\_\_  
(Corporation described herein) being duly sworn,  
deposes and says that:

- A. he/she is familiar with the books or the said corporation showing its financial position;
- B. the foregoing statements are a true and accurate statement of the financial position of said corporation as of the date hereof;
- C. the statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- D. he/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- E. the City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial, suspension or revocation of a existing work or contracts being performed by the Contractor for the City of Lauderdale Lakes, Florida.

\_\_\_\_\_  
(Officer must also sign here)

Sworn to me before this \_\_\_\_\_ day of 2016, by \_\_\_\_\_ (name of affiant).

He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
(Notary)

SEAL

**CERTIFICATES AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the foregoing bond; that \_\_\_\_\_ who signed the said bond on behalf of the Principal, was then \_\_\_\_\_ of said Corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

\_\_\_\_\_  
Principal Authority

\_\_\_\_\_  
Corporate Secretary Seal

**STATE OF FLORIDA****COUNTY OF**

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the \_\_\_\_\_ and that he has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Lauderdale Lakes, Florida.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

(Attach Power of Attorney)

\_\_\_\_\_  
Notary Public  
State of Florida-at-Large

My Commission Expires: \_\_\_\_\_

**CERTIFICATES AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the foregoing bond; that \_\_\_\_\_ who signed the said bond on behalf of the Principal, was then \_\_\_\_\_ of said Corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

**STATE OF FLORIDA**\_\_\_\_\_  
Corporate Secretary Seal**COUNTY OF**

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he is the Attorney in Fact, for the \_\_\_\_\_ and that he has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Lauderdale Lakes, Florida.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

(Attach Power of Attorney)

\_\_\_\_\_  
Notary Public  
State of Florida-at-Large

My commission Expires: \_\_\_\_\_



## PERFORMANCE BOND

Successful Proposer Must Submit when Contract is Signed  
(This bond meets and exceeds the requirements of Florida Statutes Section 255.05)

**STATE OF FLORIDA**

**COUNTY OF** \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** that we,  
\_\_\_\_\_, as Principal, hereinafter called  
Contractor, and \_\_\_\_\_ as Surety, are firmly bound unto the City of Lauderdale

Lakes, Florida, as Obligee, hereinafter called the City, in the Penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_), for the payment of which sum well and truly to be made, we bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Contractor, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, entered into a certain contract with  
the City, hereto attached, for **RFP #17-1302-01R** Entitled, "Phase I - Lauderdale Lakes Stormwater Conveyance  
and Water Quality Improvement Project" which Contract is made a part hereof by reference thereto.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that, if the Contractor shall well  
and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract,  
and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to  
the Surety being hereby waived, then this obligation shall be void; otherwise to remain in full force and effect.

**WHENEVER** the Principal shall be and is declared by the City to be in default under the Contract, or  
whenever the Contract has been terminated by default of the Contractor, the City having performed the City's  
obligations thereunder, the Surety shall:

Complete the Contract in accordance with its terms and conditions, or at the City's sole option, shall:

1. Obtain a Proposal or Proposals for submission to the City for completing the Contract in accordance  
with its terms and conditions, and upon determination by the City and the Surety of the responsible  
Proposer, arrange for a Contract between such Proposer and the City, and make available as Work  
progresses (even though there should be a default or a succession of defaults under the Contract or  
Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less  
the balance of the Contract price; but not exceeding, including other costs and damages for which the  
Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of  
the Contract price" as used in this paragraph, shall mean the total amount payable by the City to the D- B  
Firm under the Contract and any amendments thereto, less the amount properly paid by the City to the  
Contractor.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the  
City named herein or the successors or assignees thereof.

The Surety shall and does hereby agree to indemnify the City and hold it harmless of, from and against any and  
all liability, loss, cost, damage or expense, including reasonable attorney's fees, engineering and architectural fees  
or other professional services which the City may incur or which may accrue or be imposed upon it by reason  
of any negligence, default, act and/or omission on the part of the Contractor, any Subcontractor and Contractor's  
or Subcontractors agents, servants and/or employees, in, about or on account of the Construction of the work  
and performance of said Contract by the Contractor.





This Bond shall remain in full force and effect for such period or periods of time after the date of acceptance of the project by the City as are provided for in the Contract Documents, and the Contractor hereby guarantees to repair or replace for the said periods all work performed and materials and equipment furnished, which were not performed or furnished according to the terms of the Contract Documents. If no specific periods of warranty are stated in the Contract Documents for any particular item of work, material or equipment, the Contractor hereby guarantees the same for a minimum period of one (1) year from the date of final acceptance by the City of the entire project.

Any suit on this bond must be instituted within such period or periods as may be provided by law.

**IN WITNESS WHEREOF**, the above bounded parties have caused this Bond to be executed by their appropriate officials on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WITNESS:**

\_\_\_\_\_

**PRINCIPAL:** (If sole Proprietor or partnership)

\_\_\_\_\_  
(Firm Name)

**BY** \_\_\_\_\_

\_\_\_\_\_  
**Title: (Sole Proprietor or Partner)**

**PRINCIPAL:** (If Corporation)

\_\_\_\_\_  
(Corporate Name)

\_\_\_\_\_  
(President)

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

(Secretary)

(CORPORATE SEAL)

**COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:**

**SURETY:**

\_\_\_\_\_  
(Copy of Agent's current  
License as issued by State  
of Florida Insurance  
Commissioner)

\_\_\_\_\_

**By:** \_\_\_\_\_  
**Attorney-in-fact (Power of Attorney must be attached)**



**LABOR AND MATERIAL PAYMENT BOND**  
 Successful Proposer Must Submit when Contract is Signed  
**(SECTION 255.05, FLA. STAT.)**

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, as Principal, (CONTRACTOR), whose primary office is located at \_\_\_\_\_, and whose phone number is \_\_\_\_\_, and \_\_\_\_\_, as SURETY, are bound to the City of Lauderdale Lakes, Florida, as Obligee, (CITY), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment of which D-B FIRM and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

**WHEREAS, CONTRACTOR** has entered into a Contract, dated the \_\_\_\_ day of \_\_\_\_\_, 2016, with the CITY in response to RFP/Purchase Order No. \_\_\_\_\_, which is by reference made a part of this Bond and which shall be performed at \_\_\_\_\_ legally described as:

**THE CONDITION OF THIS BOND** is that if the CONTRACTOR:

- (1) Performs the Contract between the CONTRACTOR and the CITY, at the times and in the manner prescribed in the Contract; and
- (2) Promptly makes payments to all claimants, as defined in Section 255.05 (1), Florida Statutes, supplying CONTRACTOR with labor, materials, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the Contract: and
- (3) Pays CITY all losses, damages, expenses, costs, attorney's fees and paralegal fees at trial and appellate proceedings, that CITY sustains because of default by CONTRACTOR under the Contract: and
- (4) Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract,

then this Bond is void; otherwise it remains in full force.

The SURETY waives notice of and agrees that any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or any changes does not affect the SURETY's obligation under this Bond.

Whenever CONTRACTOR shall be, and is declared by CITY to be, in default under the Contract, and the CITY having performed CITY's obligations under the Contract, the SURETY shall promptly remedy the default or promptly:

- (1) Complete the CONTRACT in accordance with its terms and conditions; or
- (2) Obtain a proposal for completing the Contract in accordance with its terms and conditions, or, if the CITY elects, upon determination by the CITY of the lowest responsible PROPOSER, arrange for a Contract between such PROPOSER and CITY, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, including other costs and damages for which the SURETY may be liable. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by CITY to CONTRACTOR under the Contract and any amendments less the amount properly paid the CITY to CONTRACTOR.
- (3) The Surety shall defend, indemnify and hold harmless the City from and against any and all liability, loss, cost, damage or expense, including reasonable attorney's fees, at trial and appellate levels,



engineering and architectural fees or other professional services which the CITY may incur or which may accrue or be imposed upon the City by reason of any negligence, default, act and/or omission on the part of the CONTRACTOR, any Subcontractor or their agents, servants or employees, in, about, arising out of or on account of work and performance of the Contract by the CONTRACTOR.

(4) This Bond shall remain in full force and effect until after the date of the City's acceptance of the work as is provided for in the Contract Documents. The CONTRACTOR guarantees to repair or replace all work performed and materials and equipment furnished, which are not performed or furnished according to the terms of the Contract. If no specific periods of warranty are stated in the Contract for any particular item of work, material or equipment, the CONTRACTOR warrants and guarantees the work, material or equipment for a minimum period of one (1) year from the date of the City's final acceptance of the Work.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the City.

Any action under this Bond must be instituted in accordance with Section 255.05, Florida Statutes.

**IN WITNESS WHEREOF**, the above bounded parties have caused this Bond to be executed by their appropriate officials on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WITNESS:**

**PRINCIPAL:** (If sole Proprietor or partnership)

\_\_\_\_\_  
(Firm Name)

**BY** \_\_\_\_\_

\_\_\_\_\_  
**Title: (Sole Proprietor or Partner)**

**PRINCIPAL:** (If Corporation)

\_\_\_\_\_  
(Corporate Name)

**BY** \_\_\_\_\_  
(President)

**Attest:** \_\_\_\_\_  
(Secretary)

**(CORPORATE SEAL)**

**COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:**

**SURETY:**

\_\_\_\_\_  
(Copy of Agent's current  
License as issued by State  
of Florida Insurance  
Commissioner

\_\_\_\_\_  
**By:** \_\_\_\_\_  
**Attorney-in-fact (Power of Attorney must be attached)**



# SAMPLE CONTRACT

SAMPLE



## LAUDERDALE LAKES CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between the CITY OF LAUDERDALE LAKES FLORIDA, a Florida municipal corporation, (CITY), and \_\_\_\_\_ (CONTRACTOR), (Parties).

WHEREAS, the City desires to retain a contractor for the Project as expressed in its Request for Proposal No. **RFP#16-1302-XXR** for Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project, which closed on \_\_\_\_\_, 2016; and

WHEREAS, the Contractor has expressed its willingness and capability to perform the necessary work to accomplish the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the Parties agree as follows:

### **ARTICLE 1 - DEFINITIONS**

Wherever used in this Agreement or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural forms:

- 1.1 **Agreement** - The written agreement between CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to or incorporated in the Agreement.
- 1.2 **Change Order** - A document which is signed by the CITY and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Term or Compensation, issued on or after the Effective Date of the Agreement.
- 1.3 **CITY** - The Mayor, City Commission, City Administration and/or the Office of the City Attorney of the City of Lauderdale Lakes, Florida.
- 1.4 **Contract Documents** - The Contract Documents shall consist of the Drawings, Plans and Specifications, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the effective date of the Agreement.
- 1.5 **Drawings** - The drawings which show the character and scope of the Work to be performed and which are referred to in the Contract Documents.
- 1.6 **Engineer** - The City's Engineer of the City of Lauderdale Lakes, Florida, or the authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.7 **Notice to Proceed** - A written notice given by CITY to CONTRACTOR fixing the date on which the Work shall commence and the CONTRACTOR begins to perform its obligations under the Contract Documents.
- 1.8 **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship regarding the project.

### **ARTICLE 2 - CONTRACT DOCUMENTS**

#### **2.1 Enumeration of Contract Documents:**

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR and consist of



the following:

- (1) This Agreement.
- (2) Construction performance bond.
- (3) Construction payment bond.
- (4) Insurance certificate(s) per RFP requirements.
- (5) Notice of Award and Notice to Proceed.
- (6) Request for Proposal and the Specifications prepared by the CITY (Exhibit 1)
- (7) CONTRACTOR's Response to the CITY's Request for Proposal No. RFP# \_\_\_\_\_ dated 2016 (Exhibit 2).
- (8) Schedule of Completion (Exhibit 3).
- (9) Standard General Conditions of the Construction contract for the City of Lauderdale Lakes Florida (Exhibit 4).

Any amendments executed by the CITY and the CONTRACTOR shall become part of this Agreement. Documents not included in this Article do not, and shall not, form any part of this Agreement. In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Manager (or designee).
- b. This Agreement dated \_\_\_\_\_ and any attachments.
- c. Exhibit 1.
- d. Exhibit 2.
- e. Exhibit 3.
- f. Exhibit 4.

## 2.2 Conflict, Error or Discrepancy:

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to the CITY in writing at once and before proceeding with the Work affected shall obtain a written interpretation or clarification from CITY.

## 2.3 Representation of CONTRACTOR:

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the Work site and is familiar with the local conditions under which the Work is to be performed.

## **ARTICLE 3 - SCOPE OF WORK**

- 3.1 The CONTRACTOR shall perform all of the work required, implied and reasonably inferable from this Agreement including, but not limited to, the following:

3.1.1 Construction of the Project in accordance with the approved plans and specifications;

3.1.2 The furnishing of any required surety bonds and insurance;

3.1.3 The provision of furnishing, and prompt payment for, labor, supervision, services, materials, supplies, equipment, fixtures, facilities, communication and security systems, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities and all necessary tree permit, building permits and other permits required for the construction of the Project;

3.1.4 The preparation and submission to the CITY of detailed and comprehensive as-built drawings signed and sealed by a registered surveyor licensed by the State of Florida depicting all as-built construction. All as-built drawings shall be submitted to the CITY upon final completion of the Project and receipt by the



CITY shall be a condition precedent to final payment to the CONTRACTOR.

- 3.2** In order to induce the CITY to execute this Contract, the CONTRACTOR makes the following express representations to the CITY:
- 3.2.1** The CONTRACTOR is fully qualified to act as the CONTRACTOR for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the CONTRACTOR for the Project;
  - 3.2.2** The CONTRACTOR has become familiar with the Project site(s) and the local conditions under which the Project is to be constructed and operated; and
  - 3.2.3** The CONTRACTOR has received, reviewed and carefully examined all of the documents which make up this Agreement, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction.
- 3.3** Contractor (or its agent or subcontractor) shall provide a minimum of inconvenience to the public and to local business activities.
- 3.4** Contractor shall ensure that the public roadway and any improvements or appurtenant to the Work site remain open to the public and is fully operational whenever and wherever possible, and that sufficient signage as requested by the City is provided to direct the public or other invitees during performance of Work.
- 3.5** Contractor shall maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient lighting for the prevention of accidents. The Contractor shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.
- 3.6** Any material or waste generated by Contractor or its employees, agents and subcontractors shall be removed and disposed of, as necessary, by the Contractor, at the Contractor's expense, to the satisfaction of the City.
- 3.7** The Contractor shall also restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the Contractor during the performance of Work, and shall leave the work site and vicinity unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.
- 3.8** The Contractor shall notify the City, in writing, of any pre-existing damage to surrounding roadways, swales and improvements prior to commencing any Work. Failure to notify the City of any damage shall result in the Contractor's duty to repair the damage at no additional expense.
- 3.9** Storage of the materials shall be at a location approved by the City. Contractor shall obtain a no fee permit from the City, and shall pay the required county surcharges and fees. The Contractor shall be responsible for the replacement of any existing materials or structures damaged by the Contractor during the construction process, and any damage shall be restored to the acceptance of the City.
- 3.10** The Contractor shall exercise due caution throughout this Work to minimize the possibility of damage to utilities resulting from its activities. The Contractor shall verify the location of all overhead and underground utilities prior to any excavation, including notifying the Underground Notification Center and the City's Public Works Department and Development Services Department of any proposed excavation locations.
- 3.11** Whenever it is necessary to temporarily interrupt any local or surrounding activities, the Contractor shall notify the Owner or tenant or their designee prior to the interruption and again immediately before the service is resumed. Before disconnecting any underground or overhead utilities, the Contractor shall





make similar arrangements for their disconnection with the Owner, tenant or a designee. The Contractor shall be responsible for any damage caused by Contractor to such utilities, and shall restore them to service promptly as soon as the Work interruption has ended.

- 3.12** The City may, periodically, inspect the real property for the purpose of assuring compliance with this Agreement.
- 3.13** In the event the Owner or Contractor prevents the City from inspecting the Project for purposes of assuring compliance with this Agreement or with the contract documents, the City shall be entitled to immediately terminate this Agreement, retain all funds, seek reimbursement for any funds distributed for the Project and obtain other relief as permitted by the Agreement. Further, action by the Owner or Contractor to prevent or deny the City's inspection of the project will constitute a default of this Agreement, and the City shall be entitled to exercise any and all remedies at law or equity.
- 3.14** The Contractor shall at all times during the performance of the Work keep the work site free and clear of all rubbish and debris to the City's satisfaction, and within the applicable time frames specified under the general conditions in Exhibit "1". All sand, grit, solids and other material, accumulated rubbish or surplus materials shall be removed at the end of each work day.
- 3.15** After the City gives not less than 24-hour notice to the Contractor to clear the site of rubbish, debris and other work site materials or not less than 72-hour notice to restore or replace distributed, displaced or damaged property, and the Contractor fails to comply, the City may employ labor or equipment as it deems necessary to clear the site, impose the cost of the work, together with the cost of supervision, against the Contractor and deduct the cost from the compensation due to the Contractor.

#### **ARTICLE 4 - TERM**

The Work to be performed under this Agreement shall commence upon the date specified in the Notice to Proceed and, subject to authorized adjustments, shall be completed no later than \_\_\_\_\_ after the execution of this Agreement. CONTRACTOR agrees that all Work under this Agreement shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed term. Failure to achieve timely, substantial and/or final completion shall be regarded as a material breach of this Agreement, and shall be subject to the appropriate remedies including but not limited to liability for liquidated damages in accordance with Article 10.

#### **ARTICLE 5 - COMPENSATION**

CITY shall pay CONTRACTOR for the performance of all work, in accordance with Article 13, subject to additions and deductions by Change Order as provided in this Agreement, the sum of \_\_\_\_\_ as full compensation.

#### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

##### **6.1 Liability for Contracted Work:**

As an inducement for CITY to enter into this Agreement, CONTRACTOR has represented an expertise in professional construction of public construction projects by qualified and licensed general construction contractors. In reliance upon those representations, CITY hired CONTRACTOR to construct the Project. CONTRACTOR shall be liable for any defective or negligent work, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty.

##### **6.2 Shop Drawings and Samples:**

- 6.2.1** CONTRACTOR shall submit to CITY for review and approval five (5) copies of all Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles seven (7) calendar days before the scheduled commencement of the construction.





work. The purpose of the Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

**6.2.2** CONTRACTOR shall also submit to CITY, for review and approval, all samples required by the Contract Documents which shall clearly identify material, supplier, pertinent data such as catalog numbers and the intended use.

**6.2.3** Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

**6.2.4** At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall specifically note each variation on each Shop Drawing submitted for review and approval. Failure by the CITY to notice or identify CONTRACTOR's failure to make the notation shall not relieve CONTRACTOR from the responsibility to comply with the Contract Documents.

**6.2.5** Approval of the Shop Drawings by CITY shall be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the Work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings. No work called for by any Shop Drawing shall be done until the drawings have been approved by CITY.

**6.3 Supervision:**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention and applying CONTRACTOR's best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall ensure that the finished Work complies accurately with the Contract Documents.

**6.4 On Site Management:**

CONTRACTOR shall keep on the Work site at all times during its progress a competent on-site manager and any necessary personnel who shall not be replaced without written notice to CITY unless the personnel proves to be unsatisfactory to CONTRACTOR or to the CITY. The on-site Manager shall be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the on-site Manager shall be as binding as if given to CONTRACTOR.

**6.5 Labor:**

**6.5.1** Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida. Suppliers shall be selected and paid by the CONTRACTOR; the CITY reserves the right to approve all suppliers and materials.

**6.5.2** CONTRACTOR shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the Work site. Except in connection with the safety or protection of persons, the Work, or property adjacent to the site, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during the hours of 7:00 a.m. and 5:00 p.m. CONTRACTOR will not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without CITY's written consent.

**6.6 Materials:**

**6.6.1** Unless otherwise specified in this Agreement, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

**6.6.2** CONTRACTOR warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents.

**6.7 Subcontractors, Suppliers and Others:**

**6.7.1** Prior to the execution of this Agreement and in any event prior to the commencement of any work, CONTRACTOR shall furnish, in writing to the CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has an objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made an objection. If CITY objects to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes objection to the change.

**6.7.2** CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the CONTRACTOR, its employees, subcontractors, suppliers, other persons directly or indirectly employed by its subcontractors or suppliers, persons for whose acts any of them may be liable and any other persons or organizations performing or furnishing supplies under a direct or indirect Contract with CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

**6.7.3** All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of the Contract Documents for the benefit of CITY.

**6.8 Patent Fees and Royalties:**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use of the license 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.

**6.9 Permits:**

CONTRACTOR shall obtain and pay for all permits and licenses and all related costs for inspection and administration. There will be no cost for permits issued by the CITY.

**6.10 Compliance with Laws and Regulations:**

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR's compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents as observed by CONTRACTOR are at variance with applicable laws and regulations.

**6.11 Risk of Loss; Ownership:**

The risk of loss, injury or destruction shall be on CONTRACTOR until acceptance of the Work by CITY. Title to the Work shall pass to CITY upon acceptance of the Work by CITY.

**6.12 Taxes:**

CONTRACTOR shall pay all sales, consumer, use and other similar taxes. CONTRACTOR is responsible for reviewing the pertinent state laws and regulations involving such taxes and complying with all requirements.

**6.13 Use of Premises:**

**6.13.1** CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the work site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR shall assume full responsibility for any damage to any land or areas or to the owner or occupant of any contiguous land or areas, resulting from the performance of the Work. Should any owner or occupant because of the performance of the Work make any claim against CITY, CONTRACTOR shall promptly attempt to settle with the claimant by agreement or otherwise resolve the claim.

**6.13.2** During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents including fencing, parking lots and grounds.

**6.13.3** CONTRACTOR shall not permit any part of any structure or land to be treated in any manner that will endanger the structure or any land, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or processes that will endanger it.

**6.14 Access to Work:**

CONTRACTOR shall provide CITY, its consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for access and shall advise these authorized persons of CONTRACTOR's site safety procedures and programs.

**6.15 Safety and Protection:**

**6.15.1** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected. This paragraph applies to all the Work, materials and equipment, whether in storage on or off the site; and other property at the site or adjacent to the site.

**6.15.2** CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

**6.16 Environmental**

The CONTRACTOR has fully inspected the worksite and agrees to accept the worksite in an "as is" physical condition, without representation or warranty by the City of any kind, including, without limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the worksite. Further CONTRACTOR and all entities claiming by, through or under CONTRACTOR,



releases and discharges the CITY from any claim, demand, or cause of action arising out of or relating to the CONTRACTOR's use, handling, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the worksite. The CONTRACTOR shall have no liability for any pre-existing claims or "contamination" on the worksite.

CONTRACTOR shall not use, handle, store, discharge, treat, remove, transport or dispose of Hazardous Substances including asbestos at, in, upon, under, to or from the worksite until receipt of instructions from the CITY. At such time, a CITY approved change order, which shall not include any profit, shall authorize the CONTRACTOR to perform such services.

CONTRACTOR shall immediately deliver to CITY complete copies of all notices, demands or other communications received by CONTRACTOR from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity on the worksite which is or could be dangerous to life, limb, property or the environment.

CONTRACTOR indemnifies and agrees to protect, defend, and hold harmless, the CITY and its respective employees, agents, successors, and assigns from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the CONTRACTOR's (or any of its employees, agents, invitees, contractors or sub-contractors) use, handling, storage, release, threatened release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of a Hazardous Substance on, under, from, to or about the worksite or any other activity carried on or undertaken on or off the worksite by the CONTRACTOR or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transportation, decontamination, cleanup, disposal and/or presence or any Hazardous Substance located, transported, or present on, under, from, to, or about the worksite. This indemnity is intended to be operable under 42 U.S.C. section 9607, as amended, and any successor section.

The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (i) the costs of removal or remedial action incurred by the United States government or the State of Florida or response costs incurred by any other person, or damages from injury to, destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, response costs, or penalties which arise from the provisions of any other statute, law, regulation, code, ordinance, or legal requirement, state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

## **6.17 Indemnification:**

**6.17.1** In addition to but not in derogation of the obligation of indemnification in Section 6.16 hereof, CONTRACTOR shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential including but not limited to fees and charges of engineers, architects, attorneys, consultants and other professionals and court costs arising out of or in consequence of the performance of this Agreement at all trial and appellate levels. Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from



(a) the negligent or defective design of the project and Work of this Agreement; (b) any act, omission or default of the CONTRACTOR, its Subcontractors, agents, servants or employees; (c) any and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (f) the use of any improper materials; (g) any construction defect including both patent and latent defects; (h) failure to timely complete the work; (i) the violation of any federal, state, county or city laws, ordinances or regulations by CONTRACTOR, its subcontractors, agents, servants, independent contractors or employees; (j) the breach or alleged breach by CONTRACTOR of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

- 6.17.2** CONTRACTOR agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.
- 6.17.3** CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs at trial and appellate levels.
- 6.17.4** If any Subcontractor, supplier, laborer, or materialmen of CONTRACTOR or any other person directly or indirectly acting for or through CONTRACTOR files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the CITY to CONTRACTOR or from CONTRACTOR to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, CONTRACTOR agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) calendar days of the filing or from receipt of written notice from the CITY.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by CONTRACTOR, all monies due to CONTRACTOR, or that become due to CONTRACTOR before the lien or claim is satisfied, removed or otherwise discharged, shall be held by CITY as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If CONTRACTOR shall fail to do so, CITY shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means CITY chooses at the entire and sole cost and expense of CONTRACTOR which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to CONTRACTOR. In the event the amount due CONTRACTOR is less than the amount required to satisfy CONTRACTOR'S obligation under this, or any other section of the Agreement, the CONTRACTOR shall be liable for the deficiency due the CITY.

#### **6.18 Survival of Obligations:**

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

#### **6.19 Correction or Removal of Defective Work:**

If required by CITY, CONTRACTOR shall promptly correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs for the correction





or removal of defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals).

If the work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion, 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 or any other party.

## **6.20 Force Majeure**

No party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

No party shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable by force majeure to carry out its obligation, but the obligation of the party or parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The Contractor further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within two (2) hours after such an occurrence.

## **ARTICLE 7 - CITY'S RESPONSIBILITIES**

**7.1** CITY shall furnish data required of CITY under the Contract Documents.

**7.2** CITY shall make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

### **7.3 Technical Clarifications and Interpretations:**

**7.3.1** CITY shall issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should CONTRACTOR fail to request interpretation of questionable items in the Contract Documents, CITY shall not entertain any excuse for failure to execute the work in a satisfactory manner.

**7.3.2** CITY shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other party but in no event later than five (5) days after the occurrence of the event, and written supporting data will be submitted to the other party within five (5) calendar days after such occurrence. All written decisions of the CITY on any claim or dispute will be final and binding.



## ARTICLE 8 - BONDS AND INSURANCE

### 8.1 Payment and Performance Bonds:

- 8.1.1** Prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond, in a form approved by the CITY and as provided by state law, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+.
- 8.1.2** The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of this Agreement. The performance bond shall be conditioned that the CONTRACTOR performs the contract in the time and manner prescribed in the Agreement. The payment bond shall be conditioned that the CONTRACTOR promptly makes payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the performance of the Work provided for in this Agreement and any change orders and shall provide that the surety shall pay the amount not exceeding the sum provided in the bonds, together with interest at the maximum rate allowed by law and that the CONTRACTOR and surety shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the performance of this Agreement which the CITY may be required to make by law.
- 8.1.3** Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, the CONTRACTOR shall record the payment and performance bonds in the public records of Broward County, at its own expense.

### 8.2 Bonds, Reduction After Final Payment:

The performance and payment bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of these bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Agreed Compensation, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Agreement, upon notification by the CITY.

### 8.3 Duty to Substitute Surety:

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within three (3) days substitute another bond and surety, both of which must be acceptable to CITY. The CITY shall have the right to disapprove any contractor or subcontractor selected by any surety.

### 8.4 Insurance:

- 8.4.1** At the time of execution of the Agreement, the CONTRACTOR shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the CITY is an additional, named, first party insured with respect to the required coverage and the operations of the CONTRACTOR under the Agreement. The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that the insurance is as required by Article 8 and its subparts of this Agreement. CONTRACTOR shall not commence work under this Agreement until after CONTRACTOR has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by CITY. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then



in that event, CONTRACTOR shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. CONTRACTOR shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

- 8.4.2** Insurance Companies selected by CONTRACTOR must be acceptable to the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) Calendar days written notice has been given to CITY by certified mail.
- 8.4.3** The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of this Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:
- (a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
  - (b) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CONTRACTOR in the performance of the Work with the following minimum limits of liability:  
\$1,000,000.00 - Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence
- Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability Policy without restrictive endorsements, as filed with the Florida Department of Insurance and shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:
- 1. Premises and Operations;
  - 2. Independent Contractors;
  - 3. Product and Completed Operations Liability;
  - 4. Broad Form Property Damage;
  - 5. Broad Form Contractual Coverage applicable to this Agreement and specifically confirming the indemnification and hold harmless provision in this Agreement; and
  - 6. Personal Injury coverage with employment contractual exclusions removed and deleted.
- (c) Builder's Risk Insurance in an amount not less than the replacement cost for the construction of the Work. Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value with a deductible of not more than Five Thousand Dollars (\$5,000.00) per claim.
- 8.4.4** CONTRACTOR shall maintain the Products and Completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish CITY with evidence of the continued insurance coverage at the time of final payment.
- 8.4.5** The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.
- 8.4.6** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 8.4.7** The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they have no recourse against CITY for payment or assessments in any form on any policy of insurance.





- 8.4.8** The clauses “Other Insurance Provisions” and “Insurers Duties in the Event of an Occurrence, Claim or Suit” as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence to the Insurer within fifteen (15) working days of CITY’s actual notice of such an event.
- 8.4.9** The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance described and the CITY’s approved.
- 8.4.10** The CONTRACTOR agrees to perform the work under the Agreement as an independent CONTRACTOR, and not as a subcontractor, agent or employee of CITY.
- 8.4.11** CONTRACTOR shall require each of its subcontractors to maintain the insurance required for each category, and CONTRACTOR shall provide verification to CITY upon its request.
- 8.4.12** Violation of the terms of this paragraph and its subparts shall constitute a material breach of the Agreement, and CITY, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONTRACTOR shall cease and terminate.
- 8.4.13** CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others performing the Work. CITY specifically reserves all statutory and common law rights and immunities. Nothing contained in this Agreement is intended to limit or waive any rights or immunities including, but not limited to, the procedural and substantive provisions of Chapter 768, Florida Statutes.

## **ARTICLE 9 - WARRANTIES: TESTS AND INSPECTIONS: CORRECTION OF DEFECTIVE WORK**

### **9.1 Warranty of Title:**

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided and that there are no pending liens, claims or encumbrances against the equipment and materials.

### **9.2 Warranty of Specifications:**

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

### **9.3 Warranty of Merchantability:**

CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.

### **9.4 Correction Period:**

CONTRACTOR warrants all material and workmanship for a minimum of two (2) year(s) from date of acceptance by the CITY. If, within two (2) year(s) after the date of final completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY’s written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with Work that is not defective and that is satisfactorily correct, and remove and replace any damage to other Work. If CONTRACTOR does not promptly comply with the terms of such instructions,



or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR.

**9.4.1** Where defective Work (and damage to other work) has been corrected, removed or replaced under this Article, the correction period with respect to such Work will be extended for an additional period of two (2) year(s) after such correction, removal or replacement has been satisfactorily completed.

**9.4.2** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of two (2) year(s) as described in above paragraph relates only to the specific obligation of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to the CONTRACTOR's obligation other than specifically to correct the Work.

**9.5** CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under this Agreement.

**9.6** CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.

**9.7** CONTRACTOR warrants to the CITY that the performance of the work provided for in the Contract Documents will not result in the breach of any term or provision, or constitute a default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.

**9.8** CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the Work of the Agreement.

**9.9** No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

**9.10 Tests and Inspections:**

**9.10.1** CONTRACTOR shall give CITY timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part unless otherwise specified.

**9.10.2** Neither CITY nor other inspectors shall have authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Agreement by failure to inspect the materials and work with reasonable promptness.

**9.10.3** The payment of any compensation, the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly, is strictly prohibited and punishable to the full extent of the law, and any such action on the part of the CONTRACTOR will constitute a termination of this Agreement.



### **9.11 Warranty Information**

The CONTRACTOR shall deliver to the CITY and the CITY shall execute all applicable product and equipment registration, manuals, instructions, keys, accessories and warranty documents in accordance with manufacturers' policies and procedures. CONTRACTOR shall facilitate any necessary warranty claims free of charge.

### **ARTICLE 10 - LIQUIDATED DAMAGES**

If the awarded Proposer fails to complete the project by the completion date stated on the Proposal Form, it is understood that five-hundred dollars (\$500.00) per calendar day will be deducted as liquidated damages, for each day beyond the substantial completion time and two-hundred fifty dollars (\$250.00) per calendar day will be deducted as liquidated damages, for each day beyond the final completion time unless time extension is approved by the City Manager, it being agreed that the damage suffered by the City for such delay(s) cannot be specifically ascertained.

### **ARTICLE 11 - CHANGES IN THE WORK**

- 11.1** One or more changes to the work within the general scope of this Agreement may be ordered by Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and the terms and conditions described in this Article.
- 11.2** A Change Order shall mean a written order to the Contractor executed by the parties after execution of this Agreement, directing a change in the work and may include a change in the agreed compensation in accordance with Article 12 or the time for the Contractor's performance.
- 11.3** The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work and the Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order.
- 11.4** The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of, and consents to, such Change Order and the respective increase in the Performance bond amount commensurate with the Change Order(s). Furthermore, upon the Contractor's execution of the Change Order(s), the surety shall be conclusively deemed to have been notified of such Change Order by the Contractor in the increase in the required Performance Bond amount, and to have expressly consented.

### **ARTICLE 12 - CHANGE IN COMPENSATION**

Change orders approved by CITY shall be computed as follows:

#### **12.1 Cost of the Work:**

The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, these costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 12.2:



- 12.1.1** 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. 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 limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.
- 12.1.2** Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.
- 12.1.3** Supplemental costs including the following:
  - 12.1.3.1** 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.
  - 12.1.3.2** Rentals of all construction equipment and machinery and the parts whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY, and the costs of transporting, loading, unloading, installing, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work.
  - 12.1.3.3** Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by laws or regulations.
  - 12.1.3.4** Royalty payments and fees for permits or licenses.
  - 12.1.3.5** The cost of utilities, fuel and sanitary facilities at the Work site.
  - 12.1.3.6** 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.
  - 12.1.3.7** Cost of premiums for additional bonds and insurance required because of changes in the Work.

**12.2 Not Included in the Cost of the Work:**

The term "cost of the Work" shall not include any of the following.

- 12.2.1** Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.1.1, all of which are to be considered administrative costs covered by CONTRACTOR's fee.
- 12.2.2** Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 12.2.3** Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 12.2.4** Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain them.
- 12.2.5** 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.



**12.2.6** Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.1.

**12.3 Cost Breakdown Required:**

Whenever the cost of any Work is to be determined pursuant to this Article, CONTRACTOR will submit in form acceptable to the CITY an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown as follows:

- (a) The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.
- (b) Whenever a change involves the CONTRACTOR and one (1) or more subcontractors and the change is an increase in the agreed compensation, the overhead and profit percentage for the CONTRACTOR and each subcontractor shall be itemized separately.

**ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK**

**13.1 Progress Payments:**

**13.1.1** CONTRACTOR may request payments for work completed during the project at intervals of not more than once a month. The CONTRACTOR's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR's previous applications for payment, and any other supporting documentation as may be required by the CITY, the ENGINEER or Contract Documents. Each requisition shall be submitted in triplicate to the CITY for approval. The CITY shall make payment to the CONTRACTOR within thirty (30) calendar days after approval of the CONTRACTOR's requisition for payment. Any rejection by the CITY of any specific item (s) shall result in CONTRACTOR being notified of the rejection within five (5) Business days of the rejection.

**13.1.2** Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until the work is totally completed and accepted by the CITY.

**13.2 Inspection:**

CITY shall make an inspections as necessary and notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take the necessary measures to remedy any deficiencies within five (5) calendar days of the inspection.

**13.3 Final Application for Payment:**

After CONTRACTOR has completed all corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, warranties, guarantees, bonds, certificates of inspection, marked up record documents and other documents required by the Contract Documents or requested by the CITY, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR's receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lien or who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR shall furnish a bond satisfactory to CITY to indemnify CITY against any lien, or the CITY may directly pay any subcontractor or supplier and deduct that amount due to CONTRACTOR.





In addition, CONTRACTOR shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by a professional surveyor licensed by the State of Florida. Final payment to CONTRACTOR shall not be made until the shop drawings have been reviewed and approved by the CITY. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of CITY they do not represent correct or accurate "As-Built" drawings.

#### **13.4 Final Payment and Acceptance:**

**13.4.1** If, on the basis of observing the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation, the CITY is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, CITY will give written notice to CONTRACTOR that the Work is acceptable. Otherwise, the Application will be returned to CONTRACTOR indicating in writing the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, the amount will become due and will be paid by CITY to CONTRACTOR.

**13.4.2** If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and the occurrence is confirmed, CITY shall, upon receipt of CONTRACTOR's final Application for Payment, 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, 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 the CITY 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 held by the CITY.

**13.5** Final payment, constituting the entire unpaid balance of the agreed compensation, shall be paid by the CITY to CONTRACTOR when the work has been completed, the Contract fully performed, and a final certificate for payment has been issued by the CITY ENGINEER. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

- (1) Faulty or defective work and latent defects discovered after acceptance.
- (2) Failure of the work to comply with the requirements of the contract documents.
- (3) Terms of special warranties required by those contract documents.
- (4) Any of CONTRACTOR's continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR or the subcontractor for materials and supplies shall constitute a waiver of claims except those previously made in writing and identified as unsettled at the time of final application for payment.

#### **13.6 CITY's Right to Withhold Payment:**

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

**13.6.1** Defective work not remedied.

**13.6.2** Claims filed or evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

**13.6.3** Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.

**13.6.4** Damage to another contractor, subcontractor or supplier not remedied.



**13.6.5** Liability for liquidated damages has been incurred by the CONTRACTOR.

**13.6.6** Evidence that the Work cannot be completed for the unpaid balance of the agreed compensation.

**13.6.7** Evidence that the work will not be completed within the Agreement's term.

**13.6.8** Failure to carry out the Work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

#### **ARTICLE 14 - TERMINATION OF THE CONTRACT**

The CITY retains the right to terminate this Agreement without cause, with thirty (30) days prior written notice. Additionally, the City may also terminate this Agreement upon fifteen (15) days notice upon the occurrence of any one or more of the following events:

**14.1** If CONTRACTOR commences a voluntary case or a petition is filed against CONTRACTOR, under any chapter of the Bankruptcy Code, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

**14.2** If CONTRACTOR makes a general assignment for the benefit of creditors.

**14.3** If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors.

**14.4** If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.

**14.5** If CONTRACTOR disregards any local, state or federal laws or regulations.

**14.6** If CONTRACTOR otherwise violates any provisions of this Agreement.

Further, CONTRACTOR may be excluded from the Work site and the CITY take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use them 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 this instance, CONTRACTOR shall not be entitled to receive any further compensation until the Work is finished.

**14.7** If CONTRACTOR commits a default due to its insolvency or bankruptcy, the following shall apply:

**14.7.1** Should this Agreement be entered into and fully executed by the parties, funds released and the CONTRACTOR (Debtor) files for bankruptcy, the following shall occur:

a. In the event the Debtor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the City. The Debtor further agrees that in the event of this default, the City shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The City shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Debtor agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Debtor acknowledges that such waiver is done knowingly and voluntarily

b. Alternatively, in the event the City does not seek stay relief, or if stay relief is denied, the City shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361. The monthly adequate protection payments shall each be in an amount determined in accordance with the Note and Mortgage executed by the Debtor in favor of the City.



c. In the event the Debtor files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Debtor agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and Mortgage. Additionally, the Debtor shall agree that the City is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the Contractor has less than five (5) years of payments remaining on the Note, the Contractor agrees that the treatment afforded to the claim of the City under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

- 14.7.2** Should this Agreement be entered into and fully executed by the parties, and the compensation has not been forwarded to Debtor, the following shall occur:

In the event the Debtor files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Debtor acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Contractor acknowledges that the Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c) (2), unless the City expressly consents in writing to the assumption. In the event the City consents to the assumption, the Debtor agrees to file a motion to assume the Agreement within ten (10) days after receipt of written consent from the City, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Debtor further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

#### **ARTICLE 15 – OWNERSHIP OF DOCUMENTS**

All documents, as-built plans and specifications resulting from the project under this Agreement shall be deemed the sole property of the City, and the City shall have all rights incident to the sole ownership.

The CONTRACTOR shall agree to indemnify and hold harmless the City, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR.

#### **ARTICLE 16 - NOTICE**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the CONTRACTOR:

\_\_\_\_\_

To the CITY:

City Manager  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

With a copy to:

City Engineer/CIP Administrator  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319



**ARTICLE 17 - LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement, so that its liability never exceed the agreed sum of \$1,000.00. CONTRACTOR expresses its willingness to enter into this Agreement with CONTRACTOR'S recovery from the City for any action or claim arising from this Agreement to be limited to \$1,000.00.

Accordingly, and notwithstanding any other term or condition of this Agreement, CONTRACTOR agrees that the City shall not be liable to CONTRACTOR for damages in an amount in excess of \$1,000.00, for any action or claim of the CONTRACTOR or any third party arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

**ARTICLE 18 – MISCELLANEOUS**

- 18.1** The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY 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. This Article will be as effective as if repeated specifically in the Contract Documents will survive final payment and termination or completion of the Agreement.
- 18.2** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests. The obligations undertaken by CONTRACTOR pursuant to the Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Article shall constitute a material breach of Agreement by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR which shall immediately cease and terminate.
- 18.3** CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties.
- 18.4** CITY reserves the right to audit the records of CONTRACTOR relating in anyway to the work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract.
- 18.5** The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or later existing at law or in equity.
- 18.6** This Agreement shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.
- 18.7** Should any part, term or provision of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

**CONTRACTOR**

ATTEST:

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
(CORPORATE SEAL)

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

**CITY OF LAUDERDALE LAKES**

ATTEST:

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

\_\_\_\_\_  
Mayor

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

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
APPROVED AS TO FORM:

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

Dated: \_\_\_\_\_

# METRO EQUIPMENT SERVICE, INC.

**12-06-16**

## **Lauderdale Lakes Storm water Conveyance and Water Quality Improvement Project Construction Narrative and construction approach:**

The same steps will be taken for construction sequence on all 5 canals being quoted. Alternate # 1

Negotiate a contract, submit a performance and payment bond, and secure all pertinent permits including M.O.T. plans. Take videos and pictures of all homes where work will be performed.

First thing to take place on each of the canals is mobilization. We will be using cranes to mobilize barges to worksites and to place them in the water. These will take a few days to assemble. There will also be multiple pieces of heavy equipment mobilized to the sites (to include track-hoes, loaders, dump trucks, boats, rock boxes, conveyors, trailers, jobsite materials, etc.). Prior to mobilization all MOT related signage and Project signs will be posted and flagging and detour signs will be in place.

After equipment is on site and prepped for construction work to begin, floating turbidity barriers and BMP's will be set in place, as described in the plans and specs.

Any survey work needed will be done prior to commencement of work.

Site preparation, clearing, and grubbing will start the construction activities along with daily turbidity monitoring. After the sites are prepped, all activities will be done together to complete the scope(s) of work ( pre-survey where excavation is required, embankment fill, placement of fabrics, placement of rip rap, placement of Gabion baskets, extending of pipes, irrigation and re-set and sheet pile repairs). Fences will be removed and re-set where required. New fence will be installed. All work will be performed using GPS guided equipment using base stations and sensors to insure that the excavation, bedding and gabion baskets are installed precisely as per the plans.

To complete all scopes of work, there will be constant construction traffic (dump trucks and work trucks). All measures will be taken for dust control and cleansing of trucks before entering highway (street sweeper will be onsite along with water pumps and hoses). Daily communication with the City construction manager will take place.

Once all scopes of work are completed for each of the canals, cleanup and restoration will take place to restore staging/work areas to as they were, or better condition. At this time de-mobilization will take place (including cranes and same scopes as mentioned for mobilization).

BZ Diving will be a subcontractor working with Metro on Alternate # 1

# METRO EQUIPMENT SERVICE, INC.

Alternate # 2 will require the same approach except that Metro will coordinate with Lake & Wetland Management subcontractor on all Shoresox installation work. Based on the design criteria as per the gabion basket installation we have submitted a bid cost on line item # 15A cost using 3 to 4 layers of Shoresox in weights of 6' to 12 ' sections as needed. This has significantly increased our bid line item price. Metro Equipment Service, Inc. plan is on making a presentation to Lauderdale Lakes, R.J. Behar & Company along with any commissioners to discuss our design build ideas and strategies to substantially reduce material and construction expenses for alternate # 2 . Bid sheet Items #12, 13 and 16 will be the key drivers to achieve this goal.

We look forward to meeting with you and to present our significant cost savings ideas so that the City of Lauderdale Lakes will best utilize their funds and be able to correct a lot more linear feet of canal remediation needed in their canals.

Lake & Wetland Management and BZ Diving will be subcontractors in alternate # 2.

We thank you in advance for your consideration and we look forward to our strategy design build meeting.

Sincerely,



Abbey Fiallo  
Project Manager/ Estimator  
Metro Equipment Service, Inc.



NIELSON, HOOVER & COMPANY, INC.

April 2, 2015

RE: Metro Equipment Service, Inc.

To Whom It May Concern:

Please be advised that we are the bonding agents for Metro Equipment Service, Inc. ("Metro") through Travelers Casualty and Surety Company of America ("Travelers"); an A.M. Best rated carrier, with a rating of A++:XV.

We have had the privilege of providing all of Metro's bonding needs since 1987, and have never experienced any difficulties providing all of their bonding needs.

Metro has a very substantial bond line of surety credit in the amount of \$70,000,000 for any single project and an aggregate program of approximately \$150,000,000. Metro certainly has the ability to provide performance and payment bonds.

We hold Metro in the very highest regard and consider them to be among our finest clients.

Naturally, any bonds that are issued will be based upon acceptable contract terms as well as normal and standard criteria at the time of their request.

If you have any questions or need additional information, please do not hesitate to contact our office. Thank you.

Very truly yours,

*Charles D. Nielson*

Charles D. Nielson, Attorney-in-Fact & Florida Resident Agent  
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

CDN/mca



STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD  
2601 BLAIR STONE ROAD  
TALLAHASSEE FL 32399-0783

(850) 487-1395

BALSINDE, ALEJANDRO J  
METRO EQUIPMENT SERVICE, INC  
10101 SW 35 TERRACE  
MIAMI FL 33143

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto [www.myfloridalicense.com](http://www.myfloridalicense.com). There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION

CGC1519987 ISSUED 07/28/2016

CERTIFIED GENERAL CONTRACTOR  
BALSINDE, ALEJANDRO J  
METRO EQUIPMENT SERVICE, INC

IS CERTIFIED under the provisions of Ch.489 FS.  
Expiration date : AUG 31, 2018 L1607280001617

DETACH HERE

RICK SCOTT, GOVERNOR

KEN LAWSON, SECRETARY

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
CONSTRUCTION INDUSTRY LICENSING BOARD

LICENSE NUMBER

CGC1519987

The GENERAL CONTRACTOR  
Named below IS CERTIFIED  
Under the provisions of Chapter 489 FS.  
Expiration date: AUG 31, 2018

BALSINDE, ALEJANDRO J  
METRO EQUIPMENT SERVICE, INC  
10101 SW 35 TERRACE  
MIAMI FL 33143



ISSUED: 07/28/2016

DISPLAY AS REQUIRED BY LAW

SEQ # L1607280001617

## **Equipment List**

Powerscreen Warrior 800	2007 Vermeer T-655
John Deere 992	2006 Vermeer T-655
John Deere 800C	1990 Vermeer T-650
2004 John Deere 225C	Vermeer T-450
2001 Hitachi 450LC	
1999 Hitachi EX200	2006 New Holland Sweeper TC35
Komatsu PC-78	2003 New Holland Sweeper TC35
2008 Caterpillar 308DCR	1998 Massey Ferguson Sweeper 231S
2006 Komatsu PC200LC-7	
2008 Volvo ECR235CL	2006 Volvo BL70
2006 John Deere 330C-LC	2012 John Deere 310SJ EXT
Caterpillar 304DCR	1989 John Deere 310E
Caterpillar 305.5	1998 John Deere 310SE
	2012 John Deere 310SJ
2006 Bomag Roller BW120AD	
2005 Bomag Roller BW120AD-4	(5) 20' Container
2006 Dynapac Roller	(1) 40' Container
2007 Bomag Roller BW124DH-3	(5) Air Compressor
1998 Bomag Roller BMP851	(5) 500 Gallon Diesel Tank
2007 Bomag Roller 120AD	(5) Trench Box
	(2) Laser w/ Level
2000 Caterpillar IT28G	(9) Jumping Jack/Plate Compactor
2013 Caterpillar 262C	(30) Road Plate 8x20
2013 Caterpillar 262D	(5) Excavator Buckets
2005 Volvo L70E	(4) Heavy Duty Generators
2005 Volvo L70E	
1998 Volvo L70C	2013 Caterpillar Sweepster Broom
2013 Volvo L70G	2005 Mauldin 1750C Paving Machine
2004 Volvo L70E	
2010 Volvo L70F	

All equipment listed above is owned by Metro  
Equipment Service, Inc.

BID ITEM LIST  
LAUDERDALE LAKES  
STORMWATER CONVEYANCE AND WATER QUALITY IMPROVEMENT PROJECT  
ALTERNATE 1

ITEM	SPEC	DESCRIPTION	UNIT	UNIT PRICE	QTY CANAL 4	SUBTOTAL CANAL 4	QTY CANAL 5A	SUBTOTAL CANAL 5A	QTY CANAL 6	SUBTOTAL CANAL 6	QTY CANAL 9	SUBTOTAL CANAL 9	QTY CANAL 10	SUBTOTAL CANAL 10
1	Gen.	MOBILIZATION	LS	\$	72,345.1	\$ 72,345.1	150,000.1	\$ 150,000.1	75,000.1	\$ 75,000.1	75,000.1	\$ 75,000.1	70,000.1	\$ 70,000.1
2	Gen.	PROJECT SIGN	EA	\$	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1
3	D1065	PROJECT PERMITS	LS	\$	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1	1,500.1	\$ 1,500.1
4	D1570	MAINTENANCE OF TRAFFIC	LS	\$	36,000.1	\$ 36,000.1	90,000.1	\$ 90,000.1	36,000.1	\$ 36,000.1	36,000.1	\$ 36,000.1	36,000.1	\$ 36,000.1
5	D1320	CONSTRUCTION VIDEOS AND PHOTOGRAPHS	LS	\$	30,000.1	\$ 30,000.1	7,500.1	\$ 7,500.1	4,500.1	\$ 4,500.1	3,000.1	\$ 3,000.1	3,000.1	\$ 3,000.1
6	D2050	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	\$	34,600.1	\$ 34,600.1	66,800.1	\$ 66,800.1	40,000.1	\$ 40,000.1	—	\$ —	—	\$ —
7	D2435	FLOATING TURBIDITY BARRIER	LF	\$	29,700.1	\$ 29,700.1	25.1 x 60	\$ 1,500.1	23.5 x 191	\$ 4,500.1	25.1 x 32	\$ 800.1	23.735 x 87	\$ 2,100.1
8	D2270	TRUCK WASH OUT	EA	\$	5,000.1	\$ 5,000.1	5,000.1	\$ 5,000.1	5,000.1	\$ 5,000.1	5,000.1	\$ 5,000.1	5,000.1	\$ 5,000.1
9	D2435	TURBIDITY MONITORING	Months	\$	5,000.1	\$ 5,000.1	10,000.1	\$ 10,000.1	10,000.1	\$ 10,000.1	10,000.1	\$ 10,000.1	10,000.1	\$ 10,000.1
10	D2270	DUST CONTROL	DAY	\$	757.515	\$ 757.515	1,000.1	\$ 757.515	1,000.1	\$ 757.515	1,000.1	\$ 757.515	1,000.1	\$ 757.515
11	D2110	SITE PREPARATION AND CLEARING & GRUBBING	AC	\$	135,000.1	\$ 135,000.1	131,000.1	\$ 131,000.1	208,025.1	\$ 208,025.1	60,884.1	\$ 60,884.1	55,000.1	\$ 55,000.1
12	D2200	CHANNEL EXCAVATION	CY	\$	78,100.1	\$ 78,100.1	1,000.1	\$ 78,100.1	1,000.1	\$ 78,100.1	1,000.1	\$ 78,100.1	1,000.1	\$ 78,100.1
13	D2200	EMBANKMENT (FILL CONSTRUCTION)	CY	\$	155,555.1	\$ 155,555.1	1,000.1	\$ 155,555.1	1,000.1	\$ 155,555.1	1,000.1	\$ 155,555.1	1,000.1	\$ 155,555.1
14	D2221	IRRIGATION LINES RECONNECTIONS (SEE DETAIL)	EA	\$	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1
15	D2272	GABION BASKET, 36" THICK	SY	\$	350,400.1	\$ 350,400.1	350,400.1	\$ 350,400.1	350,400.1	\$ 350,400.1	350,400.1	\$ 350,400.1	350,400.1	\$ 350,400.1
16	D2370	RIPRAP- RUBBLE, DITCH LINING OR BEDDING STONE	CY	\$	190,000.1	\$ 190,000.1	1,000.1	\$ 190,000.1	1,000.1	\$ 190,000.1	1,000.1	\$ 190,000.1	1,000.1	\$ 190,000.1
17	D2433	STORMWATER PIPES (INCLUDES CONCRETE COLLARS)	LF	\$	325.1 x 40	\$ 13,000.1	325.1 x 40	\$ 13,000.1	325.1 x 40	\$ 13,000.1	325.1 x 40	\$ 13,000.1	325.1 x 40	\$ 13,000.1
18	D2486	SOD	SY	\$	10,749.1 x 706	\$ 7,589.1	10,749.1 x 706	\$ 7,589.1	10,749.1 x 706	\$ 7,589.1	10,749.1 x 706	\$ 7,589.1	10,749.1 x 706	\$ 7,589.1
19	D2821	FENCING RESET EXISTING (WOOD FENCE)	LF	\$	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1
20	D2821	FENCING RESET EXISTING (CHAIN LINK)	LF	\$	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1
21	D2821	FENCING NEW	LF	\$	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1	10.1 x 415	\$ 4,150.1
22	D3600	GROUT	CF	\$	3,600.1 x 2	\$ 7,200.1	3,600.1 x 2	\$ 7,200.1	3,600.1 x 2	\$ 7,200.1	3,600.1 x 2	\$ 7,200.1	3,600.1 x 2	\$ 7,200.1
23	D3700	CONCRETE	CY	\$	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1	2,000.1	\$ 2,000.1
24	D3700	SHEET PILE REPAIRS	LS	\$	4,700.1	\$ 4,700.1	4,700.1	\$ 4,700.1	4,700.1	\$ 4,700.1	4,700.1	\$ 4,700.1	4,700.1	\$ 4,700.1
25	D2050	ACM (As Approved by the City)	lbs	\$	16,450.1	\$ 16,450.1	45,350.1	\$ 45,350.1	45,350.1	\$ 45,350.1	45,350.1	\$ 45,350.1	45,350.1	\$ 45,350.1
26		ALLOWANCE (As Approved by the City)		\$										
TOTAL														
ALT. 1														

1



BID ITEM LIST  
LAUDERDALE LAKES  
STORMWATER CONVEYANCE AND WATER QUALITY IMPROVEMENT PROJECT  
ALTERNATE 2

ITEM	SPEC.	DESCRIPTION	UNIT	UNIT PRICE	QTY	SUBTOTAL	CANAL 5A	QTY	SUBTOTAL	CANAL 6	QTY	SUBTOTAL	CANAL 9	QTY	SUBTOTAL	CANAL 10	QTY	SUBTOTAL
1	Gen.	MOBILIZATION	LS	\$	72,345.1	\$	145,000.1	1	\$	70,000.1	1	\$	75,000.1	1	\$	70,000.1	1	\$
2	Gen.	PROJECT SIGN	EA	\$	1,500.1	\$	1,500.1	1	\$	1,500.1	1	\$	1,500.1	1	\$	1,500.1	1	\$
3	01065	PROJECT PERMITS	LS	\$	1,500.1	\$	1,500.1	1	\$	1,500.1	1	\$	1,500.1	1	\$	1,500.1	1	\$
4	01570	MAINTENANCE OF TRAFFIC	LS	\$	36,000.1	\$	36,000.1	1	\$	36,000.1	1	\$	36,000.1	1	\$	36,000.1	1	\$
5	01320	CONSTRUCTION VIDEOS AND PHOTOGRAPHS	LS	\$	3,000.1	\$	3,000.1	1	\$	3,000.1	1	\$	3,000.1	1	\$	3,000.1	1	\$
6	02050	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	\$	39,022.1	\$	39,022.1	1	\$	39,022.1	1	\$	39,022.1	1	\$	39,022.1	1	\$
7	02435	FLOATING TURBIDITY BARRIER	LF	\$	24,702.101	\$	24,702.101	1	\$	24,702.101	1	\$	24,702.101	1	\$	24,702.101	1	\$
8	02270	TRUCK WASH OUT	EA	\$	5,000.1	\$	5,000.1	1	\$	5,000.1	1	\$	5,000.1	1	\$	5,000.1	1	\$
9	02435	TURBIDITY MONITORING	Months	\$	5,000.1	\$	5,000.1	1	\$	5,000.1	1	\$	5,000.1	1	\$	5,000.1	1	\$
10	02270	DUST CONTROL	DAY	\$	157,515.33	\$	157,515.33	33	\$	157,515.33	33	\$	157,515.33	33	\$	157,515.33	33	\$
02110,				\$		\$			\$			\$			\$			\$
02114,		SITE PREPARATION AND CLEARING & GRUBBING	AC	\$	135,000.1	\$	135,000.1	1	\$	135,000.1	1	\$	135,000.1	1	\$	135,000.1	1	\$
02200		CHANNEL EXCAVATION	CY	\$	28,055.171	\$	28,055.171	1	\$	28,055.171	1	\$	28,055.171	1	\$	28,055.171	1	\$
02200		EMBANKMENT (FILL CONSTRUCTION)	CY	\$	765,555.181	\$	765,555.181	81	\$	765,555.181	81	\$	765,555.181	81	\$	765,555.181	81	\$
02221		IRRIGATION LINES RECONNECTIONS (SEE DETAIL)	EA	\$	500.1	\$	500.1	48	\$	500.1	48	\$	500.1	48	\$	500.1	48	\$
02272		GABION BASKET, 36" THICK	SY	\$	594.25	\$	594.25	40	\$	594.25	40	\$	594.25	40	\$	594.25	40	\$
02280		BIOENGINEERING EROSION CONTROL (SHORESOX)	LF	\$	242.367	\$	242.367	3,963	\$	242.367	3,963	\$	242.367	3,963	\$	242.367	3,963	\$
02370		RIPRAP - RUBBLE, DITCH LINING OR BEDDING STONE	CY	\$	128,998.1473	\$	128,998.1473	1	\$	128,998.1473	1	\$	128,998.1473	1	\$	128,998.1473	1	\$
02433		STORMWATER PIPES (INCLUDES CONCRETE COLLARS)	LF	\$	325.40	\$	325.40	42	\$	325.40	42	\$	325.40	42	\$	325.40	42	\$
02486		SOD	SY	\$	10,949.706	\$	10,949.706	1	\$	10,949.706	1	\$	10,949.706	1	\$	10,949.706	1	\$
02821		FENCING RESET EXISTING (WOOD FENCE)	LF	\$	10.415	\$	10.415	10	\$	10.415	10	\$	10.415	10	\$	10.415	10	\$
02821		FENCING RESET EXISTING (CHAIN LINK)	LF	\$	10.415	\$	10.415	10	\$	10.415	10	\$	10.415	10	\$	10.415	10	\$
02821		FENCING NEW	LF	\$	10.415	\$	10.415	10	\$	10.415	10	\$	10.415	10	\$	10.415	10	\$
03600		GROUT	CF	\$	3,000.1	\$	3,000.1	2	\$	3,000.1	2	\$	3,000.1	2	\$	3,000.1	2	\$
03700		CONCRETE	CY	\$	2,000.1	\$	2,000.1	2	\$	2,000.1	2	\$	2,000.1	2	\$	2,000.1	2	\$
03700		SHEET PILE REPAIRS	LS	\$	4,700.1	\$	4,700.1	1	\$	4,700.1	1	\$	4,700.1	1	\$	4,700.1	1	\$
02050		ACM (As Approved by the City)	lbs	\$	18,150.1	\$	18,150.1	1	\$	18,150.1	1	\$	18,150.1	1	\$	18,150.1	1	\$
02050		ALLOWANCE (As Approved by the City)		\$		\$			\$			\$			\$			\$
TOTAL ALT. 2																		



## Alternate 1 Price from Proposal Price Item List:

Canals	Total Price
Canal-4	One million Sixty-Eight thousand Six hundred & Ninety dollars
Canal-5A	Two million Nine hundred & Forty one thousand Four hundred & Sixty four dollars
Canal-6	One million Four hundred & Seventy four thousand five hundred & Ten dollars
Canal-9	Five hundred & Fifty three thousand Six hundred & eighty dollars
Canal-10	Three hundred & Forty thousand one hundred & one dollar <sup>25</sup> cents

## Alternate 2 Price from Proposal Price Item List:

Canals	Total Price
Canal-4	One million Two hundred & ninety six thousand Three hundred & Twenty six dollars
Canal-5A	Three million One hundred & fifty four thousand Seven hundred & Twelve dollars
Canal-6	One million Seven hundred & eighty two thousand Two hundred & Eighty two dollars
Canal-9	Five hundred & fifty-seven thousand Seven hundred & Forty two dollars
Canal-10	Three hundred & seventy Two thousand Nine hundred & Twenty-eight dollars

- A. Acknowledgment is hereby made of the following Addendum (identified by number) received since issuance of the Request for Proposals:

Addendum No. 1 Date: 2-5-16  
 Addendum No. 2 Date: 2-5-16  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

- B. Proposer accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

- C. The following documents are attached to and made as a condition to this Proposal:

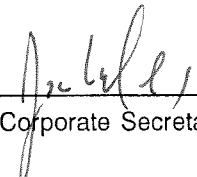
- Proposer's Certification
- Non-Collusion Affidavit
- Qualifications Statement
- Certificate of Insurance

- D. The correct legal name of Proposer is: METRO Equipment Service, INC.



## CERTIFICATES AS TO CORPORATE PRINCIPAL

I, Jorge L. Godoy, certify that I am the Secretary of the Corporation named as Principal in the foregoing bond; that Jorge L. Godoy who signed the said bond on behalf of the Principal, was then President of said Corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

  
Corporate Secretary Seal


STATE OF FLORIDA

COUNTY OF Miami-Dade

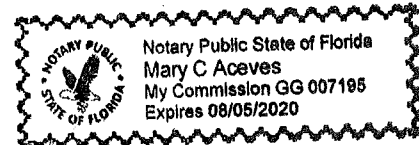
Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared Charles D. Nielson to me well known, who being by me first duly sworn upon oath, says that he is the Travelers Casualty and Surety Attorney in Fact, for the Company of America and that he has been authorized by them to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Lauderdale Lakes, Florida.

Subscribed and sworn before me this 14th day of September, 2016.

(Attach Power of Attorney)

  
Notary Public Mary C. Aceves  
State of Florida-at-Large

My commission Expires: August 5, 2020





## POWER OF ATTORNEY

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 225989

Certificate No. 006923914

**KNOW ALL MEN BY THESE PRESENTS:** That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Charles D. Nielson, Charles J. Nielson, Mary C. Aceves, David R. Hoover, Gicelle Pajon, Olga Iglesias, and Arthur Colley

of the City of Miami Lakes, State of Florida, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 4th day of August, 2016.

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company



State of Connecticut  
 City of Hartford ss.

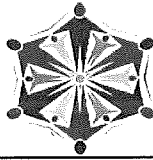
By: Robert L. Raney  
 Robert L. Raney, Senior Vice President

On this the 4th day of August, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
 My Commission expires the 30th day of June, 2021.



Marie C. Tetreault  
 Marie C. Tetreault, Notary Public



City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL, 33319

Department of Financial Services  
Phone: (954) 535-2828  
Fax: (954) 535-1892

## ADDENDUM No. 1

### ADDENDUM NO. 1

TITLE: Phase I - Lauderdale Lakes  
Stormwater Conveyance and Water Quality  
Improvement Project

RFP NO.: 17-1302-01R

RFP CLOSING DATE: **REVISED** November 21,  
2016 at 3:00 PM; December 6, 2016 at 3:00 PM

NUMBER OF PAGES: 48 including cover page

This Addendum to the contract documents is issued to provide additional information and clarification to the original solicitation requirements and is hereby declared a part of the original contract documents. In case of conflict, this Addendum shall govern. Bidders shall acknowledge receipt of this Addendum by signature of this form to be included with their intended Bid submission. Failure to sign and provide with bid submission shall deem your company as non-responsive.

### Questions, Answers, Clarifications & Announcements:

1. The non-mandatory pre-proposal sign-in sheet is provided
2. Last day for questions, Monday, November 28, 2016
3. Missing plans for Canal #4 is provided
4. Updated quantity pricing in the technical specifications is provided
5. Q1. Are there any contaminates in the canals.  
R1. No. There are no known contaminates in the canals of reference.

ALL ELSE REMAINS THE SAME

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

COMPANY NAME: META Equipment Service

SIGNATURE/DATE: [Signature] 2-5-16

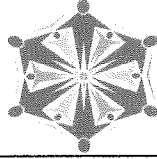
PRINTED NAME AGM Field

CITY OF LAUDERDALE LAKES

GR on behalf of Bobbi Williams

\_\_\_\_\_  
Bobbi Williams, MPA  
Budget and Management Analyst

Addendum No. 1



City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, Fl., 33319

Department of Financial Services  
Phone: (954) 535-2828  
Fax: (954) 535-1892

## ADDENDUM No. 2

### ADDENDUM NO. 2

**TITLE: Phase I - Lauderdale Lakes  
Stormwater Conveyance and Water Quality  
Improvement Project**

**RFP NO.: 17-1302-01R**

**RFP CLOSING DATE: December 6, 2016 at 3:00 PM**

**NUMBER OF PAGES: 3 including cover page**

This Addendum to the contract documents is issued to provide additional information and clarification to the original solicitation requirements and is hereby declared a part of the original contract documents. In case of conflict, this Addendum shall govern. Bidders shall acknowledge receipt of this Addendum by signature of this form to be included with their intended Bid submission. Failure to sign and provide with bid submission shall deem your company as non-responsive.

### Questions, Answers, Clarifications & Announcements:

Q1. Please breakdown how you want the contractor to distribute the \$250,000.00 allowance per each of the 5 canals.

**A1. The total allowance is \$100,000.00 and should be distributed by construction ratio for each canal.**

Q2. Under bid item #1 general conditions contractors can include all of the general conditions in addition to the mobilization cost. Is this correct?

**A2. Please see item 11 in the price proposal. Item 1 is mobilization only**

Q3. Please provide dimensions of the project sign and of what material it will be required to be built.

**A3. See attached sample of project sign**

Q4. Is there a bid bond requirement?

**A4. Yes, a bid bond (or cashier's check) in the amount of \$10,000 must be provided along with your proposal. In addition, a performance bond is required within 14 days of contract award.**

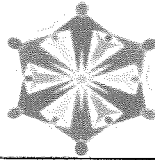
ALL ELSE REMAINS THE SAME

ACKNOWLEDGED BY:

Metro Equipment Service  
COMPANY NAME

[Signature] 12-5-16  
SIGNATURE/DATE

Abby Figueroa  
PRINTED NAME



City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, Fl., 33319

Department of Financial Services  
Phone: (954) 535-2828  
Fax: (954) 535-1892

**CITY OF LAUDERDALE LAKES**

A handwritten signature in cursive script that reads "Bobbi Williams". The signature is written in dark ink and is positioned above a horizontal line.

**Bobbi Williams, MPA**  
**Budget and Management Analyst**



E. Communications concerning this Proposal shall be addressed to:

METRO Equipment Service, INC. (Abbey Fiallo)  
City/State/Zip: Miami, Fla. 33173  
Phone & Fax: 305-586-8925 305-740-3305  
E-Mail: AF@MESINC.US

Submitted on: 12-06-16, 2016

B. Proposer accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

C. The following documents are attached to and made as a condition to this Proposal:

- a. Proper's Certification
- b. Non-Collusive Affidavit
- c. Qualifications Statement
- d. Certificate of Insurance

D. The correct legal name of Proposer is: METRO Equipment Service, INC.

E. Communications concerning this Proposal shall be addressed to:

Abbey Fiallo - METRO Equipment Service  
City/State/Zip: Miami, Fla. 33173  
Phone & Fax: 305-586-8925 - 305-740-3305  
E-Mail: AF@MESINC.US

Submitted on: 12-06, 2016





## AFFIDAVIT FOR CORPORATION

State of Florida  
County of Dade

Jorge L. Godoy is President (title) of the  
Metro Equipment Service, Inc. (corporation described herein) being duly sworn, deposes  
and says that:

- A. he/she is familiar with the books or the said corporation showing its financial position;
- B. the foregoing statements are a true and accurate statement of the financial position of said corporation as of the date hereof;
- C. the statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- D. he/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- E. the City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial, suspension or revocation of a existing work or contracts being performed by the Contractor for the City of Lauderdale Lakes, Florida.

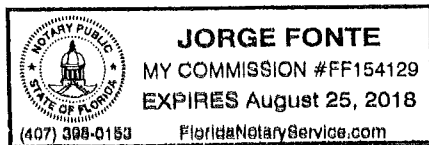
[Signature]  
(Officer must also sign here)

Sworn to me before this 6/12 day of 2016, by Jorge Godoy (name of affiant).

He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

[Signature]  
(Notary)

SEAL





## NON-COLLUSIVE PROPOSAL CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

Before me, the undersigned authority, on this day personally appeared Jorge L. Godoy (Authorized Officer), who being by me duly sworn, deposes and says:

1. That he/she is the President of the corporation/partnership known and styles as METRO EQUIPMENT SERVICE INC., duly formed under the laws of the State of Florida, on 9-21-1, 2016, he/she is duly authorized to represent such corporation/partnership in the making of this Affidavit and certification. That METRO EQUIPMENT SERVICE INC.

(corporation/partnership) has not, within six (6) months next preceding the date of this affidavit, entered into any combination, contract, obligation, or agreement to create or that may tend to create or to carry out any restriction on secret, competitive proposal on the "Project" known as Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project, Lauderdale Lakes, Florida; to fix, maintain, increase, or reduce the price set out in the Proposal on the Project; to fix or maintain any standard or figure whereby the price in the Proposal is or has been in any manner affected, controlled, or established; or in any other manner to prevent or lessen competition in the submitting the proposal for the Project.

2. That METRO EQUIPMENT SERVICE INC. (corporation/partnership) has not, during such time, entered into, executed, or carried out any contract, obligation, or agreement with any person, corporation, or association of persons not to submit a proposal on this Project below a common standard or figure, to keep the price thereof at fixed or graded figures, to preclude a fair and unrestricted competition in the submitting of the proposal of this Project, to regulate, fix or limit the proposal on the Project, or to abstain from engaging in the submittal on the Project, or any portion thereof.

3. That METRO EQUIPMENT SERVICE INC. (corporation/partnership) has not within six (6) months next preceding the date of this Affidavit, either directly or through the instrumentality of trustees or otherwise, acquired assets shares, bonds, franchise, or other rights in or physical properties of any other corporation or partnership for the purpose of preventing or lessening, or in a manner that tends to affect or lessen, competition in the proposal submittal on this Project.

4. That METRO EQUIPMENT SERVICE INC. (corporation/partnership) has not within six (6) months next preceding the date of this Affidavit entered into any agreement or understanding to refuse to buy from or sell to any other person, corporation, firm, or association of person which submits a proposal on the Project.

5. That no officer of METRO EQUIPMENT SERVICE INC. has, within Affiant's knowledge, during such six (6) months made on behalf of, or for its benefit any such contract or agreement as is specified in this Affidavit.

6. That these representations and warranties will be true at the time of the proposal opening.

By: Jorge L. GodoyIts: President

Authority Warranted

SWORN TO and subscribed before me this 6<sup>th</sup> day of DECEMBER, 2016.

Notary Public  
My Commission Expires: 8/25/2018



**QUESTIONNAIRE INSTRUCTIONS**

- A. All questions are to be answered in full, without exception. If copies of other documents will answer the question completely, they may be attached and clearly labeled. If additional space is needed, additional pages may be attached and if so added and attached, each must be clearly labeled.
- B. The City of Lauderdale Lakes shall be entitled to contact each and every person/company listed in response to this questionnaire. The Proposer, by completing this questionnaire, expressly agrees that any information concerning the Proposer in possession of said entities may be made available to the City.
- C. Only complete and accurate information shall be provided by the Proposer. The Proposer hereby warrants that, to the best of its knowledge and belief, the responses contained herein are true, accurate, and complete. The Proposer also acknowledges that the City is relying on the truth and accuracy of the responses contained herein. If it is later discovered that any material information given in response to a questions was provided by the Proposer, knowing it was false, it shall constitute grounds for immediate disqualification, termination, or rescission by the City of any subsequent agreement between the City and the Proposer.
- D. If there are any questions concerning the completion of this form, the Proposer is encouraged to contact Susan Gooding-Liburd, Financial Services Director, e-mail: [susangl@lauderdalelakes.org](mailto:susangl@lauderdalelakes.org) or Bobbi Williams, Budget and Management Analyst, [bobbw@lauderdalelakes.org](mailto:bobbw@lauderdalelakes.org), or fax: (954) 535-1892.



## QUESTIONNAIRE

Proposer's Name: METRO Equipment Service, INC.

Principal Office Address: 9415 SW 7251 Suite #131  
Miami, Fla. 33173

Official Representative: Jorge L. Godoy

Individual

Partnership ( Circle One)

Corporation

If a Corporation, answer this:

When Incorporated: 1987

In what State: Florida

If Foreign Corporation:

**Date of Registration with:**

Florida Secretary of State: May 1987

Name of Resident Agent: Jorge L. Godoy

Address of Resident Agent: 13201 SW 62 Ave Miami, Fla. 33156

President's Name: Jorge L. Godoy

Vice President's Name: Same

Treasurer's Name: Same

Members of Board of Directors: 1

If a Partnership:

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

General or Limited Partnership\*: \_\_\_\_\_

Name and Address of Each Partner:

	Name	Address
1.	Jorge L. Godoy	13201 SW 62 Ave.
2.		Miami, Fla. 33156
3.		

\*Designate general partners in Limited Partnership



1. Number of years of relevant experience in operating similar business: 29
2. Have any similar agreements held by Proposer for a similar project to the proposed project ever been canceled?  
 Yes ( ) No ☒   
 If yes, give details on a separate sheet.
3. Has the Proposer or any principals of the applicant organization failed to qualify as a responsible Proposer, refused to enter into a contract after an award has been made, failed to complete a contract during the past years, or been declared to be in default in any contract in the last years? No  
 If yes, please explain:
4. Has the Proposer or any of its principals ever been declared bankrupt or reorganized under Chapter 11 or put into receivership? No  
 If yes, give date, court jurisdiction, action taken, and any other explanation deemed necessary.
5. Person or persons interested in the proposal and Questionnaire Form (have) Have Not (have) not been convicted by a Federal, State, County or Municipal Court of any violation of law, other than traffic violations. To include stockholders over ten percent (10%). (Strike out inappropriate words).  
 Explain any convictions on a separate sheet.
6. Lawsuits (any) pending or completed involving the corporation, partnership or individuals with more than ten percent (10%) interest:
  - A. List all pending lawsuits: None
  - B. List all judgments from lawsuits in the last five years: None
  - C. List any criminal violations and/or convictions of the Proposer and/or any of its principals: None
7. List and describe all successful Performance and Payment Bond claims made to your surety(ies) during the last three years. The list and descriptions should include claims against the bond of the Proposer and its predecessor organization(s). None
8. Conflicts of Interest. The following relationships are the only potential, actual or perceived conflicts of interest in connection with this proposal: (If none, so state). None

The Proposer understands that information contained in this Questionnaire will be relied upon by the City of Lauderdale Lakes in awarding the proposed Agreement and such information is warranted by the Proposer to be true. The undersigned Proposer agrees to furnish such additional information, prior to acceptance of any proposal relating to the qualifications of the Proposer, as may be required by the City.

The Proposer further understands that the information contained in this questionnaire may be confirmed through a background investigation conducted by the Broward County Sheriff's Office. By submitting this questionnaire, the Proposer agrees to cooperate with this investigation, including but not necessarily limited to fingerprinting and providing information for credit check.

I certify that the information and responses provided on this Questionnaire are true, accurate and complete. The



City of Lauderdale Lakes

Department of Financial Services

Owner of the Project or its representatives may contact any entity or reference listed in this Questionnaire.

Each entity or reference may make any information concerning the Contractor available to the Owner.

Dated Dec 6, 2016

PROPOSER:

METRO Equipment Service, INC.

By [Signature]

Its PRESIDENT

Sworn to me before this 6<sup>th</sup> day of 2016, by JORGE FONTE (name of affiant). He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

[Signature]  
Notary Public

My Commission Expires:

8/25/2018





## PROPOSER'S CERTIFICATION

I have carefully examined the Request for Proposal, General Information, Specifications, proposed agreement and any other documents accompanying or made a part of this Request for Proposal.

I hereby propose to furnish the goods or services specified in the Request for Proposal. I agree that my proposal will remain firm for a period of up to 90 days in order to allow the City of Lauderdale Lakes adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the City of Lauderdale Lakes or any other Proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 278.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

Metro Equipment Service, INC.  
Name of Business

BY: [Signature]  
Signature

President  
Name & Title, Typed or Printed

9415 SW 72 ST Suite 131  
Mailing Address

Miami, Fla. 33173  
City, State, Zip Code

305-740-3303 EXT 103  
305-586-8925 AFE MRS INC. US  
Telephone Number Email Address

305-740-3305  
Facsimile Number

Sworn to and subscribed before me  
This 6<sup>th</sup> day of  
DECEMBER, 2016



[Signature]  
Notary Public

State of Florida



**PROPOSAL FORM FOR LAUDERDALE LAKES STORMWATER CONVEYANCE AND WATER QUALITY  
IMPROVEMENT PROJECT  
RFP # 16-1302-09R**

SUBMITTED TO:       ATTN: Financial Services Department  
                              City of Lauderdale Lakes  
                              4300 NW 36<sup>th</sup> Street  
                              Lauderdale Lakes, Florida 33319

- A.   The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into an Agreement with CITY to perform and furnish all work as specified or indicated in the Proposal and Contract Documents for the Contract price and within the Contract time indicated in the Proposal and in accordance with the other terms and conditions of the Proposal and Contract Documents.
- B.   Proposer accepts and hereby incorporates by reference in this Proposal Form all of the terms and conditions of the Request for Proposals, including without limitation those pertaining to the disposition of Proposal Security.
- C.   The Proposer has examined the site(s) of the project and has become fully informed concerning the local conditions, and nature and extent of work, and has examined all Contract Documents and bond and insurance requirements.
- D.   Proposer has given the City Manager written notice of all conflicts, errors or discrepancies that it has discovered in the Contract and/or Proposal documents and the written resolution thereof by the City Manager is acceptable to Proposer.
- E.   Proposer proposes to furnish all labor, construction services, materials, equipment, machinery, tools, transportation, supplies, services, and supervision and construction of the Lauderdale Lakes Stormwater Conveyance and Water Quality Improvement Project.
- F.   Proposer will complete the work for the following prices: please complete and attach **Exhibit B**.

*THAT  
MAY*



**SHORESUX/DREDGESUX REFERENCES**

**Palm Beach Polo & Country Club**

3031 Fortune Way, Suite A11  
Wellington, FL 33414  
(561) 514.1800  
Mr. Jim Taccone  
[Jim.Taccone@polopoa.com](mailto:Jim.Taccone@polopoa.com)

**City of Lauderdale Lakes**

4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319  
(954) 535.2819  
Mr. Vincent Richmond  
[VincentR@lauerdalelakes.org](mailto:VincentR@lauerdalelakes.org)

**Brightview Golf Maintenance**

**Boca Point Country Club**  
1200 Country Club Way  
West Palm Beach, FL 33413  
(239) 850.2924  
Mr. Lou Conzleman  
[lconzelmann@valleycrest.com](mailto:lconzelmann@valleycrest.com)

**City of Palm Coast**

160 Lake Avenue, Suite 203  
Palm Coast, FL 32164  
(386) 385.4707  
Capt. Mike Brennan  
[MBrennan@palmcoastgov.com](mailto:MBrennan@palmcoastgov.com)

**Tiburon Golf Club**

3195 Vanderbilt Beach Road  
Naples, FL 34109  
(239) 850.2924  
Mr. Lou Conzleman  
[lconzelmann@valleycrest.com](mailto:lconzelmann@valleycrest.com)

**The Seagate Country Club**

3600 Hamlet Drive  
Delray Beach, FL 33445  
(  
Mr. Ray Finch  
[rfinch@seategategolf.com](mailto:rfinch@seategategolf.com)

**Bear Lakes Country Club**

1901 Village Boulevard  
West Palm Beach, FL 33409  
(561) 644.9995  
Mr. David Troiano  
[davetroiano@hotmail.com](mailto:davetroiano@hotmail.com)



PO BOX 1096, Palm City, FL 34991

**B & Z Diving Services, LLC was founded in 2011.**

**Past experience:**

- C41 Canal Bank Stabilization Project(s) Phase 1-3 (32 miles of canal bank), SFWMD 2010-2013
- Hillsboro Canal Bank Stabilization Project (6 miles of canal bank), SFWMD 2013
- C4 Canal Bank Stabilization Project(s) Phase 2-3 (5 miles of canal bank), SFWMD 2013-2016
- Site 1 Impoundment Area - Erosion control materials installed on 3 miles of levy, USACE 2013-2014
- Desoto Canal Bank Stabilization Project (3 miles of canal bank), City of Punta Gorda 2014
- Corbett Levy Project - Erosion control materials installed on 5 miles of canal banks, SFWMD 2015
- Coral Springs Improvement District Rip Rap Stabilization project(s), Sites 1-9, CSID 205-2016

*Thank You!*  
[www.bzdiving.com](http://www.bzdiving.com)

# METRO EQUIPMENT SERVICE, INC.

## RELATED PROJECT EXPERIENCE

### Completed Project #1

Required products utilized: ACBM, HPTM, #4 Stone #1 Stone & 6-12" RipRap culverts 36"-54"

Agency/company: South Florida Water Management District

Current contact person at agency/company: Kevin Snell

Telephone: 561-682-2588 Fax: 561-242-5499 Email: ksnell@sfwmd.gov

Address of agency/company: 3301 Gun Club Road West Palm Beach Florida 33406

Name of project: Hillsboro Canal Stabilization Project

Material/Method: Same as description

Description: Installed 6.5 miles of ACBM, HPTM, cut & fill using #4 stone, #1 stone, 6"-12"

RipRap. Removal of vegetation, hauling, discharge pipe installation & adjustments. Multiple

Corrugated metal & concrete culverts 36"-54" & 72" using Sitech – GPS guided system

Total Project value: \$6,270,095.00 Value of Applicant's work: \$5,054,000.00

Name(s) of assigned personnel: Abbey Fiallo

Project Manager: Abbey Fiallo

### Completed Project #2

Required products utilized: Maccaferri Gabion baskets, 3"-6" RipRap, bedding stone

Agency/company: South Florida Water Management District

Current contact person at agency/company: Kevin Snell

Telephone: 561-682-2588 Fax: 561-242-5499 Email: ksnell@sfwmd.gov

Address of agency/company: 3301 Gun Club Road – West Palm Beach, FL 33406

Name of project: C100 & C2 canals

# METRO EQUIPMENT SERVICE, INC.

Material/Method: Gabion baskets and RipRap

Description: Installed bedding stone & placed gabion baskets filled with 3"-6" RipRap using barges with excavators & spreader bars. Using barges with push boats to transport assembled gabion baskets in six locations throughout South Dade Canals

Total Project value: \$1,234,150.00 Value of Applicant's work: \$863,905.00

Start date: January, 2011 Completion date: November, 2011

Name(s) of assigned personnel: Abbey Fiallo

Project Manager: Abbey Fiallo

## Completed Project #3

Required products utilized: #1 stone & 6"-12" RipRap & Geotech

Agency/company: Globaltech Engineering/Coral Springs Improvement District

Current contact person at agency/company: Rick Olson

Tele: 561-997-6433, cell 954-647-9530 Fax: 561-997-5811 e-mail: rolson@globaltechdb.com

Address of agency/company: 6001 Broken Sound Pky. Ste. 610, Boca Raton, FL 33487

Name of project: Coral Springs Site 1-5

Material/Method: Same as description below

Description: Install #1 stone from various elevations to elevation 5+ & sod. All work done from Barges & using 2 push boats with 2 rock boxes on barges. Using 50' & 60' long-reach Sitech GPS guided system.

Total Project value: \$3,690,040.00 Value of Applicant's work: \$2,945,250.00

Start date: February, 2015 Completion date: November, 2015

Name(s) of assigned personnel: Abbey Fiallo

Project Manager: Abbey Fiallo

# METRO EQUIPMENT SERVICE, INC.

## Completed Project #4

Required products utilized: Geotextile TenFlo with 100-2 & Fabriform Reventment System

Agency/company: South Florida Resource Conservation & Development Council

Current contact person at agency/company: Wes Scott

Telephone: 954-480-7176 Fax: 305-245-2473 Email: wesscott@sfrcd.org

Address of agency/company: 15600 SW 288 St. Suite 402, Homestead, FL 33033

Name of project: Lake Esmeralda

Material/Method:

Description: 1.5 miles of Lake re-grading & installation Geotextile TenFlo with 100-2 & Fabri-  
form reventment system. Concrete Slurry using excavators.

Total Project value: \$2,695,000.00 Value of Applicant's work: \$2,295,000.00

Start date: February, 2009 Completion date: December, 2009

Name(s) of assigned personnel: Abbey Fiallo

Project Manager: Abbey Fiallo

## Completed Project #5

Required products utilized: Armour Rock, RipRap Rubble

Agency/company: Miami Dade County Port of Miami

Current contact person at agency/company: Juan Bergouignan & Frank Ramirez

Telephone: 305-347-4974 Fax: \_\_\_\_\_ Email: juberg@miamidade.gov

Address of agency/company: 1015 N. America Way, Miami, FL 33132

Name of project: Pilot Station RipRap

Material/Method: Armour Rock, RipRap Rubble, Geotech Fabric

# METRO EQUIPMENT SERVICE, INC.

Description: Regrading excavation & placement of Armour Rock, RipRap Rabbie. Relocation  
of live coral & sponges at the Pilot Station for the port of Miami. Electrical & lighting install-  
tion of flag pole. Concrete & asphalt drainage using excavators & Long Reach.

Total Project value: \$1,415,977.92 Value of Applicant's work: \$1,090,040.00

Start date: February, 2011 Completion date: September, 2011

Name(s) of assigned personnel: Abbey Fiallo

Project Manager: Abbey Fiallo

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: Yes

Contract Requirement: Yes

#### Title

RESOLUTION 2017-048 AWARDING ITB #17-1302-05B TO VICTORY ENGINEERS AND GENERAL CONTRACTING, LLC FOR THE COMPREHENSIVE PARK IMPROVEMENTS PROJECT, AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, ON A INVITATION TO BID IN AN AMOUNT UP TO ONE HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS (\$196,456.60)

#### Summary

This Resolution awards ITB #17-1302-05B to the lowest responsible and responsive proposer. The Purchasing Division recommends to the Mayor and City Commission, Victory Engineers and General Contracting. The contractor will provide infrastructural improvements to the City's Aquatics Center and Willie Web Senior Park. The scope of services includes the furnishing of all labor, materials, machinery, equipment, tools, and supervision necessary to perform the required tasks associated with the project.

#### Staff Recommendation

#### Background:

Staff recommends that the Mayor and City Commission accepts the recommended contractor, Victory Engineers and General Contracting.

The scope of service includes infrastructural improvements to the City's Aquatic's Center and Willie Web Senior Park.

The term of the contract of one (1) year with an option to renew for one additional year for a total of two (2) years. Effective date of the contract is May 1, 2017 through April 30, 2018.

The estimated cost of the project is \$196,456.60

#### Funding Source:

For FY 2017, there is adequate funding available in the NW 41<sup>st</sup> Street Improvement Project. This project is grant funded through the Department of Economic Opportunity.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO / Director of Financial Services and Magsood M. Nasir, PE, City

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
❑ Resolution 2017-048 - Comprehensive Park Improvements	Resolution
❑ Purchasing Division Memo	Backup Material
❑ Draft Contract	Exhibit
❑ ITB 17-1302-05B Comprehensive Park Improvements	Backup Material
❑ Victory Engineers and General Contracting-Bid	Backup Material

## RESOLUTION 2017-048

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT BETWEEN THE CITY OF LAUDERDALE LAKES AND VICTORY ENGINEERS AND GENERAL CONTRACTING, UNDER THE CONTRACT #17-1302-05B COMPREHENSIVE PARK IMPROVEMENTS FOR THE TERM OF MAY 1, 2017 THROUGH APRIL 30, 2018, IN AN AMOUNT UP TO ONE HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS (\$196,456.00); A SUMMARY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 4 and 9, 2017, the City publicized a Invitation to Bid #17-1302-05B for the Comprehensive Park Improvements Projects,

WHEREAS, one thousand six hundred ninety-five (1,695) vendors were notified through DemandStar, and

WHEREAS, pursuant to request for proposal requirements in connection with which a contract is to be awarded, the awardee will be required to provide infrastructural improvements to the City's Aquatics Center and Willie Web Senior Park, and

WHEREAS, in accordance with the City's Procurement Code, bids for the services were solicited, advertised and, ultimately, opened on February 23, 2017 at 3:00 p.m., and

WHEREAS, three (3) proposals were received and publically opened, and



WHEREAS, the proposals were evaluated, as follows:

<b>Contractor</b>	<b>Aquatics Center Cost</b>	<b>Willie Web Senior Park Cost</b>	<b>Grand Total</b>
Victory Engineers and General Contracting	\$64,776.60	\$131,680.00	\$196,456.60
E and F Florida Enterprises, Inc dba Creative Contracting Group	\$71,620.60	\$176,734.30	\$248,354.90
West Construction, Inc.	\$140,165.00	\$232,943.60	\$373,108.60

WHEREAS, it was determined that Victory Engineers and General Contracting was the lowest responsive and responsible proposer, and

WHEREAS, the City Staff recommends that the term of the Contract be one (1) year, with one (1) one (1) year renewal, and that the City Manager has authority to add to or delete from the scope of services and/or service locations to the Contract, as the budget allows, and to terminate the awarded Contract and award the same, thereafter, to the next lowest responsible and responsive proposer, in the event of a contractor default,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement between the City of Lauderdale Lakes and Victory Engineers and General Contracting, in an amount up to One Hundred Ninety-Six Thousand Four Hundred Fifty-Six Dollars (\$196,456.00), a summary of which is attached as **Exhibit A**, and the City Manager is hereby authorized, in accordance with such Agreement, to delete or add to the scope of services and/or service locations as the budget will allow, as well as terminate the awarded contract and, thereafter, award to the next lowest bidder, in the event of contractor default.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Victory Engineers and General Contracting, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

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MAYOR HAZELLE ROGERS

ATTEST:

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SHARON HOUSLIN, CITY CLERK

JCB:jla

Sponsored by: SUSAN GOODING-LIBURD, MBA, CPA, CGFO, Financial Services  
Director and Masgood M. Nasir, PE, City Engineer

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)



**CITY OF LAUDERDALE LAKES  
INTEROFFICE MEMORANDUM  
FINANCIAL SERVICES DEPARTMENT**

**TO: Phil Alleyne, City Manager**

**DATE: March 31, 2017**

**FROM: Susan Gooding-Liburd, MBA, CPA,  
CGFO, Financial Services Director**

**SUBJECT: ITB No.: 17-1302-05B**

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The City of Lauderdale Lakes solicited qualified firms and competent contractor to provide all necessary construction services and materials for the Comprehensive Park Improvements Project in accordance with the construction plans and specifications.

The solicitation for the Comprehensive Park Improvement Project was advertised in the Sun-Sentinel, a newspaper of general paid circulation in the county, on February 4, and 9, 2017. It was also solicited in the City's electronic bid system, [Demandstar.com](http://Demandstar.com) from February 4, 2017 until February 23, 2017. The solicitation was provided to 1,695 firms, of which 50 downloaded the solicitation packet. In addition, the City held a mandatory pre-bid conference and site inspection on February 10, 2017 and there were six (6) firms in attendance. The solicitation was advertised in accordance with the requirements set forth in the City's procurement policies.

The solicitation was closed February 23, 2017 at 3:00 pm after being extended from its original closing date of February 22, 2017. At that time, the City received three (3) proposals, Victory Engineers and General Contracting, E and F Florida Enterprises, Inc dba Creative Contracting Group, and West Construction, Inc.

The results of each bid is shown below:

<b>Contractor</b>	<b>Aquatics Center Cost</b>	<b>Willie Web Senior Park Cost</b>	<b>Grand Total</b>
Victory Engineers and General Contracting	\$64,776.60	\$131,680.00	\$196,456.60
E and F Florida Enterprises, Inc dba Creative Contracting Group	\$71,620.60	\$176,734.30	\$248,354.90
West Construction, Inc.	\$140,165.00	\$232,943.60	\$373,108.60

Staff recommends awarding the contract to Victory Engineers and General Contracting in an amount up to \$196,456.60 for this project.

The term of contract is requested for a term of one (1) year to complete the project with an option to renew for one (1) additional year.

If approved, City staff will commence mobilization activities upon acceptance and approval of all required documents.

Encl. (s)

1. Bid tabulation

Bid Number: ITB17-1302-05B Comprehensive Park Imp Project

Bid Closing Date: February 23, 2017 @ 3pm

Prepared by: Bobbi Williams

Verified by: Geeta Ramharry

Vendor

FEIN

Is bid responsive?

Local Vendor (Y/N)

Division of Corporations -Active (Y/N)

E and F Florida Enterprises			Victory Engineers and General Contractors LLC			West Construction Inc		
20-0261053			26-0650258			59-1809068		
Yes			Yes			Yes		
Boca Raton, FL			Hialeah, FL			Lake Worth, FL		
N			Y			N		
Y			Y			Y		
ITEM #	BID QUANTITY	UNIT	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
W1	13,650	SF	\$ 1.09	\$ 14,878.50	\$ 2.40	\$ 32,760.00	\$ 1.00	\$ 13,650.00
W2	1,250	SF	\$ 8.04	\$ 10,050.00	\$ 6.00	\$ 7,500.00	\$ 10.00	\$ 12,500.00
W3	1,480	SF	\$ 11.20	\$ 16,576.00	\$ 11.00	\$ 16,280.00	\$ 10.00	\$ 14,800.00
W4	840	SF	\$ 11.20	\$ 9,408.00	\$ 11.00	\$ 9,240.00	\$ 10.00	\$ 8,400.00
W5	240	SF	\$ 11.20	\$ 2,688.00	\$ 11.00	\$ 2,640.00	\$ 10.00	\$ 2,400.00
W6	216	SF	\$ 11.20	\$ 2,419.20	\$ 11.00	\$ 2,376.00	\$ 10.00	\$ 2,160.00
W7	1	LS	\$ 39,800.00	\$ 39,800.00	\$ 3,000.00	\$ 3,000.00	\$ 65,000.00	\$ 65,000.00
W8	3,600	SF	\$ 7.00	\$ 25,200.00	\$ 1.00	\$ 3,600.00	\$ 8.75	\$ 31,500.00
W9	1,570	LS	\$ 11.78	\$ 18,494.60	\$ 14.00	\$ 21,980.00	\$ 20.00	\$ 31,400.00
W10	1,472	SF	\$ 10.00	\$ 14,720.00	\$ 7.00	\$ 10,304.00	\$ 11.30	\$ 16,633.60
W11	1	LF	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 10,000.00	\$ 10,000.00
W12	1	SF	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 2,500.00	\$ 2,500.00
W13	1	LS	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 1,500.00	\$ 1,500.00
W14	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
W15	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
W16	1	AL	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
SUB-TOTAL WILLIE L. WEBB PARK			\$ 176,734.30			\$ 131,680.00		
			\$ 232,943.60					

ITEM #	BID QUANTITY	UNIT	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
P1	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 3,375.00	\$ 3,375.00	\$ 10,000.00	\$ 10,000.00
P2	350	LF	\$ 15.70	\$ 5,495.00	\$ 5.75	\$ 2,012.50	\$ 30.00	\$ 10,500.00
P3	1	LS	\$ 21,771.00	\$ 21,771.00	\$ 9,434.10	\$ 9,434.10	\$ 36,285.00	\$ 36,285.00
P4	1,140	SF	\$ 2.19	\$ 2,496.60	\$ 1.00	\$ 1,140.00	\$ 2.00	\$ 2,280.00
P5	1,140	SF	\$ 3.00	\$ 3,420.00	\$ 5.00	\$ 5,700.00	\$ 12.00	\$ 13,680.00
P6	8	EA	\$ 362.50	\$ 2,900.00	\$ 300.00	\$ 2,400.00	\$ 350.00	\$ 2,800.00
P7	1	LS	\$ 7,500.00	\$ 7,500.00	\$ 15,000.00	\$ 15,000.00	\$ 13,000.00	\$ 13,000.00
P8	1	LS	\$ 3,300.00	\$ 3,300.00	\$ 1,742.00	\$ 1,742.00	\$ 4,000.00	\$ 4,000.00
P9	400	LF	\$ 16.00	\$ 6,400.00	\$ 1.50	\$ 600.00	\$ 7.00	\$ 2,800.00
P10	1,600	SF	\$ 1.50	\$ 2,400.00	\$ 1.00	\$ 1,600.00	\$ 1.00	\$ 1,600.00
P11	1,600	SF	\$ 1.18	\$ 1,888.00	\$ 2.00	\$ 3,200.00	\$ 0.95	\$ 1,520.00
P12	1	LS	\$ 1,350.00	\$ 1,350.00	\$ 11,373.00	\$ 11,373.00	\$ 22,000.00	\$ 22,000.00
P13	1	LS	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 10,000.00	\$ 10,000.00
P14	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 2,500.00	\$ 2,500.00
P15	1	LS	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 1,500.00	\$ 1,500.00
P16	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
P17	1	LS	\$ 700.00	\$ 700.00	\$ 700.00	\$ 700.00	\$ 700.00	\$ 700.00
SUB-TOTAL POOL FACILITY IMPROVEMENTS			\$ 71,620.60			\$ 64,776.60		
TOTAL BID PRICE (WILLIE WEBB PARK + POOL FACILITY)			\$ 248,354.90			\$ 196,456.60		

\*item P3, P7, P12 quoted by sf

## LAUDERDALE LAKES CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT is made and entered into as of this 11th day of April, 2017, between the CITY OF LAUDERDALE LAKES FLORIDA, a Florida municipal corporation, (CITY), and Victory Engineers and General Contractors, LLC (CONTRACTOR), (Parties).

WHEREAS, the CITY desires to retain a CONTRACTOR for the Project as expressed in its Invitation to Bid No. **ITB#17 – 1302-05B** for Comprehensive Park Improvements Project, which closed on February 23, 2017; and

WHEREAS, the CONTRACTOR has expressed its willingness and capability to perform the necessary work to accomplish the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the Parties agree as follows:

### **ARTICLE 1 - DEFINITIONS**

Wherever used in this Agreement or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural forms:

- 1.1 **Agreement** - The written agreement between CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to or incorporated in the Agreement. Also referred to as "Contract".
- 1.2 **Change Order** - A document which is signed by the CITY and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Term or Compensation, issued on or after the Effective Date of the Agreement.
- 1.3 **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.4 **Contractor** – The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Agreement.
- 1.5 **Contract Documents** - The Contract Documents shall consist of the Drawings, Plans and Specifications, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the effective date of the Agreement.
- 1.6 **Drawings** - The drawings which show the character and scope of the Work to be performed and which are referred to in the Contract Documents.
- 1.7 **Engineer** - The CITY'S Engineer of the City of Lauderdale Lakes, Florida, or the authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.8 **Notice to Proceed** - A written notice given by CITY to CONTRACTOR fixing the date on which the Work shall commence and the CONTRACTOR begins to perform its obligations under the Contract Documents.
- 1.9 **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship regarding the project.
- 1.10 **Worksite** – Location(s) inclusive of each site described in the plans and/or specifications.

**ARTICLE 2 - CONTRACT DOCUMENTS****2.1 Enumeration of Contract Documents:**

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR and consist of the following:

- (1) This Agreement.
- (2) Construction performance bond.
- (3) Construction payment bond.
- (4) Insurance certificate(s) per ITB requirements.
- (5) Notice of Award and Notice to Proceed.
- (6) Request for Proposal and the Specifications prepared by the CITY (Exhibit 1)
- (7) CONTRACTOR's Response to the CITY's Invitation to Bid No. ITB#17-1302-05B dated February 23, 2017 (Exhibit 2).
- (8) Schedule of Completion.
- (9) Standard General Conditions of the Construction contract for the City of Lauderdale Lakes Florida (Exhibit 3).

Any amendments executed by the CITY and the CONTRACTOR shall become part of this Agreement. Documents not included in this Article do not, and shall not, form any part of this Agreement. In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Commission (or designee).
- b. This Agreement dated April 11, 2017.
- c. Exhibit 1. Invitation to Bid 17-1302-05B
- d. Exhibit 2. Bid submitted February 23, 2017.
- e. Exhibit 3. Standard General Conditions of the Construction Contract.

**2.2 Conflict, Error or Discrepancy:**

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to the CITY, in writing at once and, before proceeding with the Work affected, shall obtain a written interpretation or clarification from CITY.

**2.3 Representation of CONTRACTOR:**

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the Work site and is familiar with the local conditions under which the Work is to be performed.

**ARTICLE 3 - SCOPE OF WORK****3.1** The CONTRACTOR shall perform all of the work required, implied and reasonably inferable from this Agreement including, but not limited to, the following:

**3.1.1** Construction of the Project in accordance with the approved plans and specifications;

**3.1.2** The furnishing of any required surety bonds and insurance;

**3.1.3** The provision of furnishing, and prompt payment for, labor, supervision, services, materials, supplies, equipment, fixtures, facilities, communication and security systems, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities and all necessary tree permit, building permits and other permits required for the construction of the Project;

**3.1.4** The preparation and submission to the CITY of detailed and comprehensive as-built drawings signed and sealed by a registered surveyor licensed by the State of Florida depicting all as-built construction. All as-built drawings shall be submitted to the CITY upon final completion of the Project



and receipt by the CITY shall be a condition precedent to final payment to the CONTRACTOR.

- 3.2** In order to induce the CITY to execute this Contract, the CONTRACTOR makes the following express representations to the CITY:
- 3.2.1** The CONTRACTOR is fully qualified to act as the CONTRACTOR for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the CONTRACTOR for the Project;
- 3.2.2** The CONTRACTOR has become familiar with the Project site(s) and the local conditions under which the Project is to be constructed and operated; and
- 3.2.3** The CONTRACTOR has received, reviewed and carefully examined all of the documents which make up this Agreement, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction.
- 3.3** CONTRACTOR (or its agent or subcontractor) shall provide a minimum of inconvenience to the public and to local business activities.
- 3.4** CONTRACTOR shall ensure that the public roadway and any improvements or appurtenant to the Work site remain open to the public and is fully operational whenever and wherever possible, and that sufficient signage as requested by the CITY is provided to direct the public or other invitees during performance of Work.
- 3.5** CONTRACTOR shall maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient lighting for the prevention of accidents. The CONTRACTOR shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.
- 3.6** Any material or waste generated by CONTRACTOR or its employees, agents and subcontractors shall be removed and disposed of, as necessary, by the CONTRACTOR, at the CONTRACTOR's expense, to the satisfaction of the CITY.
- 3.7** The CONTRACTOR shall also restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the CONTRACTOR during the performance of Work, and shall leave the work site and vicinity unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.
- 3.8** The CONTRACTOR shall notify the CITY, in writing, of any pre-existing damage to surrounding roadways, swales and improvements prior to commencing any Work. Failure to notify the CITY of any damage shall result in the CONTRACTOR's duty to repair the damage at no additional expense.
- 3.9** Storage of the materials shall be at a location approved by the CITY. CONTRACTOR shall obtain a no fee permit from the CITY, and shall pay the required county surcharges and fees. The CONTRACTOR shall be responsible for the replacement of any existing materials or structures damaged by the CONTRACTOR during the construction process, and any damage shall be restored to the acceptance of the CITY.
- 3.10** The CONTRACTOR shall exercise due caution throughout this Work to minimize the possibility of damage to utilities resulting from its activities. The CONTRACTOR shall verify the location of all overhead and underground utilities prior to any excavation, including notifying the Underground Notification Center and the CITY's Public Works Department and Development Services Department of any proposed excavation locations.
- 3.11** Whenever it is necessary to temporarily interrupt any local or surrounding activities, the CONTRACTOR shall notify the Owner or tenant or their designee prior to the interruption and again immediately before the service is resumed. Before disconnecting any underground or overhead utilities, the CONTRACTOR

shall make similar arrangements for their disconnection with the Owner, tenant or a designee. The CONTRACTOR shall be responsible for any damage caused by CONTRACTOR to such utilities, and shall restore them to service promptly as soon as the Work interruption has ended.

- 3.12** The CITY may, periodically, inspect the real property for the purpose of assuring compliance with this Agreement.
- 3.13** In the event the Owner or CONTRACTOR prevents the CITY from inspecting the Project for purposes of assuring compliance with this Agreement or with the contract documents, the CITY shall be entitled to immediately terminate this Agreement, retain all funds, seek reimbursement for any funds distributed for the Project and obtain other relief as permitted by the Agreement. Further, action by the Owner or CONTRACTOR to prevent or deny the CITY's inspection of the project will constitute a default of this Agreement, and the CITY shall be entitled to exercise any and all remedies at law or equity.
- 3.14** The CONTRACTOR shall at all times during the performance of the Work keep the work site free and clear of all rubbish and debris to the CITY's satisfaction, and within the applicable time frames specified under the general conditions in Exhibit "1". All sand, grit, solids and other material, accumulated rubbish or surplus materials shall be removed at the end of each work day.
- 3.15** After the CITY gives not less than 24-hour notice to the CONTRACTOR to clear the site of rubbish, debris and other work site materials or not less than 72-hour notice to restore or replace distributed, displaced or damaged property, and the CONTRACTOR fails to comply, the CITY may employ labor or equipment as it deems necessary to clear the site, impose the cost of the work, together with the cost of supervision, against the CONTRACTOR and deduct the cost from the compensation due to the CONTRACTOR.

#### **ARTICLE 4 - TERM**

The Work to be performed under this Agreement shall commence upon the date specified in the Notice to Proceed and, subject to authorized adjustments, shall be completed no later than One (1) year after the execution of this Agreement. CONTRACTOR agrees that all Work under this Agreement shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed term. Failure to achieve timely, substantial and/or final completion shall be regarded as a material breach of this Agreement, and shall be subject to the appropriate remedies including but not limited to liability for liquidated damages in accordance with Article 10.

#### **ARTICLE 5 - COMPENSATION**

CITY shall pay CONTRACTOR for the performance of all work, in accordance with Article 13, subject to additions and deductions by Change Order as provided in this Agreement, up to One Hundred Ninety-Six Thousand Four Hundred Fifty-Six and 60/100 Dollars (\$196,456.60) as full compensation for this Project only. Compensation for future performance and work must be approved by City Commission.

#### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

##### **6.1 Liability for Contracted Work:**

As an inducement for CITY to enter into this Agreement, CONTRACTOR has represented an expertise in professional construction of public construction projects by qualified and licensed general construction contractors. In reliance upon those representations, CITY hired CONTRACTOR to construct the Project. CONTRACTOR shall be liable for any defective or negligent work, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty.

##### **6.2 Shop Drawings and Samples:**

**6.2.1** CONTRACTOR shall submit to CITY for review and approval five (5) copies of all Shop Drawings

for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles seven (7) calendar days before the scheduled commencement of the construction work. The purpose of the Shop Drawing is to show the suitability, efficiency, technique of manufacture,

installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

**6.2.2** CONTRACTOR shall also submit to CITY, for review and approval, all samples required by the Contract Documents which shall clearly identify material, supplier, pertinent data such as catalog numbers and the intended use.

**6.2.3** Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

**6.2.4** At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall specifically note each variation on each Shop Drawing submitted for review and approval. Failure by the CITY to notice or identify CONTRACTOR's failure to make the notation shall not relieve CONTRACTOR from the responsibility to comply with the Contract Documents.

**6.2.5** Approval of the Shop Drawings by CITY shall be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the Work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings. No work called for by any Shop Drawing shall be done until the drawings have been approved by CITY.

### **6.3 Supervision:**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention and applying CONTRACTOR's best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall ensure that the finished Work complies accurately with the Contract Documents.

### **6.4 On Site Management:**

CONTRACTOR shall keep on the Work site at all times during its progress a competent on-site manager and any necessary personnel who shall not be replaced without written notice to CITY unless the personnel proves to be unsatisfactory to CONTRACTOR or to the CITY. The on-site Manager shall be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the on-site Manager shall be as binding as if given to CONTRACTOR.

### **6.5 Labor:**

**6.5.1** Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida. Suppliers shall be selected and paid by the CONTRACTOR; the CITY reserves the right to approve all suppliers and materials.

**6.5.2** CONTRACTOR shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the Work site. Except in connection with the safety or protection of persons, the Work, or property adjacent to the site, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during the hours of 7:30 a.m. and 5:00 p.m. CONTRACTOR will

not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without CITY's written consent.

**6.6 Materials:**

**6.6.1** Unless otherwise specified in this Agreement, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

**6.6.2** CONTRACTOR warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents.

**6.7 Subcontractors, Suppliers and Others:**

**6.7.1** Prior to the execution of this Agreement and in any event prior to the commencement of any work, CONTRACTOR shall furnish, in writing to the CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has an objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made an objection. If CITY objects to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes objection to the change.

**6.7.2** CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the CONTRACTOR, its employees, subcontractors, suppliers, other persons directly or indirectly employed by its subcontractors or suppliers, persons for whose acts any of them may be liable and any other persons or organizations performing or furnishing supplies under a direct or indirect Contract with CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

**6.7.3** All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of the Contract Documents for the benefit of CITY.

**6.8 Patent Fees and Royalties:**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use of the license 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.

**6.9 Permits:**

CONTRACTOR shall obtain and pay for all permits and licenses and all related costs for inspection and administration. There will be no cost for permits issued by the CITY.

**6.10 Compliance with Laws and Regulations:**

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR's compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents as observed by CONTRACTOR are at variance with applicable laws and regulations.

**6.11 Risk of Loss; Ownership:**

The risk of loss, injury or destruction shall be on CONTRACTOR until acceptance of the Work by CITY. Title to the Work shall pass to CITY upon acceptance of the Work by CITY.

**6.12 Taxes:**

CONTRACTOR shall pay all sales, consumer, use and other similar taxes. CONTRACTOR is responsible for reviewing the pertinent state laws and regulations involving such taxes and complying with all requirements.

**6.13 Use of Premises:**

**6.13.1** CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the work site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR shall assume full responsibility for any damage to any land or areas or to the owner or occupant of any contiguous land or areas, resulting from the performance of the Work. Should any owner or occupant because of the performance of the Work make any claim against CITY, CONTRACTOR shall promptly attempt to settle with the claimant by agreement or otherwise resolve the claim.

**6.13.2** During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents including fencing, parking lots and grounds.

**6.13.3** CONTRACTOR shall not permit any part of any structure or land to be treated in any manner that will endanger the structure or any land, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or processes that will endanger it.

**6.14 Access to Work:**

CONTRACTOR shall provide CITY, its consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for access and shall advise these authorized persons of CONTRACTOR's site safety procedures and programs.

**6.15 Safety and Protection:**

**6.15.1** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected. This paragraph applies to all the Work, materials and equipment, whether in storage on or off the site; and other property at the site or adjacent to the site.

**6.15.2** CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

## 6.16 Environmental

The CONTRACTOR has fully inspected the worksite and agrees to accept the worksite in an "as is" physical condition, without representation or warranty by the CITY of any kind, including, without limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the worksite. Further CONTRACTOR and all entities claiming by, through or under CONTRACTOR, releases and discharges the CITY from any claim, demand, or cause of action arising out of or relating to the CONTRACTOR's use, handling, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the worksite. The CONTRACTOR shall have no liability for any pre-existing claims or "contamination" on the worksite.

CONTRACTOR shall not use, handle, store, discharge, treat, remove, transport or dispose of Hazardous Substances including asbestos at, in, upon, under, to or from the worksite until receipt of instructions from the CITY. At such time, a CITY approved change order, which shall not include any profit, shall authorize the CONTRACTOR to perform such services.

CONTRACTOR shall immediately deliver to CITY complete copies of all notices, demands or other communications received by CONTRACTOR from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity on the worksite which is or could be dangerous to life, limb, property or the environment.

CONTRACTOR indemnifies and agrees to protect, defend, and hold harmless, the CITY and its respective employees, agents, successors, and assigns from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the CONTRACTOR's (or any of its employees, agents, invitees, contractors or sub-contractors) use, handling, storage, release, threatened release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of a Hazardous Substance on, under, from, to or about the worksite or any other activity carried on or undertaken on or off the worksite by the CONTRACTOR or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transportation, decontamination, cleanup, disposal and/or presence or any Hazardous Substance located, transported, or present on, undue, from, to, or about the worksite. This indemnity is intended to be operable under 42 U.S.C. section 9607, as amended, and any successor section.

The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (i) the costs of removal or remedial action incurred by the United States government or the State of Florida or response costs incurred by any other person, or damages from injury to, destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, response costs, or penalties which arise from the provisions of any other statute, law, regulation, code, ordinance, or legal requirement, state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

The indemnification obligations contained herein are supported by separate consideration of \$10.00 which the proposer acknowledges as adequate.

**6.17 Indemnification:**

**6.17.1** In addition to, CONTRACTOR shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential including but not limited to fees and charges of engineers, architects, attorneys, consultants and other professionals and court costs arising out of or in consequence of the performance of this Agreement at all trial and appellate levels.

Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) the negligent or defective design of the project and Work of this Agreement; (b) any act, omission or default of the CONTRACTOR, its Subcontractors, agents, servants or employees; (c) any and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (f) the use of any improper materials; (g) any construction defect including both patent and latent defects; (h) failure to timely complete the work; (i) the violation of any federal, state, county or city laws, ordinances or regulations by CONTRACTOR, its subcontractors, agents, servants, independent contractors or employees; (j) the breach or alleged breach by CONTRACTOR of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

**6.17.2** CONTRACTOR agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

**6.17.3** CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs at trial and appellate levels.

**6.17.4** If any Subcontractor, supplier, laborer, or materialmen of CONTRACTOR or any other person directly or indirectly acting for or through CONTRACTOR files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the CITY to CONTRACTOR or from CONTRACTOR to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, CONTRACTOR agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) calendar days of the filing of or from receipt of written notice from the CITY.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by CONTRACTOR, all monies due to CONTRACTOR, or that become due to CONTRACTOR before the lien or claim is satisfied, removed or otherwise discharged, shall be held by CITY as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If CONTRACTOR shall fail to do so, CITY shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means CITY chooses at the entire and sole cost and expense of CONTRACTOR which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to CONTRACTOR. In the event the amount due CONTRACTOR is less than the amount required to satisfy CONTRACTOR'S obligation under this, or any other section of the Agreement, the CONTRACTOR shall be liable for the deficiency due the CITY.

**6.18 Survival of Obligations:**

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

**6.19 Correction or Removal of Defective Work:**

If required by CITY, CONTRACTOR shall promptly correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs for the correction or removal of defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals).

If the work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion, 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 or any other party.

**6.20 Force Majeure:**

No party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

No party shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable by force majeure to carry out its obligation, but the obligation of the party or parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The CONTRACTOR further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within two (2) hours after such an occurrence.

**ARTICLE 7 - CITY'S RESPONSIBILITIES**

**7.1** CITY shall furnish data required of CITY under the Contract Documents.

**7.2** CITY shall make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

**7.3 Technical Clarifications and Interpretations:**

**7.3.1** CITY shall issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should CONTRACTOR fail to request interpretation of questionable items in the Contract Documents, CITY shall not entertain any excuse for failure to execute the work in a satisfactory manner.

**7.3.2** CITY shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other party but in no event later than five (5) days after the occurrence of the event, and written supporting data will be submitted to the other party within five (5) calendar days after such occurrence. All written decisions of the CITY on any claim or dispute will be final and binding.



**ARTICLE 8 - BONDS AND INSURANCE****8.1 Payment and Performance Bonds:**

**8.1.1** Prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond, in a form approved by the CITY and as provided by state law, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+.

**8.1.2** The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of this Agreement. The performance bond shall be conditioned that the CONTRACTOR performs the contract in the time and manner prescribed in the Agreement. The payment bond shall be conditioned that the CONTRACTOR promptly makes payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the performance of the Work provided for in this Agreement and any change orders and shall provide that the surety shall pay the amount not exceeding the sum provided in the bonds, together with interest at the maximum rate allowed by law and that the CONTRACTOR and surety shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the performance of this Agreement which the CITY may be required to make by law.

**8.1.3** Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, the CONTRACTOR shall record the payment and performance bonds in the public records of Broward County, at its own expense.

**8.2 Bonds, Reduction After Final Payment:**

The performance and payment bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of these bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Agreed Compensation, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Agreement, upon notification by the CITY.

**8.3 Duty to Substitute Surety:**

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within three (3) days substitute another bond and surety, both of which must be acceptable to CITY. The CITY shall have the right to disapprove any CONTRACTOR or subcontractor selected by any surety.

**8.4 Insurance:**

**8.4.1** At the time of execution of the Agreement, the CONTRACTOR shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the CITY is an additional, named, first party insured with respect to the required coverage and the operations of the CONTRACTOR under the Agreement. The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that the insurance is as required by Article 8 and its subparts of this Agreement. CONTRACTOR shall not commence work under this Agreement until after CONTRACTOR has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by CITY. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, CONTRACTOR shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. CONTRACTOR shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

**8.4.2** Insurance Companies selected by CONTRACTOR must be acceptable to the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) Calendar days written notice has been given to CITY by certified mail.

**8.4.3** The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of this Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:

- (a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
- (b) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CONTRACTOR in the performance of the Work with the following minimum limits of liability:  
\$1,000,000.00 - Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability Policy without restrictive endorsements, as filed with the Florida Department of Insurance and shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- 1. Premises and Operations;
- 2. Independent Contractors;
- 3. Product and Completed Operations Liability;
- 4. Broad Form Property Damage;
- 5. Broad Form Contractual Coverage applicable to this Agreement and specifically confirming the indemnification and hold harmless provision in this Agreement; and
- 6. Personal Injury coverage with employment contractual exclusions removed and deleted.

- (c) Builder's Risk Insurance in an amount not less than the replacement cost for the construction of the Work. Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value with a deductible of not more than Five Thousand Dollars (\$5,000.00) per claim.

**8.4.4** CONTRACTOR shall maintain the Products and Completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish CITY with evidence of the continued insurance coverage at the time of final payment.

**8.4.5** The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

**8.4.6** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

**8.4.7** The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they have no recourse against CITY for payment or assessments in any form on any policy of insurance.

**8.4.8** The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence to the Insurer within fifteen (15) working days of CITY's actual notice of such an event.

**8.4.9** The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance described and the CITY's approved.

- 8.4.10** The CONTRACTOR agrees to perform the work under the Agreement as an independent CONTRACTOR, and not as a subcontractor, agent or employee of CITY.
- 8.4.11** CONTRACTOR shall require each of its subcontractors to maintain the insurance required for each category, and CONTRACTOR shall provide verification to CITY upon its request.
- 8.4.12** Violation of the terms of this paragraph and its subparts shall constitute a material breach of the Agreement, and CITY, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONTRACTOR shall cease and terminate.
- 8.4.13** CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others performing the Work. CITY specifically reserves all statutory and common law rights and immunities. Nothing contained in this Agreement is intended to limit or waive any rights or immunities including, but not limited to, the procedural and substantive provisions of Chapter 768, Florida Statutes.

## **ARTICLE 9 - WARRANTIES: TESTS AND INSPECTIONS: CORRECTION OF DEFECTIVE WORK**

### **9.1 Warranty of Title:**

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided and that there are no pending liens, claims or encumbrances against the equipment and materials.

### **9.2 Warranty of Specifications:**

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

### **9.3 Warranty of Merchantability:**

CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.

### **9.4 Correction Period:**

CONTRACTOR warrants all material and workmanship for a minimum of two (2) year(s) from date of acceptance by the CITY. If, within two (2) year(s) after the date of final completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY's written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with Work that is not defective and that is satisfactorily correct, and remove and replace any damage to other Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR.

**9.4.1** Where defective Work (and damage to other work) has been corrected, removed or replaced under this Article, the correction period with respect to such Work will be extended for an additional period of two (2) year(s) after such correction, removal or replacement has been satisfactorily completed.

**9.4.2** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of two (2) year(s) as described in above paragraph relates only to the specific obligation

of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to the CONTRACTOR's obligation other than specifically to correct the Work.

- 9.5** CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under this Agreement.
- 9.6** CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.
- 9.7** CONTRACTOR warrants to the CITY that the performance of the work provided for in the Contract Documents will not result in the breach of any term or provision, or constitute a default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.
- 9.8** CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the Work of the Agreement.
- 9.9** No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

**9.10 Tests and Inspections:**

- 9.10.1** CONTRACTOR shall give CITY timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part unless otherwise specified.
- 9.10.2** Neither CITY nor other inspectors shall have authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Agreement by failure to inspect the materials and work with reasonable promptness.
- 9.10.3** The payment of any compensation, the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly, is strictly prohibited and punishable to the full extent of the law, and any such action on the part of the CONTRACTOR will constitute a termination of this Agreement.

**9.11 Warranty Information**

The CONTRACTOR shall deliver to the CITY and the CITY shall execute all applicable product and equipment registration, manuals, instructions, keys, accessories and warranty documents in accordance with manufacturers' policies and procedures. CONTRACTOR shall facilitate any necessary warranty claims free of charge.

**ARTICLE 10 - LIQUIDATED DAMAGES**

If the awarded Proposer fails to complete the project by the completion date stated on the Proposal Form, it is understood that five-hundred dollars (\$500.00) per calendar day will be deducted as liquidated damages, for each day beyond the substantial completion time and two-hundred fifty dollars (\$250.00) per calendar day will be deducted as liquidated damages, for each day beyond the final completion time unless time extension is approved by the City Manager, it being agreed that the damage suffered by the CITY for such delay(s) cannot be specifically ascertained.

**ARTICLE 11 - CHANGES IN THE WORK**

- 11.1** One or more changes to the work within the general scope of this Agreement may be ordered by Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict

accordance with the Contract Documents and the terms and conditions described in this Article.

- 11.2** A Change Order shall mean a written order to the CONTRACTOR executed by the parties after execution of this Agreement, directing a change in the work and may include a change in the agreed compensation in accordance with Article 12 or the time for the CONTRACTOR's performance.
- 11.3** The execution of a Change Order by the CONTRACTOR shall constitute conclusive evidence of the CONTRACTOR's agreement to the ordered changes in the work and the CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order.
- 11.4** The CONTRACTOR shall notify and obtain the consent and approval of the CONTRACTOR's surety with reference to all Change Orders if such notice, consent or approval is required by the CONTRACTOR's surety or by law. The CONTRACTOR's execution of the Change Order shall constitute the CONTRACTOR's warranty to the CITY that the surety has been notified of, and consents to, such Change Order and the respective increase in the Performance bond amount commensurate with the Change Order(s). Furthermore, upon the CONTRACTOR's execution of the Change Order(s), the surety shall be conclusively deemed to have been notified of such Change Order by the CONTRACTOR in the increase in the required Performance Bond amount, and to have expressly consented.

## **ARTICLE 12 - CHANGE IN COMPENSATION**

Change orders approved by CITY shall be computed as follows:

### **12.1 Cost of the Work:**

The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, these costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 12.2:

- 12.1.1** 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. 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 limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.
- 12.1.2** Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.
- 12.1.3** Supplemental costs including the following:
- 12.1.3.1** 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.
- 12.1.3.2** Rentals of all construction equipment and machinery and the parts whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY, and the costs of transporting, loading, unloading, installing, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work.

- 12.1.3.3 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by laws or regulations.
- 12.1.3.4 Royalty payments and fees for permits or licenses.
- 12.1.3.5 The cost of utilities, fuel and sanitary facilities at the Work site.
- 12.1.3.6 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.
- 12.1.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

## 12.2 Not Included in the Cost of the Work:

The term "cost of the Work" shall not include any of the following.

- 12.2.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.1.1, all of which are to be considered administrative costs covered by CONTRACTOR's fee.
- 12.2.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 12.2.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 12.2.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain them.
- 12.2.5 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.
- 12.2.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.1.

## 12.3 Cost Breakdown Required:

Whenever the cost of any Work is to be determined pursuant to this Article, CONTRACTOR will submit in form acceptable to the CITY an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown as follows:

- (a) The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.
- (b) Whenever a change involves the CONTRACTOR and one (1) or more subcontractors and the change is an increase in the agreed compensation, the overhead and profit percentage for the CONTRACTOR and each subcontractor shall be itemized separately.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK**

### 13.1 Progress Payments:

- 13.1.1 CONTRACTOR may request payments for work completed during the project at intervals of not more than once a month. The CONTRACTOR's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or

properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR's previous applications for payment, and any other supporting documentation as may be required by the CITY, the ENGINEER or Contract Documents. Each requisition shall be submitted in triplicate to the CITY for approval. The CITY shall make payment to the CONTRACTOR within thirty (30) calendar days after approval of the CONTRACTOR's requisition for payment. Any rejection by the CITY of any specific item (s) shall result in CONTRACTOR being notified of the rejection within five (5) Business days of the rejection.

**13.1.2** Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until the work is totally completed and accepted by the CITY.

### **13.2 Inspection:**

CITY shall make an inspections as necessary and notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take the necessary measures to remedy any deficiencies within five (5) calendar days of the inspection.

### **13.3 Final Application for Payment:**

After CONTRACTOR has completed all corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, warranties, guarantees, bonds, certificates of inspection, marked up record documents and other documents required by the Contract Documents or requested by the CITY, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR's receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lien or who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR shall furnish a bond satisfactory to CITY to indemnify CITY against any lien, or the CITY may directly pay any subcontractor or supplier and deduct that amount due to CONTRACTOR.

In addition, CONTRACTOR shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by a professional surveyor licensed by the State of Florida. Final payment to CONTRACTOR shall not be made until the shop drawings have been reviewed and approved by the CITY. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of CITY they do not represent correct or accurate "As-Built" drawings.

### **13.4 Final Payment and Acceptance:**

**13.4.1** If, on the basis of observing the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation, the CITY is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, CITY will give written notice to CONTRACTOR that the Work is acceptable. Otherwise, the Application will be returned to CONTRACTOR indicating in writing the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, the amount will become due and will be paid by CITY to CONTRACTOR.

**13.4.2** If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and the occurrence is confirmed, CITY shall, upon receipt of CONTRACTOR's final Application for Payment, 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, 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 the CITY 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 held by the CITY.

**13.5** Final payment, constituting the entire unpaid balance of the agreed compensation, shall be paid by the CITY to CONTRACTOR when the work has been completed, the Contract fully performed, and a final certificate for payment has been issued by the CITY ENGINEER. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

- (1) Faulty or defective work and latent defects discovered after acceptance.
- (2) Failure of the work to comply with the requirements of the contract documents.
- (3) Terms of special warranties required by those contract documents.
- (4) Any of CONTRACTOR's continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR or the subcontractor for materials and supplies shall constitute a waiver of claims except those previously made in writing and identified as unsettled at the time of final application for payment.

**13.6 CITY's Right to Withhold Payment:**

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

**13.6.1** Defective work not remedied.

**13.6.2** Claims filed or evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

**13.6.3** Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.

**13.6.4** Damage to another contractor, subcontractor or supplier not remedied.

**13.6.5** Liability for liquidated damages has been incurred by the CONTRACTOR.

**13.6.6** Evidence that the Work cannot be completed for the unpaid balance of the agreed compensation.

**13.6.7** Evidence that the work will not be completed within the Agreement's term.

**13.6.8** Failure to carry out the Work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

**ARTICLE 14 - TERMINATION OF THE CONTRACT**

The CITY retains the right to terminate this Agreement without cause, with thirty (30) days prior written notice. Additionally, the CITY may also terminate this Agreement upon fifteen (15) days notice upon the occurrence of any one or more of the following events:

**14.1** If CONTRACTOR commences a voluntary case or a petition is filed against CONTRACTOR, under any chapter of the Bankruptcy Code, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

**14.2** If CONTRACTOR makes a general assignment for the benefit of creditors.

**14.3** If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors.

**14.4** If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.



**14.5** If CONTRACTOR disregards any local, state or federal laws or regulations.

**14.6** If CONTRACTOR otherwise violates any provisions of this Agreement.

Further, CONTRACTOR may be excluded from the Work site and the CITY take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use them 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 this instance, CONTRACTOR shall not be entitled to receive any further compensation until the Work is finished.

**14.7** If CONTRACTOR commits a default due to its insolvency or bankruptcy, the following shall apply:

**14.7.1** Should this Agreement be entered into and fully executed by the parties, funds released and the CONTRACTOR (Debtor) files for bankruptcy, the following shall occur:

- a. In the event the Debtor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the CITY. The Debtor further agrees that in the event of this default, the CITY shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The CITY shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Debtor agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Debtor acknowledges that such waiver is done knowingly and voluntarily
- b. Alternatively, in the event the CITY does not seek stay relief, or if stay relief is denied, the CITY shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361. The monthly adequate protection payments shall each be in an amount determined in accordance with the Note and Mortgage executed by the Debtor in favor of the CITY.
- c. In the event the Debtor files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Debtor agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and Mortgage. Additionally, the Debtor shall agree that the CITY is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the CONTRACTOR has less than five (5) years of payments remaining on the Note, the CONTRACTOR agrees that the treatment afforded to the claim of the CITY under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

**14.7.2** Should this Agreement be entered into and fully executed by the parties, and the compensation has not been forwarded to Debtor, the following shall occur:

In the event the Debtor files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Debtor acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The CONTRACTOR acknowledges that the Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c) (2), unless the CITY expressly consents in writing to the assumption. In the event the CITY consents to the assumption, the Debtor agrees to file a motion to assume the Agreement within ten (10) days after receipt of written consent from the CITY, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Debtor further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

**ARTICLE 15 – OWNERSHIP OF DOCUMENTS**

All documents, as-built plans and specifications resulting from the Project under this Agreement shall be deemed the sole property of the CITY, and the CITY shall have all rights incident to the sole ownership.

The CONTRACTOR shall agree to indemnify and hold harmless the CITY, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR.

**ARTICLE 16 - NOTICE**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the CONTRACTOR:

To the CITY:

City Manager  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

With a copy to:

City Engineer  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

**ARTICLE 17 - LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement, so that its liability never exceed the agreed sum of \$1,000.00. CONTRACTOR expresses its willingness to enter into this Agreement with CONTRACTOR'S recovery from the City for any action or claim arising from this Agreement to be limited to \$1,000.00.

Accordingly, and notwithstanding any other term or condition of this Agreement, CONTRACTOR agrees that the City shall not be liable to CONTRACTOR for damages in an amount in excess of \$1,000.00, for any action or claim of the CONTRACTOR or any third party arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

**ARTICLE 18 – MISCELLANEOUS**

- 18.1** The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY 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. This Article will be as effective as if repeated specifically in the Contract Documents will survive final payment and termination or completion of the Agreement.
- 18.2** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests. The obligations undertaken by CONTRACTOR pursuant to the Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Article shall constitute a material breach of Agreement by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR which shall immediately cease and terminate.
- 18.3** CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties.
- 18.4** CITY reserves the right to audit the records of CONTRACTOR relating in anyway to the work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract.
- 18.5** The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or later existing at law or in equity.
- 18.6** This Agreement shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.
- 18.7** Should any part, term or provision of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

As to the CONTRACTOR on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CONTRACTOR**

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

By: \_\_\_\_\_  
Company/Contractor

Name/Title: \_\_\_\_\_

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

**CITY OF LAUDERDALE LAKES**

ATTEST:

City Clerk

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

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

APPROVED AS TO FORM:

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

Dated: \_\_\_\_\_

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT  
FOR  
THE CITY OF LAUDERDALE LAKES, FLORIDA**



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## GENERAL CONDITIONS

### ARTICLE I - DEFINITIONS

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Wherever used in the Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

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

1.2. **Application for Payment** - The form accepted by the CITY which is to be used by CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.3. **Bid** - The offer of the BIDDER submitted on the prescribed form setting forth the prices for the WORK.

1.4. **BIDDER/PROPOSER** - One who submits a Bid or Proposal directly to the CITY.

1.5. **Bid Documents** - Includes the Invitation to Bid/Request for Proposal, Instructions to Bidders, Bid Form, and proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.6. **Bonds** - Bid, Performance and Payment bonds and other instruments of security, per Florida Statutes.

1.7. **Change Order** - A document recommended by CITY, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion, or revision in the WORK or an adjustment in the Contract Price or Contract Time, issued on or after the Effective Date of the Contract.

1.8. **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.

1.9. **Contract** - The written agreement between CITY and CONTRACTOR covering the WORK to be performed. Also referred to as Agreement.

1.10. **Contract Documents** - The Contract Documents establish the rights and obligations of the parties and include the Contract, 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 Tentative Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Technical Specifications, and the Drawings as the same are more specifically identified in the Contract, together with all Written Amendments, Change Orders, Field Orders, and CITY'S written interpretations and clarifications issued on or after the Effective Date of the Contract. 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.

1.11. **Contract Price** - The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Document.

1.12. **Contract Time** - The number or numbers of successive days or dates stated in the Contract Documents for the completion of the WORK.

1.13. **CONTRACTOR** - The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Contract.

1.14. **Day** - A calendar day of 24 hours measured from midnight to the next midnight.

1.15. **Defective WORK** - WORK that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or WORK that has been damaged prior to the CITY'S recommendation of final payment.

1.16. **Drawings** - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the WORK, which have been prepared or approved by CITY are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

1.17. **Effective Date of the Contract** - The date indicated in the Contract, but if no such date is indicated it means the date on which the Contract is signed by the last of the two parties to sign the Contract.

1.18. **Field Order** - A written order issued by CITY which orders minor changes in the WORK but which does not involve a change in the Contract Price or the Contract Times.

1.19. **General Requirements** - See Technical Specifications attached to the plan.

1.20. **Laws and Regulations; Laws or Regulations** - Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

1.21. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

1.22. **Notice of Tentative Award** - The official written notice by the CITY to the apparent successful BIDDER stating that upon compliance by the apparent successful BIDDER with the conditions precedent enumerated therein within the time specified, the CITY may enter into a Contract.



1.23. **Partial Utilization** - Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the WORK.

1.24. **Project** - The total construction of which the WORK to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.25. **Resident Project Representative (RPR)** - The authorized representative of the CITY who is assigned to the Site or any part thereof.

1.26. **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the WORK, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the CONTRACTOR to illustrate material or equipment for some portion of the WORK.

1.27. **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK and certain administrative details applicable thereto.

1.28. **Sub-BIDDER** - One who submits a Bid to a BIDDER.

1.29. **SUB-CONTRACTOR** - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUB-CONTRACTOR for the performance of a part of the WORK at the Site.

1.30. **Substantial Completion** - The WORK (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY'S definitive certificate of Substantial Completion, all conditions and requirements accordance with the Contract Documents, so that the WORK (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any WORK refer to Substantial Completion thereof. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.

1.31. **SUCCESSFUL BIDDER** - The lowest, qualified, responsible and responsive BIDDER to whom CITY (on basis of CITY'S evaluation as hereinafter provided) makes an award.

1.32. **Supplementary General Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

1.33. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.34. **Surety** - Any person, firm or corporation which is bound by bid or contract bond with and for the CONTRACTOR.

of permits and regulatory agencies have been satisfied and the WORK is sufficiently complete, in Unit Price WORK - WORK to be paid for on the basis of unit prices.

1.35. **Utilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above ground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

1.36. **WORK** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. WORK includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Document.

1.37. **Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract and signed by the CITY, ordering an addition, deletion or revision in the WORK, or which references an emergency or unforeseen physical conditions under which the WORK is to be performed. A Work Change Directive may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work 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 Time.

1.38. **Written Amendment** - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non- technical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2 - PRELIMINARY MATTERS

### 2.1. DELIVERY OF BONDS AND INSURANCE CERTIFICATES:

2.1.1. When the CONTRACTOR delivers the signed Contracts to the CITY, the CONTRACTOR shall also deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents. The aforementioned documents must be submitted to the CITY prior to any WORK being performed.

### 2.2. COPIES OF DOCUMENTS:

2.2.1. The CITY shall furnish to CONTRACTOR ONE (1) copy (unless additional copies exist) of the Contract Documents for the execution of the WORK. CONTRACTOR shall be responsible for procuring additional copies.

### 2.3. NOTICE TO PROCEED:

2.3.1. The Contract Times will commence to run on the date stated in the Notice to Proceed.

## 2.4. STARTING THE WORK:

2.4.1. CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, NO WORK shall be done at the Site prior to said commencement date.

2.4.2. 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 pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CITY any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CITY before proceeding with any WORK affected thereby; however, CONTRACTOR shall not be liable to CITY for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

## 2.5. PRECONSTRUCTION CONFERENCE:

2.5.1. The CONTRACTOR is required to attend a preconstruction conference within twenty (20) days after the Contract Times start to run, but before any WORK at the site is started. This conference will be attended by the CITY, and others as appropriate in order to discuss the WORK.

2.5.2. The CONTRACTOR'S initial schedule for shop drawings submittals, obtaining permits and Plan of Operation and CPM Schedule will be reviewed and finalized. As a minimum, the CONTRACTOR'S representatives should include its project manager and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings will be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment will be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

## 2.6. FINALIZING SCHEDULES:

2.6.1. Within ten (10) days of receiving the Notice to Proceed the CONTRACTOR will submit the final schedule approved by the CITY. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the WORK to completion within the Contract Time, but such acceptance will neither impose on the CITY responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the CITY as to form and substance.

## ARTICLE 3 – USE OF CONTRACT DOCUMENTS

## 3.1. INTENT:

3.1.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the WORK. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed

in accordance with the laws of the State of Florida with venue in Broward County, Florida.

3.1.2. It is the intent of the Contract Documents to describe the WORK, functionally complete, 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.

## 3.2. REFERENCE TO STANDARDS:

3.2.1. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids/Proposals, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties or responsibilities of the CITY, CONTRACTOR or any of their agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

## 3.3. REVIEW OF CONTRACT DOCUMENTS

3.3.1. If, during the performance of the WORK, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so notify the CITY, in writing, at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification, except in an emergency as authorized by paragraph 6.13.

## 3.4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

3.4.1. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Change Order
2. Construction Contract
3. Addenda, with later date having greater priority
4. Bid/Proposal Form
5. Supplemental General Conditions
6. Invitation to Bid/Request for Proposal
7. Instructions to Bidders/Proposers
8. General Conditions
9. Technical Specifications
10. Contract Drawings

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to assist in locating and reading the provisions hereof.

3.4.2. With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/Change Order drawings govern over any other drawings
4. Drawings govern over standard drawings

3.4.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5, 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:

1. The provisions of any such standard, specification, manual, code or instruction (whether or note specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such 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).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or any of their SUB-CONTRACTORS, agents or employees from those set forth in the Contract Documents, no shall it be effective to assign to CITY or any of CITY's agents or employees any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.10. or any other provision of the Contract Documents.

### 3.5. AMENDING CONTRACT DOCUMENTS:

3.5.1. The Contract Documents may be amended to provide for additions, deletions and revisions in the WORK or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10).

3.5.2. Additionally, the requirements of the Contract Documents may be supplemented and variations and deviations in the WORK may be authorized, in one or more of the following ways:

3.5.2.1. a Field Order (pursuant to paragraph 9.5)

3.5.2.2. CITY'S approval of a Shop Drawing or sample (pursuant to paragraphs 6.14), or

3.5.2.3. CITY'S written interpretation or clarification (pursuant to paragraph 9.4).

### 3.6. REUSE OF DOCUMENTS:

3.6.1. Neither CONTRACTOR nor any Sub-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the WORK under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents, drawings, technical specifications or other documents used on the WORK; and, they shall not reuse any of them on extensions of the Project or any other project without prior written consent of the CITY.

## ARTICLE 4 – SITE OF THE WORK

### 4.1. AVAILABILITY OF LANDS:

4.1.1. The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.1.2. Occupying Private Land: The CONTRACTOR shall not enter upon nor use any property not under the control of the CITY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner(s), and a copy of said easement furnished to the CITY prior to said use; and, the CITY will not be liable for any claims or damages resulting from the CONTRACTOR'S trespass on or use of any such properties. The CONTRACTOR shall provide the CITY with a signed release from the property owner(s) confirming that the lands have been satisfactorily restored upon completion of the WORK.

4.1.3. WORK in State, County and CITY Rights-of-Way and Easements: When the WORK involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the CONTRACTOR shall (as the WORK progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance as part of the contract.

4.1.4. WORK Adjacent to Telephone, Power, Cable TV and Gas Company Structures: In all cases where WORK is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the CONTRACTOR shall provide written notification to the respective companies of the areas of which WORK is to be performed, prior to the actual performance of any WORK in these areas.

4.1.5. Use of Public Streets: The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. The CONTRACTOR shall remove any earth or excavated materials spilled from trucks and clean the streets to the satisfaction of the CITY, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

### 4.2. REPORTS OF PHYSICAL CONDITIONS:

4.2.1. **Subsurface Explorations:** Where applicable, reference is made in the technical specifications, for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.2. **Existing Structures:** Where applicable, reference is made to the technical specifications, for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 herein) which are at or contiguous to the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.3 The CITY does not make any representation as to the completeness of the reports or drawings referred to in Paragraph 4.2.1. or 4.2.2. above or the accuracy of any data or information contained therein. CONTRACTOR may rely upon the general accuracy of the technical data contained in such reports and drawings but not for the completeness thereof for CONTRACTOR'S purposes including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. However, the CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.2.4 Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new WORK, the CONTRACTOR shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There shall be no additional cost to the CITY for CONTRACTOR'S failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR.

#### 4.3. PHYSICAL CONDITIONS -- UNDERGROUND FACILITIES:

4.3.1. **Indicated:** The information and data indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site is based on information and data furnished to the CITY by the owners of such Underground Utilities or by others.

4.3.1.1. The CITY shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 The CONTRACTOR shall notify the Underground Service Alert (USA) System, Phone No. 1-800-227-2600, and Sunshine State One Call Services (1-800-432-4770) at least 48 hours in advance of the commencement of WORK at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities.

4.3.1.3. The CONTRACTOR acknowledges that some (or all) of the utility companies with facilities shown on the drawings may not be members of the USA System or Sunshine State One Call Services; and, therefore, not automatically contacted by the above referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the USA System or Sunshine State One Call Services, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall be responsible for notifying all of the utilities at least 48 hours in advance of the commencement of

WORK at any site to allow the utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also be responsible for verifying that each utility has responsibly responded to such notification.

4.3.1.4. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. Further, the CONTRACTOR shall be responsible for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordination of the WORK with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.10, and repairing any damage thereto resulting from the WORK, the cost of all of which will be considered as having been included in the Contract Price.

4.3.1.5. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, shall be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR shall notify the CITY or occupant of such facilities both 48 hours before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR shall obtain permission from the CITY and shall make suitable arrangements for the disconnection. The CONTRACTOR shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly, as part of the work, as soon as the WORK has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new WORK are shown, but are to be verified in the field by the CONTRACTOR prior to performing the WORK. The CONTRACTOR shall uncover these pipes, ducts, cables, etc., carefully, prior to installing his WORK. Any discrepancies or differences found shall be immediately brought to the attention of the CITY in order that necessary changes may be made to permit installation of the WORK.

4.3.2. **Not Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown on the plan, nor located by the CITY and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK affected thereby (except in an emergency as permitted by paragraph 6.13), identify the CITY of such Underground Facility and give written notice thereof to that CITY. The CITY will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.12.

#### 4.4. DIFFERING SITE CONDITIONS

4.4.1. The CONTRACTOR shall notify the CITY, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than 7 days after their discovery) and

before they are disturbed:

4.4.1.1. Subsurface or latent physical conditions at the Site of the WORK differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Paragraph 4.2 and 4.3; and

4.2.3.2. Any unknown physical conditions and the Site of the WORK of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, including those reports and documents discussed in Paragraph 4.2 and 4.3.

4.4.2. CITY will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the CITY in writing (with a copy to the CONTRACTOR) of CITY'S findings and conclusions.

4.4.3. If CITY concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.

4.4.4. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Article 11 and 12.

4.4.5. The CONTRACTOR'S failure to give notice of differing Site conditions within 7 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

#### 4.5. REFERENCE POINTS:

4.5.1. The CITY shall provide, if available, engineering surveys to establish reference points for construction, which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the WORK.

4.5.2. CONTRACTOR shall be responsible for laying out the WORK (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR shall report to the CITY whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

#### ARTICLE 5 -- BONDS AND INSURANCE

##### 5.1. BONDS:

5.1.1. CONTRACTOR shall upon delivery of the executed Contract or receipt of a Notice of Tentative Award to the CITY furnish Performance and Payment Bonds, each in an amount at least ONE HUNDRED PERCENT (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. Said bonds must be provided to the CITY within ten (10) business days of the Notice of Tentative

Award or delivery of a contract to CONTRACTOR to execute, or the CITY, at its sole discretion and option may terminate the contract. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. Each Bond shall be furnished in an amount equal to ONE HUNDRED PERCENT 100% of the amount of the Contract award. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.2 The CONTRACTOR shall provide a Maintenance and Guaranty Bond in the amount of 50% of the Performance and Payment Bonds to provide a guarantee against defects in the WORK occurring during the year following the one-year correction period. The Bond shall be payable to the CITY, and be at the sole cost of the CONTRACTOR. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.3. The Surety shall be a nationally recognized Surety Company acceptable to the CITY, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, for projects not exceeding (\$500,000) five hundred thousand dollars and meet the other requirements of Florida Statutes Section 287.0935 (1989). For projects exceeding five hundred thousand dollars, all bonds shall be placed with sureties with a Best Rating of no less than A-IX. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties.

5.1.4. If the CONTRACTOR is a partnership, the Bond should be signed by each of the individuals who are partners; if a corporation, the Bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties; (b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where bond is executed by agent, officer or other representative of CONTRACTOR or Surety; (c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

5.1.5. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 5.1.2., CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 5.1.2. Under no circumstances shall the successful CONTRACTOR begin WORK until he/she has supplied to the CITY Performance and Payment Bonds and Affidavit for Bond using the CITY form, and the CITY has approved the bond.

## 5.2. INSURANCE:

5.2.1. CONTRACTOR shall purchase and maintain the insurance required under this Paragraph. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided herein. All insurance shall be maintained continuously during the life of the Contract up to the date of Substantial Completion and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing *Defective Work* in accordance with Paragraph 13.6. the CONTRACTOR'S liabilities under this Contract shall not be deemed limited in any way to the insurance coverage required.

5.2.2. All insurance required by the Contract Documents to be purchased and maintained by the CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized to issue insurance policies for the limits and coverages so required in the State of Florida. Such insurance companies shall have a current Best's Rating of at least an "A" (Excellent) general policy holder's rating and a Class VII financial size category and shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2.3. Before starting the WORK, the CONTRACTOR shall furnish the CITY, with copies to each additional insured who is indicated in the Supplementary General Conditions, with certificates and original endorsements showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice has been given the CITY and additional insureds by certified mail. All such insurance required herein (except for worker's compensation and employer's liability) shall name the CITY, and CITY'S officers, directors, agents, and employees as "additional insureds" under the policies. The CONTRACTOR shall purchase and maintain the following insurance:

5.2.3.1. **Workers' Compensation and Employer's Liability:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. CONTRACTOR shall require each SUB-CONTRACTOR similarly to maintain workers compensation during the term of the Contract and up to the date of final acceptance. CONTRACTOR shall defend, indemnify and save the CITY harmless from any damage resulting to them for failure of either CONTRACTOR or any SUB-CONTRACTOR to take out or maintain such insurance.

- a. Employers' Liability with Statutory Limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate.
- b. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and/or Jones Act if applicable.

5.2.3.2. **Comprehensive or Commercial General Liability:** Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy or Commercial General Liability filed by the Insurance Services Office, and must include:

- a. Minimum Limits of total coverage shall be \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability, the basic policy to be in said form with any excess coverage (and the carrier) to meet \$2,000,000 minimum to be acceptable to the CITY.

5.2.3.3. **Business Auto Policy.** Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Service Office and must include:

- a. Minimum limit of \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

- b. Owned Vehicles

- c. Hired and Non-Owned Vehicles

- d. Employee Non-Ownership

5.2.3.4. **SUB-CONTRACTOR's Public Liability and Property Damage Insurance and vehicle Liability Insurance:** The CONTRACTOR shall either require each of the Sub-CONTRACTORS to procure and to maintain SUB-CONTRACTOR's public liability and property damage insurance and vehicle liability insurance of the type and in the amount indicated above in Paragraph 5.2.3.1., 5.2.3.2. and 5.2.3.3.

5.2.3.5. **Products and/or Completed Operations:** CONTRACTOR shall maintain in force until at least three (3) years after completion of all services required under the Contract, coverage for products and completed operations, including Broad Form Property Damage.

5.2.3.6. **All Risk Property Insurance:** When Applicable, coverage must include real and personal property and in an amount equal to the replacement cost of all real and personal property of the CITY'S for which the CONTRACTOR is responsible and over which he exercises control. Builders Risk insurance must be provided to cover Property under construction and an Installation Floater must cover all machinery, vessels, air conditioners or electric generators to be installed. This insurance shall include a waiver of subrogation as to the CITY, the CONTRACTOR, and their respective officers, agents, employees, and SUB-CONTRACTORS.

- a. Coverage to be provided on a full replacement cost basis.
- b. Losses in excess of ten thousand dollars (\$10,000) shall be jointly payable to the CONTRACTOR and the CITY.
- c. Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the CITY will not occupy the building(s), addition(s) or structure(s).
- d. Maximum Deductible - \$5,000 each claim.
- e. Flood Insurance. When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the CONTRACTOR and the CITY must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance

coverage available under the National Flood Program.

5.2.4. All policies shall also specify that the insurance provided by the CONTRACTOR will be considered primary and not contributory to any other insurance available to the CITY.

## ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

### 6.1. SUPERVISION AND SUPERINTENDENCE:

6.1.1. The CONTRACTOR has the obligation to deliver to the CITY the completed job in a good and workmanlike condition. CONTRACTOR shall supervise and direct the WORK completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents. The CONTRACTOR shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Final Acceptance. The supervision of the execution of this contract is vested wholly in the CONTRACTOR.

6.1.2. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.

### 6.2. LABOR, MATERIALS AND EQUIPMENT:

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey, prepare the WORK and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all WORK at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime WORK or the performance of WORK on Saturday, Sunday or any legal holiday without the CITY'S written consent (which shall not be unreasonably withheld) given after prior written notice to CITY. The CONTRACTOR is hereby informed, and understands that unless otherwise approved by the CITY, the CITY restricts the WORK between the hours of 5:00 p.m. and 7:30 a.m., unless emergency conditions exist that are endangering life or property as may be determined by the CITY. If the CONTRACTOR is authorized to operate equipment twenty-four (24) hours per day, the engines shall be provided with residential type silencers approved by the CITY. The CONTRACTOR shall receive no additional compensation for overtime WORK. However, additional compensation will be paid to the CONTRACTOR for overtime WORK only in the event extra WORK is ordered by the CITY and the change order specifically authorizes the use of overtime WORK and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime WORK of a similar nature in the same locality. All costs of inspection and testing performed by the CITY during overtime WORK by the CONTRACTOR which is allowed solely for the

convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The CITY shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.

6.2.2. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and final completion of the WORK.

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CITY, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY, or any of the CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

### 6.3. SCHEDULE:

6.3.1. CONTRACTOR shall submit to CITY for review and comment (to the extent indicated in paragraph 2.6.) proposed adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. All approved changes shall be memorialized as change orders.

### 6.4. SUBSTITUTES OR "OR-EQUAL" ITEMS:

6.4.1. The technical specifications shall govern the use of substitute or "or-equal" items. The procedure for review by CITY will include the following as supplemented in the technical specifications. Requests for review of substitute items of material and equipment will not be accepted by CITY from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY for acceptance thereof, certifying that the proposed substitute will perform equally or better the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the WORK will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for WORK on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with

the WORK is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs and cost savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by CITY in evaluating the proposed substitute. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

6.4.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to CITY, if CONTRACTOR submits sufficient information to allow CITY to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by CITY will be similar to that provided in paragraph 6.4.1 as applied by CITY and as may be supplemented in the Technical Specifications.

6.4.3. CITY will be allowed a reasonable time within which to evaluate each proposed substitute. CITY will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CITY'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

#### 6.5. CONCERNING SUB-CONTRACTORS, SUPPLIERS AND OTHERS:

6.5.1. CONTRACTOR shall not employ any SUB-CONTRACTOR, Supplier or other person or organization (including those acceptable to the CITY as indicated in paragraph 6.5.2), whether initially or as a substitute, against whom the CITY may have reasonable objection. CONTRACTOR shall not be required to employ any SUB-CONTRACTOR, Supplier or other person or organization to furnish or perform any of the WORK against whom CONTRACTOR has reasonable objection.

6.5.2. If the Technical Specifications or Contract Documents require the identity of certain SUB-CONTRACTORS, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) shall be submitted to the CITY for acceptance by the CITY, and if CONTRACTOR has submitted a list thereof, the CITY'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid documents or the Contract Documents) of any such SUB-CONTRACTOR, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. If after bid opening and prior to the award of the contract, the CITY objects to certain suppliers or SUB- CONTRACTORS, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the contract price or contract time. If the contract price or contract time is increased, the CITY may return the bid bond and award the contract to the next qualified, competent BIDDER. If after the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY shall permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the

CITY. No acceptance by the CITY of any such SUB-CONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of the CITY to reject defective WORK.

6.5.3. CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the SUB-CONTRACTORS, Suppliers and other persons and organizations performing or furnishing any of the WORK under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such SUB-CONTRACTOR, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such SUB-CONTRACTOR, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.5.4. The divisions and sections of the Technical Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the WORK among SUB-CONTRACTORS or Suppliers or delineating the WORK to be performed by any specific trade.

6.5.5. All WORK performed for CONTRACTOR by a SUB-CONTRACTOR will be pursuant to an appropriate agreement between CONTRACTOR and the SUB-CONTRACTOR which specifically binds the SUB-CONTRACTOR to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

#### 6.6. PATENT FEES AND ROYALTIES:

6.6.1. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of WORK or the incorporation in the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the WORK and if to the actual knowledge of the CITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to other, the existence of such rights shall be disclosed by the CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless the CITY and anyone directly or indirectly employed by the CITY from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### 6.7. PERMITS:

6.7.1. CONTRACTOR shall obtain and pay for all construction permits and licenses without limitation as required by Laws or Regulations. The CITY shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for prosecution of the WORK, which are applicable at the time of opening of Bids. There will be no cost for permits issued by the CITY. CONTRACTOR shall pay all charges for utility connections to the WORK.



**6.8. LAWS AND REGULATIONS:**

6.8.1. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to furnishing and performance of the WORK. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, the CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any Laws, ordinances, rules or regulations.

6.8.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws, ordinances, rules or regulations, CONTRACTOR shall give CITY prompt, written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.5. If CONTRACTOR performs any WORK knowing or having reason to know that it is contrary to such laws, ordinances, rules or regulations, and without such notice to the CITY, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations unless they are at variance with construction practices recognized as industry standards.

**6.9. TAXES:**

6.9.1. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws, ordinances and regulations of the place of the Project which are applicable during the performance of the WORK.

**6.10. USE OF PREMISES:**

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits and easements, and shall not reasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the CITY or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against the CITY by any such CITY or occupant because of the performance of the WORK, CONTRACTOR shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. CONTRACTOR shall, to the fullest extent permitted by laws and regulations, indemnify and hold the CITY harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK.

6.10.2. During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other and other debris resulting from the WORK. At the completion of the WORK CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.10.3. 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.

**6.11. RECORD DOCUMENTS:**

6.11.1. CONTRACTOR shall maintain in accordance with the Technical Specifications in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. The record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the CITY for reference. Upon completion of the WORK, these record documents, samples, and Shop Drawings will be delivered to the CITY.

**6.12. SAFETY AND PROTECTION:**

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

6.12.1.1. all employees on the WORK and other persons and organizations who may be affected thereby;

6.12.1.2. all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.12.1.3. 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.

6.12.2. CONTRACTOR shall comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the WORK and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.12.1.2. or 6.12.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUB-CONTRACTOR,

Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK for anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and CITY has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 14.6. that the WORK is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.12.3. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

6.12.4. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of an accident in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

6.12.5. Safety Representative: CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

6.12.6. Hazard Communication Programs: 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 employees at the Site in accordance with Laws and Regulations.

#### 6.13. EMERGENCIES AND PRECAUTIONS DURING ADVERSE WEATHER:

6.13.1. In emergencies affecting the safety or protection of persons or the WORK or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the WORK or variations from the Contract Documents have been caused thereby. If CITY determines that a change in the Contract Documents is required because of the action taken in response to an emergency, or Change Order will be issued to document the consequences of the changes or variations.

6.13.2. During adverse weather, and against the possibility thereof, the CONTRACTOR shall take all

necessary precautions to ensure that the WORK shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The CONTRACTOR shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he shall take such precautions and procure such additional insurance as he deems prudent. The CITY may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

#### 6.14. SUBMITTALS: SHOP DRAWINGS AND SAMPLES:

6.14.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to CITY for review in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.5.2.), ordinances, rules and all Shop Drawings which will bear the stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CITY may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

6.14.2. CONTRACTOR shall also submit to CITY for review and approval with such promptness as to cause no delay in WORK, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended. Please note – samples may not be returned by CITY. Samples are to be supplied at no expense to the CITY and CONTRACTOR is hereby put on notice that said samples may not be returned.

6.14.3. Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the WORK and the Contract Documents.

6.14.4. At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition shall cause a specific notation to be made on each Shop Drawing submitted to CITY for review and approval of each such variation.

6.14.5. CITY will review within ten days of receipt thereof, Shop Drawings and samples but CITY'S review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or

procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by CITY, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CITY on previous submittals. CITY will review one (1) re-submittal for each shop drawing or product data. All costs of reviewing additional submittals shall be at the CONTRACTOR'S expense.

6.14.6. CITY'S review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CITY'S attention to each such variation at the time of submission as required by paragraph 6.14.4 and CITY has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any review by CITY relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.14.3.

6.14.7. Where a Shop Drawing or sample is required by the Specifications, any related WORK performed prior to CITY'S review and acceptance of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

#### 6.15. CONTINUING THE WORK:

6.15.1. CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the CITY. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 15 or as CONTRACTOR and the CITY may otherwise agree in writing.

#### 6.16. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

6.16.1. CONTRACTOR warrants and guarantees to CITY that all work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.16.1.1. Abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, SUB-CONTRACTORS or Suppliers; or

6.16.1.2. Normal wear and tear under normal usage.

6.16.2. 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:

6.16.2.1. observations by CITY;

6.16.2.2. recommendation of any progress or final payment by CITY;

6.16.2.3. the issuance of a certificate of Substantial Completion or any payment by CITY to CONTRACTOR under the Contract Documents;

6.16.2.4. use or occupancy of the WORK or any part thereof by CITY;

6.16.2.5. any acceptance by CITY or any failure to do so;

6.16.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by CITY pursuant to paragraph 14.10;

6.16.2.7. Any inspection, test or approval by others; or

6.16.2.8. Any correction of *defective* WORK by CITY.

#### 6.17. INDEMNIFICATION:

6.17.1. In consideration of ten dollars (\$10.00) and other valuable consideration, the CONTRACTOR shall defend, indemnify and save harmless the CITY, its officers, agents and employees, from or on account of any claims, losses, injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding the sole negligence of the CITY), in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the said CONTRACTOR or his SUB-CONTRACTORS, agents, servants or employees. CONTRACTOR agrees to defend, indemnify and save harmless the CITY, its officers, agents and employees, against any liability arising from or based upon the violation of any Federal, State, County or CITY laws, by-laws, ordinances or regulations by the CONTRACTOR, his SUB-CONTRACTORS, agents, servants or employees.

6.17.2. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

6.17.3. The indemnification provided above shall obligate the CONTRACTOR to defend at his own expense or to pay for such defense, at the CITY'S option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY which may result from the operations and activities under this Contract whether the construction operations be performed by the CONTRACTOR, his SUB-CONTRACTOR or by anyone directly or indirectly employed by either.

6.17.4. This indemnification includes all costs and fees including attorney's fees and costs at trial and appellate levels. The CITY will pay to the CONTRACTOR the specific

consideration of ten dollars and other good and valuable consideration as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06 of the Florida Statutes. Furthermore, the CONTRACTOR acknowledges that the bid price includes said consideration for the indemnification provision.

#### ARTICLE 7 -- OTHER WORK

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##### 7.1. RELATED WORK AT SITE:

7.1.1. The CITY may perform other WORK related to the Project at the site by the CITY'S own forces, let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other WORK is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other WORK; and, if CONTRACTOR believes that such performance will involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. If the performance of additional WORK by other CONTRACTOR or the CITY is noted in the Contract Documents, no additional adjustment of time or compensation shall be considered.

7.1.2. CONTRACTOR shall afford the CITY and other CONTRACTORS who are a party to such a direct contract (or the CITY, if the CITY is performing the additional WORK with the CITY'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such WORK, and shall properly connect and coordinate the WORK with theirs. CONTRACTOR shall do all cutting, fitting and patching of the WORK that may be required to make its several parts come together properly and integrate with such other WORK. CONTRACTOR shall not endanger any WORK of others by cutting, excavating or otherwise altering their WORK and will only cut or alter their WORK with the written consent of the CITY and the others whose WORK will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and other CONTRACTORS to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and other CONTRACTORS.

7.1.3. If any part of CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other CONTRACTOR other than CONTRACTOR'S OWN SUB-CONTRACTOR, (or the CITY), CONTRACTOR shall inspect and promptly report to CITY in writing any delays, defects or deficiencies in such other WORK that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR'S WORK. CONTRACTOR'S failure to report will constitute an acceptance of the other WORK as fit and proper for integration with CONTRACTOR'S WORK except for latent defects and deficiencies in the other WORK.

##### 7.2. COORDINATION:

7.2.1. If the CITY contracts with others for the performance of other WORK on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime CONTRACTORS will be identified in the Technical Specifications and the specific matters to be covered by such authority and responsibility will be itemized, and the

extent of such authority and responsibilities will be provided in the Technical Specifications. Unless otherwise provided in the Technical Specifications, the CITY shall not have any authority or responsibility in respect of such coordination.

#### ARTICLE 8 -- THE CITY'S RESPONSIBILITIES

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##### COMMUNICATIONS TO CONTRACTOR:

8.1.1. CITY shall issue all communications to CONTRACTOR through CITY'S Project Manager.

##### 8.2. FURNISH DATA:

8.2.1. CITY shall promptly furnish the data required of the CITY under the Contract Documents.

##### 8.3. PAYMENTS:

8.3.1. CITY shall make payments to CONTRACTOR promptly when they are due as provided in Sections 14.5 and 14.10.

##### 8.4. LANDS, EASEMENTS: REPORTS AND TESTS:

8.4.1. The CITY'S duties in respect of providing lands and easements and providing engineering surveys, if available, to establish reference points are set forth in paragraphs 4.1.1 and 4.5.1.

8.4.2. The CITY will identify and make available to CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures that have been utilized in preparing the Contract Documents as set forth in Paragraph 4.22 and 4.2.3.

##### 8.5. CHANGE ORDERS

8.5.1. The CITY is obligated to execute Change Orders as indicated in Article 10.

##### 8.6. SUSPENSION OF WORK

8.6.1. In connection with the CITY'S right to stop WORK or suspend WORK see paragraph 13.5 and 15.1. Paragraph 15.2 deals with the CITY'S right to terminate services of CONTRACTOR.

#### ARTICLE 9 -- CITY'S STATUS DURING CONSTRUCTION:

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##### 9.1. CITY'S REPRESENTATIVE:

9.1.1. The City's Project Manager will be the CITY'S representative during the construction period. The duties and responsibilities and the limitations of authority of CITY'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the CITY.

##### 9.2. VISITS TO SITE:

9.2.1. After written notice to proceed with the WORK, the CITY shall make visits to the site at intervals

appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the Contract Documents; he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction and he will not be responsible for the CONTRACTOR'S failure to perform the construction WORK in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the WORK; and during such visits and on the basis of his on-site observations, as an experienced and qualified engineering professional, he will keep the CITY informed of the progress of the WORK, will endeavor to guard the CITY against defects and deficiencies in the WORK of the CONTRACTOR and may reject WORK as failing to conform to the Contract Documents.

### 9.3. PROJECT REPRESENTATION:

9.3.1. A Resident Project Representative may be assigned to assist CITY in carrying out his responsibilities to CITY at the site. Resident Project Representative is CITY'S agent at site, will act as directed by and under the supervision of CITY, and will confer with CITY regarding Resident Representative's actions. Resident Project Representative's dealing in matters pertaining to the on-site WORK shall in general be with CITY and CONTRACTOR keeping the CITY advised as necessary. Resident Project Representative's dealings with SUB-CONTRACTORS shall only be through or with the full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with the CITY.

9.3.2. Resident Project Representative shall where applicable:

9.3.2.1. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with CITY concerning its general acceptability.

9.3.2.2. Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

9.3.2.3. Working principally through CONTRACTOR'S superintendent, assist CITY in serving as the CITY's liaison with CONTRACTOR, when CONTRACTOR'S operations affect the CITY's on-site operations.

9.3.2.4. Assist in obtaining from the CITY additional details or information, when required for proper execution of the WORK.

9.3.2.5. Record date of receipt of Shop Drawings and samples.

9.3.2.6. Receive samples which are furnished at the site by CONTRACTOR, and notify the CITY of availability of samples for examination.

9.3.2.7. Advise the CITY and CONTRACTOR of the commencement of any WORK requiring a Shop Drawing if the submittal has not been approved by the CITY.

9.3.2.8. Conduct on-site observations of the WORK in progress to assist the CITY in determining if the WORK is, in general, proceeding in accordance with the Contract Documents.

9.3.2.9. Report to the CITY whenever Residential Project Representative believes that any WORK is unsatisfactory, faulty or *defective* or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the CITY of WORK that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein shall relieve the CONTRACTOR or the CITY from the duties imposed by contract.

9.3.2.10. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to the CITY appropriate details relative to the test procedures and startups.

9.3.2.11. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the CITY.

9.3.2.12. Report to CITY when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by the CITY.

9.3.2.13. Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the CITY. Transmit to CONTRACTOR decisions as issued by the CITY.

9.3.2.14. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, CITY'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

9.3.2.15. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the CITY.

9.3.2.16. Record all names, addresses and telephone numbers of the CONTRACTOR, all SUB-CONTRACTORS and major suppliers of material and equipment.

9.3.2.17. Furnish the CITY periodic reports as required of progress of the WORK of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

9.3.2.18. Consult with the CITY in advance of schedule major tests, inspections or start of important phases of the WORK.

9.3.2.19. Draft proposed Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to the CITY, Change Orders, Work Change Directives, and Field Orders.

9.3.2.20. Report immediately to the CITY upon the occurrence of any accident.

9.3.2.21. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the CITY, noting particularly the relationship of the payment requested to the schedule of values, WORK completed and materials and equipment delivered at the site but not incorporated in the WORK.

9.3.2.22. During the course of the WORK, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the CITY for review and forwarding to CITY prior to final payment for the WORK.

9.3.2.23. Before the CITY issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

9.3.2.24. Conduct final inspection in the company of the CITY and the CONTRACTOR and prepare a final list of items to be completed or corrected.

9.3.2.25. Observe that all items on final list have been completed or corrected and make recommendations to the CITY concerning acceptance.

9.3.3. The Resident Project Representative shall not:

9.3.3.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment.

9.3.3.2. Exceed limitations of the CITY'S authority as set forth in the Contract Documents.

9.3.3.3. Undertake any of the responsibilities of CONTRACTOR, SUB-CONTRACTORS, or CONTRACTOR'S superintendent.

9.3.3.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

9.3.3.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the WORK.

9.3.3.6. Accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.

9.3.3.7. Authorize the CITY to occupy the Project in whole or in part.

9.3.3.8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the CITY.

#### 9.4. CLARIFICATIONS AND INTERPRETATIONS:

9.4.1. The CITY will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CITY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification of interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

#### 9.5. AUTHORIZED VARIATIONS OF WORK:

9.5.1. CITY may authorize variations in the WORK from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field Order and will be binding on the CITY, and also on CONTRACTOR who shall perform the WORK involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 9.6. REJECTING DEFECTIVE WORK

9.6.1. The CITY will have authority to disapprove or reject WORK which CITY believes to be *defective* or believes to be in nonconformance with the intent of the contract documents, and will also have authority to require special inspection or testing of the WORK as provided in Section 13.3, whether or not the WORK is fabricated, installed or completed.

#### 9.7. SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

9.7.1. In connection with CITY'S responsibility for Shop Drawings and samples, see Sections 6.11 and 6.14.

9.7.2. In connection with CITY'S responsibilities as to Change Orders see Article 10, 11, and 12.

9.7.3. In connection with CITY'S responsibilities in respect of Applications for Payment, etc., see Article 14.

#### 9.8. DETERMINATIONS FOR UNIT PRICES:

9.8.1. CITY will verify the actual quantities and classifications of Unit Price WORK performed by CONTRACTOR. CITY will review with CONTRACTOR CITY'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CITY'S written decisions thereon will be final and binding upon the CITY or CONTRACTOR unless, within ten days after the date of any such decision, either the CITY or CONTRACTOR delivers to the other party

to the Contract and to CITY written notice of intention to appeal from such a decision.

#### 9.9. DECISIONS ON DISPUTES:

9.9.1. The CITY 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 or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the WORK and claims under Article 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to CITY in writing with a request for a formal decision in accordance with this paragraph, which CITY will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to CITY and the other party to the Contract promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to CITY and the other party within thirty (30) days after such occurrence unless CITY allows an additional period of time to ascertain more accurate data in support of such claim, dispute or other matter.

9.9.2. The opposing party shall submit any response to CITY and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless CITY allows additional time). CITY will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. CITY's written decision on such claim, dispute or other matter will be final and binding upon CITY and CONTRACTOR unless: (i) an appeal from CITY's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between CITY and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from

CITY's written decision is delivered by CITY or CONTRACTOR to the other and to CITY within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction 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 within sixty (60) days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.3 When functioning as interpreter and judge under paragraphs 9.8.1, 9.9.1 and 9.9.2, CITY will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by CITY pursuant to paragraphs 9.8.1, 9.9.1 and 9.9.2 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 14.11.) 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 pursuant to Article 16.

#### 9.10. LIMITATIONS ON CITY:

9.10.1. Neither CITY'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by CITY either to exercise or not exercise such authority shall give rise to any duty or responsibility of CITY to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, or any other person or organization performing any of the WORK, or to any surety for any of them.

9.10.2. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the WORK, it is intended that such requirement, direction, review or judgment will be solely to evaluate the WORK for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

9.10.3. CITY will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CITY will not be responsible to CONTRACTOR for CONTRACTOR'S failure to perform or furnish the WORK in accordance with the Contract Documents.

9.10.4. CITY will not be responsible for the acts or omissions of CONTRACTOR or of any SUB-CONTRACTOR, any Supplier, or of any other person or organization performing or furnishing any of the WORK.

#### ARTICLE 10 -- CHANGES IN THE WORK

##### 10.1. AUTHORIZED CHANGES IN THE WORK

10.1.1. Without invalidating the Contract and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the WORK; these will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the WORK involved that will be performed under the applicable conditions of the Contract Documents, except as otherwise specifically provided.

10.1.2. If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.

##### 10.2. UNAUTHORIZED CHANGES IN THE WORK

10.2.1. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Section 3.2, except in the case of an emergency as provided in

paragraph 6.13.1 and except in the case of uncovering WORK as provided in paragraph 13.4.2.

### 10.3. EXECUTION OF CHANGE ORDERS

10.3.1. The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.3.1.1. Changes in the WORK, which are ordered by the CITY pursuant to paragraph 10.1.1, are required because of acceptance of *defective* WORK under paragraph 13.7.4 or correcting *defective* WORK under paragraph 13.9.3, or are agreed to by the parties.

10.3.1.2. Changes in the Contract Price or Contract time which the parties agree to.

10.3.1.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CITY pursuant to paragraph 9.9.1; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the WORK and adhere to the progress schedule as provided in paragraph 6.15.1.

10.3.2. **Surety.** It is distinctly agreed and understood that any changes made in the Contract Documents for this WORK (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR shall in no way annul, release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the WORK or the provisions of the Contract Documents (including, but not limited to, Contract Price or contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.3.3. Notwithstanding, anything to the contrary contained within the contract documents, all change orders involving additional cost or extensions of time, shall be governed by the ordinances of the City of Lauderdale Lakes.

## ARTICLE 11 -- CHANGE OF CONTRACT PRICE

### 11.1. GENERAL

11.1.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the WORK. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.1.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting

data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by CITY in accordance with paragraph 9.9.1 if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.1.2.

11.1.3. The value of any WORK covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.1.3.1. Where the WORK involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Section 11.5, inclusive).

11.1.3.2. By mutual acceptance of a lump sum (which shall include an allowance for overhead and profit in accordance with paragraph 11.3.1.2.a).

11.1.3.3. On the basis of the Cost of the WORK (determined as provided in Section 11.2, inclusive) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Section 11.3, inclusive).

### 11.2. COST OF THE WORK:

11.2.1. **General.** The term Cost of the WORK means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.2.2:

11.2.1.1. **Labor.** Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the WORK under schedules of job classification agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the CITY.

11.2.1.2. **Materials and Equipment.** Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and



equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.

11.2.1.3. SUB-CONTRACTOR. Payments made by CONTRACTOR to the SUB-CONTRACTORS for WORK performed by SUB-CONTRACTORS. If required by the CITY, CONTRACTOR shall obtain competitive bids from SUB-CONTRACTORS acceptable to CONTRACTOR and shall deliver such bids to the CITY who will then determine, with the advice of the CITY, which bids will be accepted. If a subcontract provides that the SUB-CONTRACTOR is to be paid on the basis of Cost of the WORK Plus a Fee, the SUB-CONTRACTOR's Cost of the WORK shall be determined in the same manner as CONTRACTOR'S Cost of WORK. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.2.1.4. Costs of special CITY's (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the WORK.

11.2.1.5. Supplemental costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers, which are consumed in the performance of WORK, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

b. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front end loaders, backhoes, and tractors, or other equipment, required for the economical performance of the authorized WORK, the CONTRACTOR shall receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate blue book for Construction Equipment, published by Equipment Guide Book Co., reduced by 25 percent. Equipment cost shall be calculated based upon the actual time the equipment is used in the WORK. If said WORK required the use of machinery not on the WORK or not to be used on the WORK, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the WORK shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract.

c. Sales, consumer, use or similar taxes related to the WORK and for which CONTRACTOR is liable, imposed by laws and regulations.

d. Royalty payments and fees for permits and licenses.

e. The site costs of utilities, fuel and sanitary facility.

f. Cost of premiums for additional bonds and insurance required because of changes in the WORK.

11.2.2. The term Cost of the WORK shall not include any of the following:

11.2.2.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.2.1.1 or specifically covered by paragraph 11.2.1.4 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

11.2.2.2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

11.2.2.3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the WORK and charges against CONTRACTOR for delinquent payments.

11.2.2.4. Cost of premiums for all Bonds and for all Insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.2.1.5f above).

11.2.2.5. Costs due to the negligence or intentional acts of the CONTRACTOR, any SUB-CONTRACTOR, or anyone whose acts any of them may be liable, including but not limited to, the correction of *defective* WORK, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.2.2.6. Costs associated with fringe benefits that are greater than actual costs; i.e., where worker hours exceed a typical 8-hour day and 40-hour workweek.

11.2.2.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.2.

### 11.3. CONTRACTOR'S FEE:

11.3.1. The CONTRACTOR'S Fee for overhead and profits shall be determined as follows:

11.3.1.1. A mutually acceptable fixed fee; or if none can be agreed upon,

11.3.1.2. A fee based on the following percentages of the various portions of the Cost of the WORK:

a. For costs incurred under paragraphs 11.2.1.1 and 11.2.1.2, the CONTRACTOR'S Fee shall be five (5%) percent;

b. For costs incurred under paragraph 11.2.1.3, the CONTRACTOR'S Fee shall be five percent; and if a subcontract is on the basis of Cost of the WORK Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all SUB-CONTRACTORS shall be five (5%) percent;

c. No fee shall be payable on the basis of costs itemized under paragraphs 11.2.1.4, 11.2.1.5 and 11.2.2;

d. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in accordance with paragraphs 11.3.1.2a through 11.3.1.2d, inclusive.

11.3.2. Whenever the cost of any WORK is to be determined pursuant to paragraph 11.2.1 or 11.2.2, CONTRACTOR will submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

#### 11.4. CASH ALLOWANCES:

11.4.1. 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 done by such SUB-CONTRACTORS or Suppliers and for such sums within the limit of the allowances as may be acceptable to the CITY, CONTRACTOR agrees that:

11.4.1.1. 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

11.4.1.2. 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. No demand for additional payment on account of any thereof will be valid.

11.4.1.3. Prior to final payment, an appropriate Change order will be issued as recommended by CITY to reflect actual amounts due CONTRACTOR on account of WORK covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.5. UNIT PRICE WORK:

11.5.1. Where the Contract Documents provide that all or part of the WORK is to be Unit Price WORK, initially the Contract Price will be deemed to include for all Unit Price WORK an amount equal to the sum of the established unit prices for each separately identified item of Unit Price WORK times the estimated quantity of each item as indicated in the Contract. 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 CITY in accordance with Paragraph 9.8.

11.5.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

11.5.3. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

11.5.4. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CITY believes that CONTRACTOR has incurred reduced expense as a result thereof, CITY may make a claim for a decrease in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such decrease.

#### 11.6. OMITTED WORK:

11.6.1. The CITY may at any time, by written order, without Notice to the Sureties, require omission of such contract WORK as it may find necessary or desirable. An order for omission of WORK shall be valid only by an executable change order. All WORK so ordered must be omitted by the CONTRACTOR. The amount by which the contract price shall be reduced shall be determined as follows:

11.6.1.1. By such applicable unit prices, or rates for WORK of a similar nature or character as set forth in the contract; or,

11.6.1.2. By the appropriate lump sum price set forth in the Contract; or,

11.6.1.3. By the reasonable and fair estimated cost of such omitted WORK and profit percentage as determined by the CONTRACTOR and the CITY, and approved by the CITY.

#### ARTICLE 12 -- CHANGE OF CONTRACT TIME

##### 12.1 GENERAL

12.1.1. The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an extension or shortening of the Contract time shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment of the Contract Time shall be determined by CITY in accordance with Section 9.9 if the CITY and CONTRACTOR cannot otherwise agree.

No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.1.

12.1.2. All time limits stated in the Contract Documents are of the essence of the Contract.

12.1.3. 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 therefore as provided in paragraph 12.1.1. 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. Delays attributable to and within the control of a SUB-CONTRACTOR or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.1.4. 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. In no event shall CITY be liable to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other CONTRACTORS performing other work as contemplated by Article 7.

12.1.5 Liquidated Damages. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph 2.3 of the General Conditions and the Notice To Proceed, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with a certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.3 of the General Conditions, and paragraph 3.1 of the Construction Contract for substantial completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 2.3 of the General Conditions and paragraph 3.1 of the construction contract for completion and readiness for final payment.

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

### 13.1. NOTICE OF DEFECTS:

13.1.1. Prompt notice of all defects for which CITY has actual knowledge will be given to CONTRACTOR. All defective WORK, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

13.1.2. Un-remedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment, which are remedied as a result of obligations of the guarantee, shall subject the remedied portion of the WORK to an extended guarantee period of one year after the defect has been remedied. The Surety shall be bound with and for the CONTRACTOR in the CONTRACTOR's faithful observance of the guarantee.

### 13.2. ACCESS TO WORK:

13.2.1 CITY and CITY'S representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the WORK at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### 13.3. TESTS AND INSPECTIONS:

13.3.1. CONTRACTOR shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals.

13.3.2. If Laws or Regulations of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the CITY'S requirements or CITY'S acceptance of a Supplier of materials or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the WORK.

13.3.3. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the CITY.

13.3.4. If any WORK (including the WORK of others) that is to be inspected, tested or approved is covered without written concurrence of CITY, it must, if requested by CITY, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CITY timely notice of CONTRACTOR'S intention to cover the same and CITY has not acted with reasonable promptness in response to such notice.

13.3.5. Neither observations by CITY nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligation's to perform the WORK in accordance with the Contract Documents.

#### 13.4. UNCOVERING WORK:

13.4.1. If any WORK is covered contrary to the request of CITY, it must, if requested by CITY, be uncovered for CITY'S observation and replaced, at CONTRACTOR'S expense.

13.4.2. If CITY considers it necessary or advisable that covered WORK be observed by CITY or inspected or tested by others, CONTRACTOR, at CITY'S request shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the WORK in question, furnishing all necessary labor, material and equipment. If it is found that such WORK is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such WORK is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 13.5. CITY MAY STOP THE WORK:

13.5.1. If the WORK is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the Contract Documents, the CITY may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the WORK shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

#### 13.6. CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.6.1. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective WORK, whether or not fabricated, installed or completed, or, if the WORK has been rejected by CITY, remove it from the site and replace it with non-*defective* WORK. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### 13.7. ONE-YEAR CORRECTION PERIOD:

13.7.1. If within one year after the date of Acceptance of WORK or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable

special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any WORK is found to be *defective*, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such *defective* WORK, or, if it has been rejected by the CITY, remove it from the site and replace it with non-*defective* WORK.

13.7.2. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the *defective* WORK corrected or the rejected WORK removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

13.7.3. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance 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.

13.7.4. Nothing herein shall be deemed a waiver of the statute of limitations as provided in Florida Law.

13.7.5. Where *defective* WORK (and damage to other WORK resulting therefrom) has been corrected, removed or replaced under this paragraph 13.7., 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.

#### 13.8. ACCEPTANCE OF DEFECTIVE WORK:

13.8.1. If, instead of requiring correction or removal and replacement of *defective* WORK, CITY (and, prior to CITY's recommendation of final payment, also CITY) prefers to accept it, CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY'S evaluation of and determination to accept such *defective* WORK (such costs to be approved by CITY as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

13.8.2. If any such acceptance occurs prior to CITY'S recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, CONTRACTOR will pay an appropriate amount to the CITY.

#### 13.9. CITY MAY CORRECT DEFECTIVE WORK:

13.9.1. If CONTRACTOR fails within thirty days (30) after written notice of CITY to proceed to correct and to correct *defective* WORK or to remove and replace rejected WORK as required by CITY in accordance with paragraph 13.7.1, or if CONTRACTOR fails to perform the WORK in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

13.9.2. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the WORK, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, the CITY'S representative, agents and employees such access to the site as may be necessary to enable the CITY to exercise the rights and remedies under this paragraph.

13.9.3. All direct, indirect and consequential costs of the CITY in exercising such rights and remedies will be charged against CONTRACTOR by CITY and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and/or replacement of WORK of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective WORK. CONTRACTOR shall also be responsible for restoring any other sites affected by such repairs or remedial work at no cost to CITY. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the WORK attributable to the exercise by the CITY of the CITY'S rights and remedies hereunder.

#### ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

##### 14.1. SCHEDULE OF VALUES

14.1.1. The schedule of values established as provided in paragraph 2.6.1 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY.

##### 14.2. UNIT PRICE BID SCHEDULE

14.2.1. Progress payments on account of Unit Price WORK will be based on the number of units completed.

##### 14.3. APPLICATION FOR PROGRESS PAYMENTS:

14.3.1. Unless otherwise prescribed by law, at the end of each month, the CONTRACTOR shall submit to the CITY for review, an Application for Progress Payment filled out and signed by the CONTRACTOR covering the WORK completed as of the date of the Application and accomplished by such supporting documentation as is required by the Contract Documents.

14.3.2. The Application for Progress Payment shall identify, as a subtotal, the amount of the CONTRACTOR'S Total Earnings to Date, plus the Value of Materials Stored which have not yet been incorporated in the WORK, less a deductive adjustment for materials stored which have been

installed which were not previously incorporated in the WORK, but for which payment was allowed.

14.3.3. The Net Payment Due to the CONTRACTOR shall be the above- mentioned subtotal from which shall be deducted the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by the CONTRACTOR. Retainage shall be calculated based upon the above- mentioned subtotal.

The above calculation in tabular form is as follows:

Total Earnings to Date . . . . .	\$
Value of Materials Stored . . . . .	\$
Less Value of Materials Stored for which payment was allowed and which have been installed . . . . .	(\$ )
Sub Total	\$
Less Retainage (based on sub total)	(\$ )
Less total of all previous approved Applications for Progress Payment	(\$ )
NET PAYMENT DUE	\$

14.3.4. The Value of Materials Stored shall be an amount equal to the specified percent of the value of same as set forth in the Contract or Schedule of Values. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the WORK but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the WORK and is planned for installation within the following thirty (30) days. The Application for Progress Payment shall also be accompanied by a Bill of Sale, paid invoice, or other documentation warranting that the CITY has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY'S interest therein, all of which shall be satisfactory to the CITY.

##### 14.4. CONTRACTOR'S WARRANTY OF TITLE:

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

##### 14.5. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

14.5.1. CITY will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CITY'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Thirty days after receipt of the Application for Payment by the CITY with CITY'S recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.5.4) become due and when due will be paid by the CITY to CONTRACTOR.

14.5.2. CITY'S recommendation of any

payment requested in the application for payment shall not prohibit the CITY from withholding payment or prohibit the CITY from paying additionally sums regarding other matters or issues between the parties.

14.5.3. CITY'S recommendation of final payment will constitute an additional representation by CITY's Project Manager that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.10 have been fulfilled.

14.5.4. CITY may refuse to recommend the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such representations to the CITY. The CITY may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CITY'S opinion to protect the CITY from loss, including but not limited to:

14.5.4.1. The WORK is *defective*, or completed WORK has been damaged requiring correction or replacement.

14.5.4.2. The Contract Price has been reduced by a Written Amendment or Change Order.

14.5.4.3. The CITY has been required to correct *defective* WORK or complete WORK in accordance with paragraph 13.9.1, or

14.5.4.4. Of CITY'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1.1 through 15.2.1.9 inclusive.

14.5.5. The CITY may refuse to make payment of the full amount recommended by the CITY because claims have been made against the CITY on account of CONTRACTOR'S performance or furnishing of the WORK, or there are other items entitling the CITY to credit against the amount recommended, but the CITY must give CONTRACTOR written notice (with a copy to CITY) stating the reasons for such action.

#### 14.6. SUBSTANTIAL COMPLETION:

(60) When the CONTRACTOR considers the entire WORK ready for its intended use, the CONTRACTOR shall notify the CITY in writing that the WORK is substantially complete and request that the CITY prepare a Certificate of Substantial Completion. For construction projects having an estimated cost of less than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK shall make an inspection of the WORK within thirty (30) calendar days after the notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. For construction projects having an estimated cost of more than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK within thirty (30) calendar days unless otherwise extended by contract not to exceed sixty calendar days after notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. If the CITY does not consider the WORK substantially complete, the CITY shall notify the CONTRACTOR in writing giving the reasons therefor. If the CITY considers the WORK to be

substantially complete, the CITY will prepare and deliver to the CITY for its execution and recordation the Certificate of Substantial Completion signed by the CITY and CONTRACTOR, which shall fix the Date of Substantial Completion.

14.6.1. The CITY shall have the right to exclude CONTRACTOR from the WORK after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the "punch list".

#### 14.7. PARTIAL UTILIZATION:

14.7.1. Use by the CITY of any finished part of the WORK, which has specifically been identified in the Contract Documents, or which the CITY and CONTRACTOR agree constitutes a separately functioning and useable part of the WORK that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the WORK, may be accomplished prior to Substantial Completion of all WORK subject to the following:

14.7.1.1. The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the WORK which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to the CITY that said part of the WORK is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. CONTRACTOR at any time may notify the CITY in writing that CONTRACTOR considers any such part of the WORK ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. Within a reasonable time after either such request, the CITY, CONTRACTOR and CITY shall make an inspection of that part of WORK to determine its status of completion. If CITY does not consider that part of the WORK to be substantially complete, CITY will notify the CITY and CONTRACTOR in writing giving the reasons therefor. If CITY considers that part of the WORK to be substantially complete, the provisions of paragraphs 14.6.1 and 14.6.2 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.

14.7.1.2. The CITY may at any time request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the WORK although it is not substantially complete. A copy of such request will be sent to CITY and within a reasonable time thereafter the CITY, CONTRACTOR and CITY shall make an inspection of that part of the WORK to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY that such part of the WORK is not ready for separate operation by the CITY will finalize the list of items to be completed or corrected and will deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the WORK which will become binding upon the CITY and CONTRACTOR at the time when

the CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed CITY). During such operation and prior to Substantial Completion of such part of the WORK, the CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related WORK.

#### 14.8. FINAL INSPECTION:

14.8.1. Upon written notice from CONTRACTOR that the entire WORK or an agreed portion thereof is complete, CITY will make a final inspection with the CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the WORK is incomplete, defective, or not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### 14.9. FINAL APPLICATION FOR PAYMENT:

14.9.1. After CONTRACTOR has completed in writing all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 14.6) and other documents--all as required by the Contract Documents, and after CITY has indicated in writing that the WORK is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the WORK.

#### 14.10. FINAL PAYMENT AND ACCEPTANCE:

14.10.1. Upon receipt of written notice from the CONTRACTOR that the WORK has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment, Final Receipt and Release of Lien and accompanying documentation, the CITY shall promptly examine the WORK and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed WORK by a properly qualified and experienced Professional CITY, shall satisfy himself that the CONTRACTOR'S statement appears to be correct and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled. He shall then inform the CITY in writing that he has examined the WORK and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the CONTRACTORS other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the WORK for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY does not in any way relieve the CONTRACTOR from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CITY liable for any faulty WORK done

or defective materials or equipment used by the CONTRACTOR.

14.10.2. The CITY will then make a final estimate of the value of all WORK done and will deduct all previous payments which have been made. The CITY will report such estimate to the CITY together with the recommendation as to the acceptance of the WORK or his findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CITY'S estimate and recommendation, the CITY will make final payment to the CONTRACTOR of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including, but not limited to, Liquidated Damages, as applicable. Title passes and warranty begins at final acceptance.

14.10.3. All prior estimates are subject to correction in the final estimate. Thirty days after approval by the CITY of the application for final payment, the amount recommended by CITY shall become due and will be paid to CONTRACTOR.

#### 14.11. WAIVER OF CLAIMS:

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

14.11.1.1. 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 14.8, 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

14.11.1.2 a waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and still unsettled.

### ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

#### CITY MAY SUSPEND WORK:

15.1.1. The CITY may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CITY 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 increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

#### 15.2. CITY MAY TERMINATE

15.2.1. Upon the occurrence of any one or more of the following events:

15.2.1.1. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to the bankruptcy or

insolvency;

15.2.1.2. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.1.3. If CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.1.4. If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

15.2.1.5. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.1.6. If CONTRACTOR fails to perform the WORK in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.6 as revised from time to time);

15.2.1.7. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.1.8. If CONTRACTOR disregards the authority of CITY; or

15.2.1.9. If CONTRACTOR otherwise violates any provisions of the Contract Documents;

the CITY may, after giving CONTRACTOR and Surety seven days written notice of any default and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the WORK and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere, and finish the WORK as the CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the Contract Price exceeds the expense of completing the WORK including compensation for additional managerial and administrative services, plus the CITY'S direct, indirect and consequential losses, damages and costs because of the CONTRACTOR'S default (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) such excess will be paid to CONTRACTOR. If such expenses and costs plus the CITY'S losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly on demand. Such costs incurred by the CITY will be approved as to reasonableness by CITY and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the CITY shall not be required to obtain the lowest price for the WORK performed.

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

15.2.3. The CITY may terminate this Contract without cause by giving seven (7) days prior written notice to the CONTRACTOR, and in such event, the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination, plus reasonable termination expenses. The CITY also will reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of the WORK and paid directly by the CONTRACTOR, not including overhead, general expenses or profit. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to SUB-CONTRACTORS or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY shall reimburse the CONTRACTOR for major materials or equipment purchased before termination if the CONTRACTOR can show proof of said purchases prior to notice of termination) inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same.

#### 15.3. CONTRACTOR MAY STOP WORK OR TERMINATE:

15.3.1. If, through no act or fault of CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or CITY fails to act on any Application for Payment within thirty (30) days after it is submitted, or the CITY fails for sixty (60) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to the CITY, terminate the Contract and the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination plus reasonable termination expenses. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same. In addition and in lieu of terminating the Contract, if CITY has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven days written notice to the CITY stop the WORK until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.13 to



carry on the WORK in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

#### ARTICLE 16 – DISPUTE RESOLUTION

16.1. All claims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.11) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to CITY initially for the decision in accordance with paragraph 9.9 will be made until the earlier of (a) the date on which CITY has rendered a written decision or (b) the thirty-first (31<sup>st</sup>) day after the parties have presented their evidence to CITY if a written decision has not been rendered by CITY before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty (30) days after the date on which CITY has rendered a written decision in respect thereof in accordance with paragraph 9.9; and the failure to demand arbitration within said thirty (30) days' period will result in CITY's decision being final and binding upon CITY and CONTRACTOR. If CITY renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of CITY rendered in accordance with paragraph 9.8 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.8.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration, and a copy will be sent to CITY for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph, 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including CITY and the officers, directors, agents, employees or any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceeding, and

16.4.3. the written consent of the other person or entity sought to be included and of CITY and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between CITY and CONTRACTOR involves the Work of a SUB-CONTRACTOR, either CITY or CONTRACTOR may join such SUB-CONTRACTOR as a party to the arbitration between CITY and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.5.5 a specific provision whereby the SUB-CONTRACTOR consents to being joined in arbitration between CITY and CONTRACTOR involving the Work of such SUB-CONTRACTOR. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of SUB-CONTRACTOR and against CITY that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. CITY and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in questions between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

#### ARTICLE 17 -- MISCELLANEOUS

##### 17.1. GIVING NOTICE:

17.1.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### 17.2. COMPUTATION OF TIME:

17.2.1. 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.

### 17.3. NOTICE OF CLAIM:

17.3.1. Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### 17.4. CUMULATIVE REMEDIES:

17.4.1. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to the CITY thereunder, are in addition to , and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy to which they apply. All representations warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract.

### 17.4. ACCIDENT AND PREVENTION:

17.4.1. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of and in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

### 17.5. NATIONAL EMERGENCY

17.5.1. In the event the CITY is prevented from proceeding with any or all of this WORK as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, CITY, Town, or County regulations, orders, restrictions, or due to circumstances beyond the CITY'S control, then the CITY

herein reserves the right to either suspend the WORK to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the WORK herein has already been commenced, then the CITY herein shall be liable for only the cancellation or suspension without the addition of prospective profits or other changes whatsoever.

### 17.6. FLORIDA PRODUCTS AND LABOR:

17.6.1. The CONTRACTOR'S attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

### 17.7. EMPLOYEES:

17.7.1. All labor described in these specifications or indicated on the Drawings and the WORK specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.7.2. Any person employed on the WORK who fails, refuses or neglects to obey the instructions of the CONTRACTOR in anything relating to this WORK or who appears to the CITY to be disorderly, intoxicated, insubordinate, or incompetent, shall upon the order of the CITY, be at once discharged and not again employed in any part of the WORK. Any interference with, or abuse or threatening conduct toward the CITY or their inspectors by the CONTRACTOR or his employees or agents, shall be authority for the CITY to annul the Contract and re-let the WORK. No intoxicating substance shall be allowed on the WORK site.

### 17.8. NON-DISCRIMINATION:

17.8.1. The CONTRACTOR shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The CONTRACTOR will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all SUB-CONTRACTORS and it is the responsibility of the SUB-CONTRACTOR compliance.

### 17.9. DRUG-FREE WORKPLACE:

17.9.1. The CITY requires all prospective CONTRACTORS to maintain a drug free work place and have their Drug Free Workplace policy posted in their offices and available for inspection by the CITY.

### 17.10. PUBLIC ENTITY CRIMES:

17.10.1. Pursuant to F.S. 287.133, as amended: a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not

submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a CONTRACTOR, supplier, SUB-CONTRACTOR, or CITY under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO or higher for a period of 36 months from the date of being placed on the convicted vendor list.

17.11. ASSIGNMENT:

17.11.1. This Contract, nor any monies due hereunder, or any part thereof, shall not be assigned, or transferred, by CONTRACTOR, nor shall the CITY be liable to any assignee or transferee, without the written consent of the CITY, to the assignment, or transfer. The CITY shall not release or discharge CONTRACTOR from any obligation hereunder. The CITY shall not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

17.12. VENUE:

17.12.1. This Contract shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Contract is fixed in Broward County, Florida.

17.13. ASBESTOS:

17.13.1. If the CONTRACTOR during the course of the WORK observes the existence of asbestos in any structure, building or facility, the CONTRACTOR shall promptly notify the CITY. The CITY shall consult with the CITY regarding removal or encapsulation of the asbestos material and the CONTRACTOR shall not perform any WORK pertinent to the asbestos material prior to receipt of special instructions from the CITY.

17.14. RIGHT TO AUDIT:

17.14.1. If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR'S books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR'S plants, or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all SUB-CONTRACTORS. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR'S normal business hours at the office of the CONTRACTOR. The accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the CITY.

(END)

# CITY OF LAUDERDALE LAKES

INVITATION TO BID

COMPREHENSIVE PARK PROJECT

ITB NO. 17-1302-05B



Department of Financial Services  
Purchasing Division

4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319  
(954) 535-2700  
[purchasing@lauderdalelakes.org](mailto:purchasing@lauderdalelakes.org)

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**BID # 17-1302-05B**

**PROJECT NAME: COMPREHENSIVE PARK IMPROVEMENT PROJECT**

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When completed and executed, these documents, along with the Plans/exhibits, Specifications and applicable Power of Attorney certifications for bond agents and Certificates of Insurance for the CONTRACTOR, will, collectively, form the Contract for this Project.

## INVITATION TO BID (ITB) NO. 17-1302-05B

The City of Lauderdale Lakes is requesting sealed proposals from a qualified service provider to administer the Business Consultation Program at the City of Lauderdale Lakes as listed in Invitation to Bid # 17-1302-05B to be received at the Department of Financial Services, City of Lauderdale Lakes, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, Florida 33319-5599, **until 3:00 p.m. Local Time, on Wednesday, February 22, 2017,** at which time this ITB will be publicly declared closed.

Solicitation documents shall be obtained by contacting DemandStar by Onvia at [www.demandstar.com](http://www.demandstar.com) or toll-free: 1-800-711-1712. Vendors who obtain solicitation documents from other sources than DemandStar.com are cautioned that the solicitation package may be incomplete. Furthermore, all addendums will be posted and disseminated by DemandStar. The City is not responsible for the accuracy of other means of distribution.

Bidders shall submit **ONE (1) MARKED ORIGINAL AND FOUR (4) PHOTOCOPIES OF THE COMPLETED ITB PACKAGE** in a sealed envelope. The Bidder may include in the package a CD with the ITB submittal information (but not required). The Proposal Name, ITB Number, and time and date of the ITB closing shall be clearly marked on the outside of the sealed envelope. Facsimile or digital responses shall not be accepted.

All ITB submittals shall be in sealed envelopes addressed to the Department of Financial Services, City of Lauderdale Lakes, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, Florida 33319-5599, and plainly marked on the outside:

ITB #: 17-1302-05B  
ITB Name: Comprehensive Park Project  
ITB Closing Date: **Wednesday, February 22, 2017 @ 3:00PM**  
Location: City of Lauderdale Lakes City Hall, Commission Chambers, 2<sup>nd</sup> Floor

Bidders may withdraw their ITB submittals at any time. Withdrawal request must be in writing from an authorized representative of the organization.

The City of Lauderdale Lakes reserves the right to waive informalities, to reject any and all ITB submittals, and to accept any ITB submittals or any combination of ITB submittals, which in its sole judgment will best serve the public interest.

Advertisement Dates: (*Sun Sentinel*)

February 4, 2017

February 9, 2017

This ITB package contains the following:

Section I: Notice to Bidders

Section II: Proposal Forms

Section III: Sample Forms

Section IV: General Conditions

## SECTION I: NOTICE TO BIDDERS

The City of Lauderdale Lakes is seeking a qualified contractor/firm to provide infrastructural improvements to the City's Aquatics Center and Willie Webb Senior Park. Specifications per facility is provided on the Schedule of Prices.

**This is a grants funded project through the Florida Department of Economic Opportunity (DEO). All requirements per DEO contract #HL058 with the City of Lauderdale Lakes are applicable to this Invitation to Bid (ITB).**

**Compliance with Federal Davis-Bacon Wage Rates is a must. Fringe benefits must be added to the prevailing hourly rates where applicable.**

It is the intent of the CITY to award this bid to the lowest responsible and responsive bidder. The CITY reserves the right to accept or reject any or all bids and to waive any informality concerning the bids and re-advertise and award, when such rejection or waiver is deemed to be in the best interest of the City of Lauderdale Lakes. The CITY reserves the right to award the bid on a split order basis, lump sum or individual item basis, unless otherwise stated.

A **Mandatory** Pre-Bid Conference will be held at the City of Lauderdale Lakes CITY Hall, 2<sup>nd</sup> Floor, Alfonso A. Gereffi Conference Room located at 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, Florida, at **10:00 AM, on Friday, February 10, 2017.** Failure to attend a mandatory pre-Bid conference, as required by the Bid Documents, shall result in the automatic rejection of your Bid as non-conforming and non-responsive.

All Bidders are required to submit a five percent (5%) Bid Bond with the Bid Form or the applicable Bid shall be rejected as non-responsive. A one hundred percent (100%) Payment and Performance Bond is required upon the CITY issuing a Notice of Intent to award the Contract to the selected Bidder.

Bidders shall submit **ONE (1) MARKED ORIGINAL AND FOUR (4) PHOTOCOPIES OF THE COMPLETED BID PACKAGE** in a sealed envelope. The Project Name, Bid Number, and time and date of the Bid opening shall be clearly marked on the outside of the sealed envelope. Facsimile responses shall not be accepted.

# INSTRUCTIONS TO BIDDERS

## 1. Defined Terms.

Terms used in these Instructions to Bidders, have the meanings assigned to them in the City of Lauderdale Lakes, Florida, Standard General Conditions of the Construction Contract.

## 2. Copies of Bid Documents.

2.1. Complete sets of the Bid Documents in the number and for the sum, if any, stated in the Invitation to Bid may be obtained from the Purchasing Office.

2.2. Complete sets of Bid Documents shall be used in preparing Bids. CITY does not assume and each disclaims any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

2.3. CITY in making copies of Bid Documents available on the above terms do so only for the purpose of obtaining bids on the WORK and do not confer a license or grant for any other use.

## 3. Submission of Bids.

3.1 Bidders shall submit **one (1) marked original and four (4) copies** of the completed Bid package in an opaque sealed envelope at the time and place indicated in the Invitation to Bid. The face of the envelope shall contain the Project Name, Bid number and time and date of the Bid opening. The sealed envelope shall be addressed to:

The City of Lauderdale Lakes  
Attn: Financial Services Department  
4300 N.W. 36<sup>th</sup> Street  
Lauderdale Lakes FL 33319-5599

If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "Bid Enclosed" on the face of the enclosing envelope.

3.2. Bids will be opened and read aloud, publicly, at the time and place indicated in the Invitation to Bid. All BIDDERS and their representatives are invited to attend. An abstract of the amounts of the base Bids will be made available to BIDDERS after the opening of Bids.

3.3. If not submitting a Bid, please respond no later than the Bid opening date and time, by returning the acknowledgment, noting the reason in the space provided. Failure to respond three (3) times in succession without returning the acknowledgement may be cause for removal of the BIDDER'S name from the mailing list.

3.4. All Bids shall remain subject to acceptance for ninety (90) calendar days after the day of the Bid opening, but the CITY may, at its sole discretion, release any Bid and return the Bid Security prior to that date.

## 4. Bid Form.

4.1. Bids must be submitted on the Bid Form

provided by the CITY.

4.2. The BIDDER will be responsible for correctly completing all blanks on the Bid Form.

4.3. Bids by partnerships must be executed in the partnership name, signed by a partner, and accompanied by evidence of authority to sign. The name of the person executing the Bid Document shall be typed or printed below the signature.

4.4. Bids by corporations must be executed in the corporate name by the president, vice-president or other corporate officer, attested by the secretary of the corporation and accompanied by evidence of authority to sign. The name of the person executing the Bid Document and state of incorporation shall be typed or printed below the signature.

4.5. The Bid shall contain an acknowledgement of receipt of all Addenda.

4.6. Non-Collusion: Every BIDDER shall provide an affidavit on the form provided indicating that it has not divulged, discussed or compared its Bid with other BIDDERS and has not colluded with any other BIDDER or parties to a Bid whatsoever. (Note: Premiums, rebates or gratuities are not permitted with, prior to, or after any delivery of material.) Any such violation will result in the cancellation and/or return of materials (as applicable) as being non-conforming and removal from the CITY'S Bid list(s).

4.8. Florida Trench Safety Act Compliance: In the event this contract requires trench excavation, the requirement of Fla. Stat. 553.60, et seq., shall be adhered to by all BIDDERS. Every BIDDER shall provide a certification on the form provided and other required documentation.

## 5. Bid Security.

5.1. Each Bid must be accompanied by a Bid security made payable to the City of Lauderdale Lakes in an amount of five percent (5%) of the BIDDER'S maximum Bid price and in the form of a certified check or cashier's check drawn upon any State or National Bank of Florida or a Bid Bond issued by a surety meeting the requirements of Paragraph 5.1 of the General Conditions. Said check or Bid Bond shall be made payable to the CITY and shall be given as a guarantee that BIDDER, upon receipt of Notice of Tentative Award of the contract, will enter into the Contract with the CITY, and furnish the necessary documents including, but not limited to: insurance certificates, Payment Bond and Performance Bond; each of the said Bonds to be in the amount stated on the Invitation to Bid.

5.2. The Bid Security of the SUCCESSFUL BIDDER will be retained until such BIDDER has executed the Construction Contract and furnished the required contract security whereupon the Bid security will be returned. If the apparent SUCCESSFUL BIDDER fails to execute and deliver the Construction Contract and furnish the required contract security within fifteen (15) calendar days after the Notice of



Tentative Award, which is issued prior to CITY Commission award of Construction Contract, the CITY may annul the Notice of Tentative Award, and the Bid security of that BIDDER will be forfeited. The CITY may then accept the Bid of the next lowest responding BIDDER, or re-advertise for bids. If the Bid of the next lowest BIDDER is accepted, this acceptance shall bind such BIDDER as though it was the original SUCCESSFUL BIDDER. There shall be no binding contract until such time as the CITY accepts the Construction Contract and makes final award of the contract. The Bid Security of other BIDDERS whom CITY believes to have a reasonable chance of receiving the award may be retained by the CITY until the earlier of the seventh day after the effective date of the Construction Contract or the ninety-first day after the Bid opening, whereupon Bid security furnished by such BIDDERS will be returned. Bid security with Bids which are not competitive or responsive will be returned upon award of the Bid.

#### 6. Qualifications of BIDDERS.

6.1. To demonstrate qualifications to perform the WORK, each BIDDER must be prepared to submit within five (5) calendar days of CITY'S request written evidence, such as financial data, previous experience, present commitments and other such data as may be called for in the Instructions to Bidders. Each Bid must contain evidence of BIDDER'S qualifications to do business in the State of Florida or obtain such qualification prior to award of the contract. The CITY reserves the right to make such investigations as it may deem necessary to establish the competency and financial ability of any BIDDER to perform the WORK and if, after investigation, the evidence of the BIDDER'S competency or financial ability is not satisfactory, the CITY reserves the right to reject the BIDDER'S Bid.

6.2. BIDDER'S on this project must hold a State of Florida license or a current certificate of competency issued by the Broward County Examining Board having jurisdiction over licensing of CONTRACTORS in the type of WORK involved in this Construction Contract. The BIDDER must submit, with the bid, proof this requirement has been met.

#### 7. Examination of Bid Documents and Site.

7.1. Pursuant to Article 4, General Conditions, BIDDER must satisfy itself by personal and thorough examination of the location of the proposed WORK, Bid Documents, requirements of the WORK and the accuracy of the estimate of the quantities of the WORK to be done; and BIDDER shall not at any time after the submission of a Bid dispute or complain of such estimate nor the nature or amount of WORK to be done.

7.2. By submission of its Bid, BIDDER affirms that it has, at its own expense, made or obtained any additional examinations, investigations, explorations, tests, and studies and obtained any additional information and data which pertain to the physical conditions (surface, subsurface, and Underground Utilities) at or contiguous to the site or otherwise, prior to bidding which may affect cost, progress, or performance of the WORK and which BIDDER deems necessary to determine its Bid for performing the

WORK in accordance with the time, price, and other terms and conditions of the Bid Documents and/or BIDDER has satisfied itself with respect to such conditions and it shall make no claims against the CITY if on carrying out the WORK it finds that the actual conditions do not conform to those indicated.

7.3. On request, the CITY will provide BIDDER access to the site to conduct such investigations and tests, as BIDDER deems necessary for submission of its Bid. BIDDER shall schedule such access in advance with the CITY.

7.4. Upon completion of such additional field investigations and tests, BIDDER shall completely restore disturbed areas.

#### 8. Interpretations and Addenda.

8.1. All questions about the meaning or intent of the Bid Documents are to be directed to CITY, unless otherwise indicated. Interpretations or clarifications considered necessary by CITY in response to such questions will be issued by addenda mailed or delivered to all parties recorded by CITY as having received the Bid Documents. Questions received less than ten (10) calendar days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

8.2 The CITY will endeavor to send any addenda to all prospective BIDDERS on record. However, it is the sole responsibility of the BIDDER to ascertain, by contacting the CITY'S Financial Services Department, no less than five (5) calendar days prior to the Bid opening date, whether any addendum to this Invitation to Bid and the Bid Documents has been issued, and to submit any and all such addenda properly acknowledged with the Bid response. The CITY will not issue addenda within five (5) calendar days of the Bid opening.

8.3 All Special Conditions, Drawings and Technical Specifications shall have precedence over General Conditions. If there is a conflict between the General Conditions, Special Conditions, Technical Specifications and Drawings, the more stringent specification shall apply.

#### 9. Substitute or "Or-Equal" Items.

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by SUCCESSFUL BIDDER if acceptable to CITY, application for such acceptance must be made fifteen (15) calendar days prior to the Bid opening date, or such application will not be considered by CITY. The procedure for submittal of any such application, including those applications made after award of the Construction Contract by SUCCESSFUL BIDDER for consideration by CITY, is set forth in Section

6.4 of the General Conditions which may be supplemented in the General Requirements.

#### 10. SUB-CONTRACTORS, Suppliers and Others.

10.1. If the Bid Form requires the identity of certain SUB-CONTRACTORS, Suppliers and other persons and organizations, including those who are to furnish the principal items of material and equipment, to be submitted, the BIDDER shall provide such identification. If requested by the CITY, BIDDER shall provide an experience statement with pertinent information regarding similar projects and other evidence of qualification for each SUB-CONTRACTOR, Supplier, person or organization. If the CITY after due investigation has reasonable objection to any proposed SUB-CONTRACTOR, Supplier, other person or organization, either may, before the Notice of Tentative Award is given, request the apparent SUCCESSFUL BIDDER to submit an acceptable substitute without an increase in Bid price. If the apparent SUCCESSFUL BIDDER declines to make any such substitution, the CITY may award the contract to the next lowest BIDDER that proposes to use acceptable SUB-CONTRACTORS, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid Security of any BIDDER. Any SUB-CONTRACTOR, Supplier, other person or organization listed and to whom the CITY does not make written objection prior to the giving of the Notice of Tentative Award will be deemed acceptable to the CITY subject to revocation of such acceptance after the Effective Date of the Contract as provided in Paragraph 6.5.2 of the General Conditions. SUB-CONTRACTORS shall not be changed without the approval of the CITY. No acceptance by the CITY of any such SUB-CONTRACTOR, Supplier or other person or organization shall constitute a waiver of any right of the CITY to reject defective WORK or materials not conforming with these specifications.

10.2. In contracts where the Contract Price is on the basis of Cost-of-the-WORK Plus a Fee, the apparent SUCCESSFUL BIDDER, prior to the Notice of Tentative Award, shall identify in writing to the CITY those portions of the WORK that such BIDDER proposes to subcontract and after the Notice of Tentative Award the Successful BIDDER may only subcontract other portions of the WORK with the CITY'S written consent.

10.3. No BIDDER shall be required to employ any SUB-CONTRACTOR, other person or organization against which BIDDER has reasonable objection.

10.4. No more than seventy percent (70%) of the dollar value of the total contract WORK may be accomplished by SUB-CONTRACTORS. Balance of the WORK must be accomplished by the SUCCESSFUL BIDDER'S own forces. Each BIDDER must furnish with its Bid Form, a list of the items it proposes to subcontract and the estimated cost of these items.

#### 11. Modifications and Withdrawal of Bids.

11.1. Bids may be modified by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are

to be submitted at any time prior to the scheduled time for the opening of bids.

11.2. Bids may be withdrawn only by written communication delivered to the Purchasing Office, prior to the Solicitation Closing Date & Time. The BIDDER must present certification to assure that they are indeed an authorized representative of the BIDDER'S firm at the time such communication to withdraw the Bid is presented. A CITY representative shall verify this information prior to return of the Bid and Bid Security.

11.3. However, if, within twenty-four (24) hours after Bids are opened, any BIDDER files a duly signed written notice with the CITY and promptly thereafter demonstrates to the reasonable satisfaction of the CITY that there was a material and substantial mistake in the preparation of its Bid, that BIDDER may withdraw its Bid, and the Bid Security will be returned. The BIDDER must present certification to assure that the BIDDER is indeed an authorized representative of the BIDDER'S firm at the time such communication to withdraw the Bid is presented. A CITY representative shall verify this information prior to return of the Bid and Bid Security. Thereafter, that BIDDER will be disqualified from further bidding on the WORK to be provided under the Bid Documents.

#### 12. Award of Contract.

12.1 The CITY reserves the right to accept any Bid or combination of Bid alternates which, in the CITY'S judgment will best serve the CITY'S interest, reject any and all Bids, waive any and all informalities and/or irregularities, and disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, the CITY reserves the right to reject the Bid of any BIDDER, if the CITY believes that it would not be in the best interest of the CITY to make an award to that BIDDER, whether because the Bid is non-conforming, non-responsive, unqualified, of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the CITY.

12.2. In evaluating Bids, the CITY shall consider the qualifications of the BIDDER, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Tentative Award.

12.3. The CITY may consider the qualifications and experience of SUB-CONTRACTORS, Suppliers, and other persons and organizations proposed for those portions of the WORK as to which the identity of SUB-CONTRACTORS, Suppliers and other persons and organizations must be submitted as provided in Section 10. The CITY may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the WORK when such data is required to be submitted prior to the Notice of Tentative Award.

12.4. The CITY may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the BIDDER, proposed SUB-CONTRACTORS, Suppliers and other persons and organizations to perform and furnish the WORK in

accordance with the Bid Documents to the CITY'S satisfaction within the prescribed time.

12.5. If the contract is to be awarded, the contract will be awarded to the most responsive BIDDER whose evaluation indicates that the award will be in the best interest of the CITY.

12.6. The CITY reserves the right to reduce the quantities of WORK to be done and to completely eliminate any items of the WORK listed in the Bid Form in order that the WORK can be completed within the amount of available funds.

12.7. If the contract is to be awarded, the CITY will give the SUCCESSFUL BIDDER a Notice of Tentative Award within ninety (90) calendar days after the day of the Bid opening.

12.8. The BIDDER which staff intends to recommend for award may be required to submit a Schedule of Values priced in line item format including time frames (not dated) for staff to review prior to staff's actual award recommendation being submitted to the CITY Commission. Staff will review BIDDER's schedule for any inconsistencies. Should any inconsistencies be noted, they will be brought to the attention of the intended awardee for adjustment. The award process will not continue until the CITY accepts said schedule. An unbalanced Schedule of Values may result in rejection of the Bid as non-conforming and non-responsive. Failure to produce Schedule of Values within four (4) business days of the CITY'S request may result in the Bid being rejected as non-conforming and non-responsive.

12.9. Discrepancies in the multiplication of units of WORK and unit prices will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

12.10. NO AWARD WITH RESPECT HERETO SHALL BE DEEMED FINAL AND ALL SUCH AWARDS SHALL BE DEEMED CONDITIONAL, UNLESS AND UNTIL THE PARTIES SHALL HAVE FULLY EXECUTED THE AGREEMENT(S) CONTEMPLATED HEREIN, AND A FULLY EXECUTED AGREEMENT HAS BEEN RETURNED TO THE BIDDER BY THE CITY. THE CITY RESERVES THE RIGHT TO REVOKE ANY AWARD MADE HEREUNDER, WITHOUT PENALTY, PREMIUM OR OBLIGATION, AT ANY TIME PRIOR TO THE DELIVERY OF THE FULLY EXECUTED AGREEMENT(S) TO THE BIDDER, NOTWITHSTANDING THAT AN AWARD MAY HAVE BEEN PUBLISHED. NO BIDDER SHALL BE ENTITLED TO RELY ON ANY ANNOUNCEMENT OF AN AWARD, AND THE CITY SHALL IN NO WAY BE ESTOPPED IN THE REVOCATION OF AN AWARD PREVIOUSLY GRANTED.

#### 13. Contract Security and Insurance.

Article 5 of the General Conditions sets forth the CITY'S requirements as to Performance and Payment Bonds. When the SUCCESSFUL BIDDER delivers the executed Construction Contract to the CITY, it must be accompanied by the required Performance and Payment Bonds and insurance certificates and policies,

if applicable.

#### 14. Signing of Contract.

The Notice of Tentative Award will be presented to the SUCCESSFUL BIDDER, accompanied by the required number of unsigned counterparts of the Construction Contract with all other written Contract Documents attached. Within fifteen (15) calendar days thereafter, the SUCCESSFUL BIDDER shall sign and deliver the required number of counterparts of the Construction Contract and attached documents to CITY with the required bonds and insurance certificates. Within forty-five (45) calendar days thereafter, the CITY upon final award by the CITY Commission shall deliver one fully signed counterpart to the SUCCESSFUL BIDDER.

#### 15. Public Records.

Any material submitted in response to this Invitation to Bid will become a public document pursuant to F.S. 119.07. This includes material that the responding BIDDER might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening of Bids pursuant to F.S. 119.07.

#### 16. Local Preference.

Any qualified local business shall receive bidding preferences pursuant to Section 23-64.5 of the CITY'S Code of Ordinances, which states:

"If a qualified local business submits a response to either an inquiry made pursuant to informal competitive conditions or a formal invitation to Bid as required in Section 23-65 of the code, and the original Bid of the qualified local business is within five percent (5%) of the low Bid, then the CITY shall give the qualified local business the opportunity to meet the price of the low Bid. The order of preference by which the qualified local business shall be given the opportunity to match the low Bid shall be from the lowest to the highest Bid, as long as the initial Bid was within five percent (5%) of the low Bid."

A list of local businesses may be issued upon request and at any pre-Bid conference held by the CITY.

#### 17. Building Permits.

The SUCCESSFUL BIDDER shall make application and obtain the necessary building permits from the CITY or other governing bodies. There shall be no cost for permits issued by the CITY.

#### 18. Sales Tax.

**All materials and supplies necessary for completion of this contract are subject to Florida Sales and Use Tax in accordance with Florida Statutes.**

#### 19. Indemnification.

The Bid shall include in its price the sum of \$10.00 in consideration for the indemnification provision, as referenced in Section 6.16 of the General Conditions.

20. Bid Exemption.

Purchases shall not include any items or services available at lower prices on other public entity or State of Florida Contract. The CITY reserves the right to bid separately any item or service if deemed to be in the best interest of the CITY.

21. Facilities.

A BIDDER must have, at the time of the Bid opening, an operational facility or be a fully authorized agent or representative of the product Bid, and capable of producing, providing or installing the items Bid, and so certify upon request. The CITY reserves the right to inspect the BIDDER'S facilities at any reasonable time, prior to award of the Bid, during normal working hours, with prior notice to determine that BIDDER has a bona fide place of business, and is a responsible BIDDER.

22. Conflict of Interest.

All BIDDERS must disclose with their Bid the name of each of its employees, agents, or relatives who are employees of the CITY. Further, all BIDDERS must disclose the name of any CITY employee known to it, who owns, directly or indirectly, an interest of five (5%) percent or more in the BIDDER'S firm or any of its affiliated companies.

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## SCHEDULE OF BID PRICES

### WILLIE WEBB PARK IMPROVEMENTS

ITEM #	BID ITEM DESCRIPTION	BID QUANTITY	UNIT	UNIT COST	TOTAL COST
W1	Resurface existing basketball court (Double Court)	13,650	SF	\$ -	\$ -
W2	Remove existing floor covering inside the fitness center and replace with Heavy duty 1/2" rubber matting (Minimum 4 ft. wide)	1,250	SF	\$ -	\$ -
W3	Remove and Replace Tiles in Auditorium (20"x20" Porcelain. Thickness: 3/8in.)	1,480	SF	\$ -	\$ -
W4	Remove and Replace Tiles in Hallway (20"x20" Porcelain. Thickness: 3/8in)	840	SF	\$ -	\$ -
W5	Remove and Replace Tiles in Lobby (20"x20" Porcelain tiles. Thickness: 3/8in.)	240	SF	\$ -	\$ -
W6	Remove and Replace Tiles in Vending Machine Area (20"x20" Porcelain tiles. Thickness: 3/8in.)	216	SF	\$ -	\$ -
W7	Removal and Replacement of Playground canopy	1	LS	\$ -	\$ -
W8	Resurface existing playground rubber surface	3,600	SF	\$ -	\$ -
W9	Furnishing and Installing 30 ft high Soccer Field Netting	1,570	LS	\$ -	\$ -
W10	Removal and replacement of outdoor walkways (Concrete or Flexipave). See attached detail	14,472	SF	\$ -	\$ -
W11	Mobilization	1	LF	\$ -	\$ -
W12	Maintenance of Traffic	1	SF	\$ -	\$ -
W13	Clearing and Grubbing	1	LS	\$ -	\$ -
W14	Allowance for Engineering Design	1	LS	\$ 15,000.00	\$ 15,000.00
W15	Contingency	1	LS	\$ 10,000.00	\$ 10,000.00
W16	Permit Allowance	1	AL	\$ 500.00	\$ 500.00
<b>SUB-TOTAL WILLIE L. WEBB PARK</b>					\$ -

**NOTE:**

**Item # W1:** Price shall include all resurfacing material, painting, marking and sealing of asphalt as needed.

**Item # W3, W4, W5 and W6:** Price shall include all removal and disposal of existing tiles, furnishing and installing new 20"x20" porcelain tiles with a minimum thickness of 3/8" including base material. Color to be determined by the City.

**Item # W7:** Playground canopy size is approximately 3,796 SF. **New canopy to be adjusted to a new height of approximately 4 feet higher than existing to prevent reach of kids.**

**Item # W8:** Proposed playground surface shall be 1/2 inch thick with bounded rubber with a minimum of 2 colors to be determined by the City.

**Item # W9:** New field netting shall be 22 feet high, made of #15x1-3/4" black nylon diamond mesh barrier netting, 125 lb. single strand tensile strength with a 3/8" black dacron rope. The existing netting poles shall be utilized. Price shall also include all required hardware including insulated cable.

**Item # W14:** This allowance is to compensate for the preparation of engineering and/or architectural design as required for permitting by the City's Building Department and any other agencies having jurisdiction.

**Item # W15:** This is a contingency item to be utilized ONLY as authorized by the CITY. Payment will be made for authorized additional work to the contractor as unforeseen conditions.

**Item # W16:** payment for permit fees will be based upon the actual permit fees required by the CONTRACTOR from the various agencies having jurisdiction for construction of the project, all in accordance with the Contract Documents. The allowance permit fee amount shown on the Bid Schedule is an estimate of permit fees required for the project and is a cost pass through item.

## SCHEDULE OF BID PRICES

### POOL FACILITY IMPROVEMENTS

ITEM #	BID ITEM DESCRIPTION	BID QUANTITY	UNIT	UNIT COST	TOTAL COST
P1	Repair pool liner	1	LS	\$	\$
P2	Replace pool deck expansion joints	380	LF	\$	\$
P3	Repair pool deck	1	LS	\$	\$
P4	Removal and disposal of existing VC tiles inside of existing building	1,140	SF	\$	\$
P5	Furnishing and installing new epoxy floor coating inside of existing building	1,140	SF	\$	\$
P6	Repair and repaint existing canopy posts	8	EA	\$	\$
P7	Building painting (Exterior: APPROX AREA = 12,500 sf)	1	LS	\$	\$
P8	Building painting (Interior: APPROX. AREA = 1,340 sf)	1	LS	\$	\$
P9	Furnishing and installing barbwire	400	LF	\$	\$
P10	Remove and dispose shrubs around the perimeter of the property	1,600	SF	\$	\$
P11	Installation St. Augustine Sod	1,600	SF	\$	\$
P12	Re-coat and striping of existing parking lot	1	LS	\$	\$
P13	Mobilization	1	LS	\$	\$
P14	Maintenance of Traffic	1	LS	\$	\$
P15	Clearing and Grubbing	1	LS	\$	\$
P16	Contingency	1	LS	\$ 10,000.00	\$ 10,000.00
<b>SUB-TOTAL POOL FACILITY IMPROVEMENTS</b>					\$
<b>TOTAL BID PRICE (WILLIE WEBB PARK + POOL FACILITY)</b>					\$

#### NOTES:

**Item # P1:** The size of the existing pool is approximately 3,375 SF. There are multiple visible damaged areas to the liner on the surface of the pool and the plastic area around the pool. Existing liner shall be repaired to prevent the leaks.

**Item # P2:** All proposed expansion joints must be the full depth of the concrete section in which they are located.

**Item # P3:** Approximate surface area of the pool deck is 7,257 square feet. Price shall include saw cutting, removal and repair of broken/crack concrete slabs in various locations, installation of new expansion joints and the installation of a new deck surface with anti-slip characteristics to bare feet and sandals when wet. Color to be determined by the City.

**Item # P4:** Price shall include removal and proper disposal of existing VC tile inside of the building.

**Item # P5:** Price shall include furnishing and installing a new epoxy floor coating inside of the building.

**Item # P6:** Price shall include cleaning, polishing, rust removal and coating with 2 part epoxy for 8 existing posts.

**Item # P7 and P8:** Exterior building surface area is approximately 12,500 square feet; Interior building surface area is approximately 1,340 square feet. Price shall include surface preparation. Paint shall be marine base. Color to be determined by the City.

**Item # P9:** Proposed barbwire shall match existing. Price shall include all support and hardware as required.

**Item # P12:** The dimension of the existing parking lot is approximately 10,200 SF. Price shall include striping for 21 parking spaces including 2 handicap spaces. All existing wheelstops shall be painted. Color to be determined by the City.

**Item # P16:** This is a contingency item to be utilized ONLY as authorized by the CITY. Payment will be made for authorized additional work to the contractor as unforeseen conditions.

## SECTION II: PROPOSAL FORM

### BID FORM

#### COMPREHENSIVE PARK IMPROVEMENT PROJECT PROJECT NO: 17-1302-05B

(Submit One (1) Original + Four (4) copies of this form to City of Lauderdale Lakes,  
Financial Services Department, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319)

Submitted By: \_\_\_\_\_  
(BIDDER)

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

to furnish and deliver all materials and to do and perform all WORK as is required for the project scope.

In order to be considered for this project, **the Bidder must** have successfully completed a minimum of three (3) projects of similar scope and complexity over the past five (5) years, in the State of Florida, and must be able to document the required experience upon request.

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Contract with the CITY to perform and furnish all WORK as specified herein for the Contract Price and within the Contract Period indicated in this Bid.
2. This Bid will remain subject to acceptance for ninety (90) days after the day of Bid opening. BIDDER will sign and submit the necessary documents required by the CITY within fifteen (15) days after the date of CITY'S Notice of Tentative Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Contract, that

- a. BIDDER has examined the Bid Documents, including the following addenda:

Number	Date	Number	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

of all of which is hereby acknowledged;

- b. BIDDER has familiarized itself with the nature and extent of the Bid Documents, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the WORK.
  - c. BIDDER has given the CITY written notice of all conflicts, errors or discrepancies that it has discovered in the Bid Documents and the written resolution thereof by the CITY is acceptable to BIDDER.
4. BIDDER proposes to furnish the WORK in conformity with the specifications and at the Bid Prices referenced below in the Schedule of Bid Prices. The Bid Prices quoted have been checked and certified to be correct. Said Bid Prices are fixed and firm and shall be paid to BIDDER for the successful completion of its obligation as specified in the Bid Documents.

5. It is the intent of the CITY to award this bid to the lowest responsible and Responsive BIDDER. The CITY reserves the right to accept or reject any or all bids and to waive any informality concerning the bids when such rejection or waiver is deemed to be in the best interest of The CITY OF LAUDERDALE LAKES. The CITY reserves the right to award the bid on a split order basis, lump sum or individual item basis unless otherwise stated.
6. BIDDER agrees that the WORK will be substantially completed within\_\_\_\_\_calendar days after the receipt of the Notice to Proceed and final completion will occur within \_\_\_\_\_calendar days after the Notice of Substantial Completion.
7. BIDDER accepts the provisions of the Contract as to liquidated damages in the event of failure to complete the WORK on time.

8. Communications concerning this Bid shall be as follows:

Contact Person \_\_\_\_\_

Business Address \_\_\_\_\_

CITY, State, Zip Code \_\_\_\_\_

Business Phone Number \_\_\_\_\_

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

Cell Phone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

9. Other pertinent information is as follows:

License Number \_\_\_\_\_  
(Please Attach Copy)

Federal Tax ID# \_\_\_\_\_

Federal Employment ID # \_\_\_\_\_

Submitted on this\_\_\_\_\_day of\_\_\_\_\_, 20\_\_ .

- a. (If an individual, partnership, or non-incorporated organization)

Signature of  
BIDDER \_\_\_\_\_

By \_\_\_\_\_

- b. (If a corporation)

(Affix Seal)

Signature of  
BIDDER \_\_\_\_\_

By \_\_\_\_\_



Attested by

Secretary \_\_\_\_\_

Incorporated under the laws of the State of \_\_\_\_\_.

BID PRICES WITHOUT THE MANUAL SIGNATURE OF AN AUTHORIZED AGENT OF THE  
BIDDER SHALL BE REJECTED AS NON-RESPONSIVE, NON-CONFORMING AND INELIGIBLE  
FOR AWARD.

CERTIFICATE  
(For Partnership)

I HEREBY CERTIFY that a meeting of the partners of \_\_\_\_\_, a Partnership under the laws of the State of \_\_\_\_\_ held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED, that \_\_\_\_\_ as \_\_\_\_\_ of the Partnership, is hereby authorized to execute the Bid Form dated \_\_\_\_\_, 20\_\_\_\_, between the City of Lauderdale Lakes, Florida, and this Partnership, and that the execution thereof, attested by the \_\_\_\_\_ of the Partnership be the official act and deed of this Partnership."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Signature)

(Title)

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ who O is personally known to me or who O has presented the following type of identification: \_\_\_\_\_.

Signature of Notary Public, State of Florida

Notary seal (stamped in black ink)  
OR  
Printed, typed or stamped name of Notary  
and Commission Number

CERTIFICATE  
(For Corporation)

I HEREBY CERTIFY that a meeting of the Board of Directors of \_\_\_\_\_, a corporation under the laws of the State of \_\_\_\_\_ held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED, that \_\_\_\_\_, as \_\_\_\_\_ of the Corporation, is hereby authorized to execute the Bid Form dated \_\_\_\_\_, 20 \_\_, between the City of Lauderdale Lakes, Florida, and this Corporation, and that the execution thereof, attested by the Secretary of the Corporation and with corporate seal affixed, shall be the official act and deed of this Corporation".

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Secretary

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ who O is personally known to me or who O has presented the following type of identification: \_\_\_\_\_.

Signature of Notary Public, State of Florida

Notary seal (stamped in black ink)  
OR  
Printed, typed or stamped name of Notary  
and Commission Number

## BID COVER PAGE CHECKLIST

THIS SHOULD BE THE FIRST PAGE OF YOUR BID

COMPANY NAME: \_\_\_\_\_

COMPANY PHONE: \_\_\_\_\_

### BEFORE SEALING YOUR BID ENVELOPE MAKE SURE THE FOLLOWING ITEMS ARE INCLUDED IN YOUR BID SUBMITTAL . . .

- D 1. **Bid Form:** Carefully read *all* Bid Documents, review the project scope and properly fill out the **Bid Form**. *(Failure to properly complete and sign this document shall cause the Bid submittal to be rejected as non-responsive.)*
- D 2. **Bidder's Qualification Statement:** Complete and sign the **Bidder's Qualification Statement**. *(Failure to properly complete and sign this document shall cause the Bid submittal to be rejected as non-responsive.)*
- D 3. **Schedule of Bid Prices:** Complete the schedule of bid prices for each of the locations: Lauderdale Lakes Aquatics Center and Willie L. Webb Senior Park.
- D 4. **Non-Collusion Affidavit:** Sign the **Non-Collusion Affidavit** and have it properly notarized.
- D 5. **Trench Safety Act:** Complete and sign the **Trench Safety Act** form.
- D 6. **Warranties:** Complete and sign the **Warranties** form.
- D 7. **Bid Bond:** Include a five percent (5%) Bid Bond. Failure to provide a Bid guarantee will result in automatic rejection of your Bid. **All required Bonds must be submitted on the CITY'S Bond forms, included in this document.** *(Failure to properly complete and sign this document shall cause the Bid submittal to be rejected as non-responsive.)*
- D 8. **Proof of Insurance:** Include proof of insurance containing a provision or endorsement that the coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice has been given to the CITY and additional insured by certified mail. All such insurance required herein (except for worker's compensation and employer's liability) shall name the CITY and CITY's and their officers, directors, agents, and employees as "additional insured".
- D 9. **License:** Attach certificate of competency, state registration and any other applicable licenses.

IF "NO BID" IS OFFERED, PLEASE PROVIDE THE FOLLOWING INFORMATION:

Please indicate reason(s) why a Bid Form is not being submitted at this time. Return this page to the Financial Services Department to avoid removal from the City of Lauderdale Lakes vendor listing.

## BID BOND

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

KNOW ALL MY BY THESE PRESENTS that \_\_\_\_\_ as Principal,  
hereinafter called BIDDER and \_\_\_\_\_ as Surety, are held  
and firmly bound unto the CITY Lauderdale Lakes, Florida, hereinafter called the CITY in the  
penal sum of:

\_\_\_\_\_ Dollars \$ \_\_\_\_\_

lawful money of the United States, for the payment of which sum will and truly to be made, we  
bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly  
by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas the BIDDER has  
submitted the accompanying Bid, dated \_\_\_\_\_, 20\_\_ , for:

PROJECT NAME: \_\_\_\_\_

BID NO: \_\_\_\_\_

NOW, THEREFORE,

1. It is a condition precedent to the submission of said Bid that a certified check, cashiers  
check or bid bond in the amount of five percent (5%) of the base Bid be submitted with said Bid  
as a guarantee that BIDDER will, if awarded the contract, enter into a written contract with CITY.

2. If the BIDDER shall not withdraw said bond within ninety (90) days after date of the  
same, and shall within fifteen (15) days after the prescribed forms are presented to him for  
signature, enter into a written contract with the CITY in accordance with the Bid as accepted, and  
give bonds with good and sufficient surety or sureties, as may be required, for the faithful  
performance and proper fulfillment of such contract, then the above obligation shall be void and of  
no effect, otherwise the sum herein stated shall be due and payable to CITY and the Surety  
herein agrees to pay said sum immediately upon demand of the CITY in good and lawful money  
of the United States of America as liquidated damages for failure thereof of said BIDDER.

IN WITNESS WHEREOF, the above-bounded parties executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required. If Corporation, Secretary Only will attest and affix seal.)

WITNESSES:

BIDDER

By (Signature & Title)

(AFFIX SEAL)

Typed Name & Title signed above

ATTEST:

CORPORATE SURETY (Affix Seal)

Secretary

By (Signature & Title)

Typed Name & Title signed above

ATTEST:

Attorney in Fact (Affix Seal)

Business Phone

Secretary

Business Address

CITY

State

(AFFIX SEAL)

Name of Local Insurance Agency

## CERTIFICATE AND AFFIDAVIT FOR BONDS

TO: CITY OF LAUDERDALE LAKES CITY COMMISSIONERS

RE: Bid Number: \_\_\_\_\_

Bidder: \_\_\_\_\_

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

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

CITY/ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

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

Bond Amount: \_\_\_\_\_

SURETY BOND COMPANY:

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

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

CITY/ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

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

This is to certify that in accordance with Chapter 85-104, Laws of Florida (HB 1266) the insurer named above:

1. Holds a certificate of authority authorizing it to write surety bonds in the state of Florida;
2. Has twice the minimum surplus and capital required by the Florida Insurance Code; and
3. Holds a current valid certificate of authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

Date

Agent and Attorney-in-Fact

## PERFORMANCE BOND

Successful Bidder Must Submit when Contract is Signed  
(This bond meets and exceeds the requirements of Florida Statutes Section 255.05)

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** that we,  
\_\_\_\_\_, as Principal, hereinafter called  
Contractor, and \_\_\_\_\_ as Surety, are firmly bound unto the City of Lauderdale

Lakes, Florida, as Obligee, hereinafter called the City, in the Penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_), for the payment of which sum well and truly to be made, we bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Contractor, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, entered into a certain contract with  
the City, hereto attached, for **ITB #17-1302-05B** Entitled, "Comprehensive Park Improvement Project" which  
Contract is made a part hereof by reference thereto.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that, if the Contractor shall well  
and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract,  
and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to  
the Surety being hereby waived, then this obligation shall be void; otherwise to remain in full force and effect.

**WHENEVER** the Principal shall be and is declared by the City to be in default under the Contract, or  
whenever the Contract has been terminated by default of the Contractor, the City having performed the City's  
obligations thereunder, the Surety shall:

Complete the Contract in accordance with its terms and conditions, or at the City's sole option, shall:

1. Obtain a Proposal or Proposals for submission to the City for completing the Contract in accordance  
with its terms and conditions, and upon determination by the City and the Surety of the responsible  
Bidder, arrange for a Contract between such Bidder and the City, and make available as Work  
progresses (even though there should be a default or a succession of defaults under the Contract or  
Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less  
the balance of the Contract price; but not exceeding, including other costs and damages for which the  
Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of  
the Contract price" as used in this paragraph, shall mean the total amount payable by the City to the D- B  
Firm under the Contract and any amendments thereto, less the amount properly paid by the City to the  
Contractor.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the  
City named herein or the successors or assignees thereof.

The Surety shall and does hereby agree to indemnify the City and hold it harmless of, from and against any and  
all liability, loss, cost, damage or expense, including reasonable attorney's fees, engineering and architectural fees  
or other professional services which the City may incur or which may accrue or be imposed upon it by reason  
of any negligence, default, act and/or omission on the part of the Contractor, any Subcontractor and Contractor's  
or Subcontractors agents, servants and/or employees, in, about or on account of the Construction of the work  
and performance of said Contract by the Contractor.



This Bond shall remain in full force and effect for such period or periods of time after the date of acceptance of the project by the City as are provided for in the Contract Documents, and the Contractor hereby guarantees to repair or replace for the said periods all work performed and materials and equipment furnished, which were not performed or furnished according to the terms of the Contract Documents. If no specific periods of warranty are stated in the Contract Documents for any particular item of work, material or equipment, the Contractor hereby guarantees the same for a minimum period of one (1) year from the date of final acceptance by the City of the entire project.

Any suit on this bond must be instituted within such period or periods as may be provided by law.

**IN WITNESS WHEREOF**, the above bounded parties have caused this Bond to be executed by their appropriate officials on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**WITNESS:**

**PRINCIPAL:** (If sole Proprietor or partnership)

(Firm Name)

BY \_\_\_\_\_

**Title: (Sole Proprietor or Partner)**

**PRINCIPAL:** (If Corporation)

(Corporate Name)

(President)

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

(Secretary)

(CORPORATE SEAL)

**COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:**

**SURETY:**

(Copy of Agent's current  
License as issued by State  
of Florida Insurance  
Commissioner

By: \_\_\_\_\_  
Attorney-in-fact (Power of Attorney must be attached)

## BIDDER'S QUALIFICATIONS STATEMENT

BIDDER'S GENERAL INFORMATION:

BIDDER shall furnish the following information. Failure to comply with this requirement will render Bid non-responsive and may cause its rejection. Additional sheets shall be attached as required.

1. BIDDER'S Name, Principal Address, Phone and Fax Number:
2. Number of years as a CONTRACTOR in this type of work: \_\_\_\_\_
3. Names and titles of all officers, partners or individuals doing business under trade name:
4. The business is a:      Sole Proprietorship ☐              Partnership ☐              Corporation ☐
5. Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract:
6. What is the last project of this nature that you have completed?
7. Have you ever failed to complete work awarded to you. If so, when, where and why?
8. Have you personally inspected the proposed WORK and do you have a complete plan for its performance?

9. List CM's or GC's your company has worked for within the past three years

CM/GC No. 1	Contact Person:	Tel: Fax:
CM/GC No. 2	Contact Person:	Tel: Fax:

10. List three SIGNIFICANT PROJECTS completed within the past five years.

Project No. 1	Location:	Date Completed:
	Your Subcontract Amount:	\$
Contracting Agency:	Contact Person:	Tel: Fax:

Project No. 2	Location:	Date Completed:
	Your Subcontract Amount:	\$
Contracting Agency:	Contact Person:	Tel: Fax:

Project No. 3	Location:	Date Completed:
	Your Subcontract Amount:	\$
Contracting Agency:	Contact Person:	Tel: Fax:

11. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).

12. State the name and licensing of the individual who will have personal supervision of the WORK.

13. Will you sublet any part of this WORK? If so, give details.

14. What equipment do you own that is available for the WORK? (Attach additional sheets as necessary)

15. What equipment will you purchase for the proposed WORK?

16. What equipment will you rent for the proposed WORK?

17. Principal Materials Manufacturer and SUB-CONTRACTORS. The BIDDER who proposes to perform WORK per the project scope is submitting this Bid Form. The Schedule of Bid Prices shown on the preceding pages(s) has been calculated and tabulated using basic material prices. The following is a list of material manufacturers and SUB-CONTRACTORS whose materials and services said BIDDER proposes to furnish and utilize if awarded a CONTRACT for the WORK specified herein. It is understood that the following list is not complete, but includes the names of manufacturers of the principal components and SUB-CONTRACTORS supplying principal services to said project. It is also understood that if awarded a Contract, the BIDDER will furnish the materials of the manufacturers and utilize the services of the SUB-CONTRACTORS stated herein and that if for any reason whatsoever BIDDER wishes to substitute materials or SUB-CONTRACTORS BIDDER shall request permission in writing from the CITY stating fully the reason for making such a request prior to ordering same.

All manufacturers or their authorized vendors have been made aware of all the appropriate portions of the Bid Documents and agree that their materials will meet all of the requirements stated therein and deliveries will be scheduled so as not to impede the progress of the WORK.

Materials:

Item	Manufacturer
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____

SUB-CONTRACTORS:

Name	License #	Duties	Contract Amount \$	% of Contract
------	-----------	--------	-----------------------	------------------

The BIDDER acknowledges and understands that the information contained in response to this Qualification's Statement shall be relied upon by CITY in awarding the contract and such information is warranted by BIDDER to be true. The discovery of any omission or misstatement that materially affects the BIDDER'S qualifications to perform under the contract shall cause the CITY to reject the Bid, and if after the award, to cancel and terminate the award and/or contract.

The BIDDER also acknowledges that all information listed above may be checked by the CITY and authorizes all entities or persons listed above to answer any and all questions. BIDDER hereby indemnifies the CITY and persons or entities listed above and hold them harmless from any claim arising from such authorization or the exercise thereof, including the dissemination of information requested above.

By \_\_\_\_\_  
(Signature)

Date \_\_\_\_\_

**AFFIDAVIT FOR INDIVIDUAL**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn, deposes and says that:

- A. The foregoing financial statements are a true and accurate statement of his/her financial position as of the date thereof; and the answers to the interrogatories contained therein are true;
- B. The statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- C. He/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- D. The City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial of submitting a proposal for City construction projects or the suspension or revocation of existing work or contracts being performed by the Contractor for the City of Lauderdale Lakes, Florida.

(Applicant)

(name of affiant).

Sworn to me before this \_\_\_\_\_ day of 2017, by \_\_\_\_\_

He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

(Notary)

SEAL

**AFFIDAVIT FOR CO-PARTNERSHIP**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ is a member of the firm of \_\_\_\_\_, being duly sworn  
deposes and says that:

- A. the foregoing financial statements are a true and accurate statement of the financial position of said firm as of the date thereof and the answers to the interrogatories contained therein are true;
- B. the statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- C. he/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- D. the City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial of submitting a proposal for City construction projects or the suspension or revocation of existing work or contracts being performed by Contractor for the City of Lauderdale Lakes, FL.

(Member of Firm)

(name of affiant).

Sworn to me before this \_\_\_\_\_ day of 2017, by \_\_\_\_\_

He/she is personally known to me or has produced \_\_\_\_\_ (type of  
identification) as identification.

(Notary)

SEAL



**AFFIDAVIT FOR CORPORATION**

State of \_\_\_\_\_  
County of \_\_\_\_\_

is \_\_\_\_\_ (title) of the

\_\_\_\_\_ (Corporation described herein) being duly sworn, deposes  
and says that:

- A. he/she is familiar with the books or the said corporation showing its financial position;
- B. the foregoing statements are a true and accurate statement of the financial position of said corporation as of the date hereof;
- C. the statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- D. he/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- E. the City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial, suspension or revocation of a existing work or contracts being performed by the Contractor for the City of Lauderdale Lakes, Florida.

(Officer must also sign here)

Sworn to me before this \_\_\_\_\_ day of 2017, by \_\_\_\_\_ (name of affiant).

He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

(Notary)

SEAL

**CERTIFICATES AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the foregoing bond; that \_\_\_\_\_ who signed the said bond on behalf of the Principal, was then \_\_\_\_\_ of said Corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Principal Authority

Corporate Secretary Seal

**STATE OF FLORIDA**

**COUNTY OF**

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he is the Attorney-in-Fact, for the \_\_\_\_\_ and that he has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Lauderdale Lakes, Florida.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

(Attach Power of Attorney)

Notary Public  
State of Florida-at-Large

My Commission Expires: \_\_\_\_\_

## DRUG FREE WORKPLACE CERTIFICATION

**IDENTICAL TIE BIDS:** Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quantity, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program (Florida Statutes Section 287.087). In order to have a drug-free workplace program, a business shall:

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

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

BIDDER'S Signature

(Print or Type Name)

## NON-COLLUSION AFFIDAVIT

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that:

1. BIDDER \_\_\_\_\_ is \_\_\_\_\_ the  
(Owner, Partner, Officer, Representative or Agent)

2. BIDDER is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the said BIDDER nor any of its officers, partners, owners, agents, representative, employees or parties in interest, including this affidavit, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other BIDDER, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted; or to refrain from bidding in connection with such Contract; or have in any manner, directly or indirectly, sought by agreement or collusion, or communications, or conference with any BIDDER, firm, or person to fix the price or prices in the attached Bid or any other BIDDER, or to fix any overhead, profit, or cost element of the Bid Price or the Bid Price of any other BIDDER, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against CITY, or any person interested in the proposed Contract;

5. The price of items quoted in the attached Bid are fair and proper and are not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the BIDDER or any other of its agents, representatives, owners, employees or parties in interest.

By \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_ who O is personally known to me or who O has presented the  
following type of identification: \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public, State of Florida

\_\_\_\_\_  
Notary seal (stamped in black ink) OR  
Printed, typed or stamped name of Notary  
and Commission Number

### TRENCH SAFETY ACT COMPLIANCE

BIDDER acknowledges that the Florida Trench Safety Act, Section 553.60 et. seq., which became effective October 1, 1990, shall be in effect during the period of construction of the project. The BIDDER by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with the applicable trench safety standards. The BIDDER further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance.

Method of Compliance	Cost

BIDDER acknowledges that this cost is included in the applicable items of the Bid Form and in the Grand Total Bid Price. Failure to complete the above and sign below may result in the bid being declared non-responsive.

The BIDDER is, and the CITY are not, responsible to review or assess CITY's safety precautions, programs or costs, or the means, methods, techniques or technique adequacy, reasonableness of cost, sequences or procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Florida Statute Section 553.60 et. seq. cited as the "Trench Safety Act". BIDDER is, and the CITY are not, responsible to determine if any safety or safety related standards apply to the project, including, but not limited to, the "Trench Safety Act".

Bidders Signature

(Print or Type Name)

## WARRANTIES

In consideration of, and to induce the Award of **THE CITY OF LAUDERDALE LAKES, FLORIDA**, Construction Contract described in these Bid Documents, the CONTRACTOR represents and warrants to the City of Lauderdale Lakes, Florida:

1. The CONTRACTOR is financially solvent and sufficiently experienced and competent to perform all of the work required of the CONTRACTOR in the Construction Contract; and
2. That the facts stated in the CONTRACTOR's Bid and information given the CONTRACTOR pursuant to the request or proposal for Bids, instructions to CONTRACTORS and Specifications are true and correct in all respects; and
3. That the CONTRACTOR has read and complied with all of the requirements set forth in the request for Bids, instructions to CONTRACTORS and Specifications; and
4. That the CONTRACTOR warrants all materials supplied by it under the terms of the Construction Contract are delivered to the City of Lauderdale Lakes, Florida, free from any security interest, and other lien, and that the CONTRACTOR is a lawful owner having the right to sell the same and will defend the conveyance to the City of Lauderdale Lakes, Florida, against all persons claiming the whole or any part thereof; and
5. That the materials supplied to the City of Lauderdale Lakes, Florida, under the Construction Contract are free from the rightful claims of any persons whomsoever, by way of patent or trademark infringement or the like; and
6. That the materials supplied under the Construction Contract are merchantable within the meaning of the Uniform Commercial Code Section 2-314; and
7. That the materials supplied under the Construction Contract are free from defects in materials and workmanship under normal use and service and that any such materials found to be defective shall be replaced by the CONTRACTOR as per the attached Warranty.
8. That the materials supplied pursuant to the Construction Contract are fit for the purposes for which they are intended to be used; that under normal use and maintenance the material will continue to be fit for such purposes for the warranty period after delivery, provided that the CITY shall give the CONTRACTOR notice that the materials failed to fulfill the warranty; such notice shall state in what respect the materials have failed to fulfill the warranty, where upon the CONTRACTOR shall be allowed a reasonable time after receipt of such notice to correct the defect and the CITY agrees to cooperate in this regard. If the materials cannot be made to fulfill the Contract within the warranty period the CONTRACTOR will either furnish duplicate materials, or at its option refund the amount paid, which shall constitute a settlement in full for all damages occasioned by reason at this warranty of fitness; and
9. That this Warranty is included in exposures for which the CONTRACTOR has products liability and completed operations insurance, in minimum amounts of One Hundred Thousand (\$100,000.00) Dollars for property damage and Three Hundred Thousand (\$300,000.00) Dollars for personal injury as shown on the Certificates of such Insurance attached hereto, and the CONTRACTOR agrees to keep such insurance coverage during the period of this Warranty; and
10. That it is an express condition of this Warranty that the item(s) hereby warranted shall be operated and maintained by the CITY in accordance with the manufacturer's recommendations as to those portions of the item(s) that are not fabricated by the CONTRACTOR, and in accordance with the CONTRACTOR's recommendations, a copy

of which has either been supplied to the City of Lauderdale Lakes should maintain complete and accurate records made at the time of performance of maintenance showing compliance with such instructions, and by acceptance of this Warranty, the City of Lauderdale Lakes, Florida, agrees to present such records to the CONTRACTOR upon request in the event of a claim hereunder by the CITY;

11. The foregoing Warranties apply as a minimum and are supplemental to other Warranties offered. They are not substituted, but in addition to, any other Warranties offered; and
12. That it is agreed and understood by the CONTRACTOR that the City of Lauderdale Lakes, Florida, is induced to enter the Construction Contract in reliance upon this Warranty.

**SIGNED**, sealed and delivered on this    day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

CONTRACTOR:

By \_\_\_\_\_

**ATTEST:**

Secretary

### SECTION III: SAMPLE FORMS

#### **ITEM / DESCRIPTION PAGE(S)**

1. Sample Construction Contract .....
2. Change Order .....
3. Daily Construction Report .....
4. Final Receipt, Waiver and Release of Lien .....
5. Certificate of Substantial Completion .....
6. Application and Certificate of Payment .....



**SAMPLE CONSTRUCTION CONTRACT #**  
**PROJECT NAME**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, between the CITY OF LAUDERDALE LAKES, BROWARD COUNTY, FLORIDA "CITY", a municipal corporation, and \_\_\_\_\_ "CONTRACTOR".

WHEREAS, CITY has awarded to the CONTRACTOR the work of performing certain construction,

NOW, THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. SCOPE OF WORK.**

CONTRACTOR shall furnish all labor, materials, and equipment and perform all the necessary WORK in the manner and form provided in the Contract Documents entitled: **PROJECT NAME & NUMBER.**

**Article 2. CITY. ("CITY") has designed the Project and will assume all duties and responsibilities and will have the rights and authority assigned to CITY in connection with completion of the WORK in accordance with the Contract Documents.**

**Article 3. CONTRACT TIME; LIQUIDATED DAMAGES.**

- 3.1 The Work will be completed within \_\_\_\_\_ calendar days from the date when the contract Time commences to run as provided in paragraph 2.3 of the General conditions, and ready for final payment in accordance with paragraph 14.9 of the general conditions.
- 3.1 Liquidated Damages. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with a certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 3.1 for Substantial Completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

#### Article 4. CONTRACT PRICE.

CITY shall pay CONTRACTOR, for faithful performance of the Contract, in lawful money of the United States of America, and subject to the additions and deductions as provided in the Contract Documents, a total sum as follows:

Based on the Contract prices shown in the Bid Form submitted to the CITY as subsequently revised and as stated herein, a copy of said Bid Form being a part of the Contract Documents, the aggregate amount of this Contract **(obtained from either the lump sum price, the application of unit prices to the quantities shown in the Bid Form or the combination of both)** not to exceed:

(Written) \_\_\_\_\_

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

#### Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. CITY will process Applications for Payment as provided in the General Conditions.

- 5.1 Progress Payments. CONTRACT may submit an Application for Payment as recommended by CITY, for WORK completed during the Project at intervals of not more than once a month. All progress payments will be on the basis of the progress of WORK measured by the schedule of values established in paragraph 2.6.1 of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event of there is no schedule of values, as provided in the General Requirements.
- 5.2 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of WORK completed, but, in each case, less the aggregate of payments previously made and less such amounts as CITY shall determine, or CITY may withhold, in accordance with paragraph 14.5 of the General Conditions.
- 5.3 CONTRACTOR shall submit with each Application for Payment, and updated progress schedule acceptable to the CITY and a release of liens relative to the Work that is the subject of the Application. Each Application for Payment shall be submitted in triplicate to the CITY for approval. The CITY shall make payment to the CONTRACTOR within thirty (30) days after approval by the CITY of CONTRACTOR'S Application for Payment and submission of an acceptable updated progress schedule.
- 5.4 Ten percent (10) of all monies earned by the CONTRACTOR shall be retained by CITY until fifty (50) percent completion of the construction work purchased (defined as that point at which fifty (50) percent of the construction of the Work as defined in the Contract Schedule of Values has been performed under the Contract by the CONTRACTOR) has been reached.
- 5.5 After fifty (50) percent completion of the construction work purchased under the Contract has been reached, five (5) percent of all monies earned by the CONTRACTOR after completion of fifty (50) percent of the Construction work shall be retained by the CITY, until Final Completion and acceptance by CITY.
- 5.6 The CITY may withhold, in whole or in part, and in addition to the retainage described at paragraphs 5.4 and 5.5 hereof, payment to such extent as may be necessary to protect itself from loss on account of:

- 5.6.1 Defective Work not remedied.
- 5.6.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.
- 5.6.3 Failure of CONTRACTOR to make payments properly to sub-CONTRACTORS or for material or labor.
- 5.6.4 Damage to another CONTRACTOR not remedied.
- 5.6.5 Liquidated damages and costs incurred by the CITY for extended construction administration.

When the above grounds are removed or resolved or CONTRACTOR provides a surety bond or consent of Surety, satisfactory to the CITY, which will protect the CITY in the amount withheld, payment may be made in whole or in part.

- 5.7 Final Payment. Upon final completion and acceptance of the WORK in accordance with paragraph 14.10 of the General Conditions, CITY shall pay the remainder of the Contract Price as recommended by CITY as provided in said paragraph 14.10.

#### **Article 6. CONTRACTOR GUARANTEE.**

CONTRACTOR warrants all work, materials and equipment shall be free from damages and/or defects owing to faulty materials or workmanship for a period of one (1) year after completion of the WORK covered by this Contract. The CONTRACTOR shall replace any part of the equipment, materials, or work included in this Contract, which proves to be defective by reason of faulty materials, damages, and/or workmanship within said twelve (12) month period free of all costs to the CITY.

#### **Article 7. CONTRACT DOCUMENTS.**

The Documents hereinafter listed shall form the Contract, and they are as fully a part of the Contract as if attached hereto:

- 7.1 Invitation to Bid
- 7.2 Instructions to Bidders
- 7.3 Bid Forms (including the Bid, Bid Schedule(s), Information Required of Bidder, Approved Bid Bond, and all required certificates, affidavits and other documentation)
- 7.4 Contract
- 7.5 CONTRACTOR's Performance and Payment Bond
- 7.6 General Conditions, Special Conditions
- 7.7 Technical Specifications
- 7.8 Drawings entitled: \_\_\_\_\_
- 7.9 Addendum Nos. \_.

**ARTICLE 8. NOTICE:**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY, shall be mailed to:

City of Lauderdale Lakes  
Attn: CITY Manager

Copy to: Financial Services Director  
City of Lauderdale Lakes

4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319-1912  
Tel (954) 535-2740  
Fax (954) 733 7325

4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319-5599  
Tel (954) 535-2713  
Fax (954) 535-1892

And if sent to the CONTRACTOR shall be mailed to:

Name:  
Attn:  
Address:

Tel:  
Fax:

**Article 9. INDEMNITY:**

In consideration of Ten Dollars (\$10.00) in hand paid and other valuable consideration, receipt of which is hereby acknowledged, CONTRACTOR agrees to defend, indemnify and hold harmless CITY, its agents and employees, in accordance with paragraph 6.17 of the General Conditions which is incorporated herein and made a part hereof as if fully set forth herein. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statutes 725.06. It is further the specific intent and agreement of said parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the Specific Consideration.

**Article 10. REIMBURSEMENT OF CITY EXPENSES:**

Should the completion of this Work be delayed beyond the specified or adjusted time limit, CONTRACTOR shall reimburse the CITY for all expenses of consulting and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for consulting and inspection incurred by the CITY will be charged to CONTRACTOR and be deducted from payments due CONTRACTOR as provided by this Contract. Said expenses shall be further defined as CITY charges associated with the construction contract administration and project management, including resident project representative costs.

**Article 11. MISCELLANEOUS:**

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

11.2 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

**Article 12. Date:** This Contract shall be effective beginning \_\_\_\_\_ notwithstanding it or some of the Contract documents being signed on a different date.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

**CITY OF LAUDERDALE LAKES, FLORIDA**

**CONTRACTOR** \_\_\_\_\_

By: \_\_\_\_\_  
Barrington A. Russell, Sr., Mayor

By: \_\_\_\_\_  
(Signature)

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

Name: \_\_\_\_\_  
(Type or Print)

(CITY SEAL)

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

(CORPORATE SEAL)

Attest: \_\_\_\_\_  
Sharon Houslin  
CITY Clerk

License  
No.:

Agent for service of process:

Review and approved as to form  
and legality by:

(CITY  
Attorney)

(If CONTRACTOR is a Corporation or  
Partnership, attach evidence of authority to  
sign.)

## CORPORATE ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, who produced the following identification:

And they acknowledged that they executed the foregoing instrument as such officers and as the official act of said corporation, and that they affixed thereto the official seal of the corporation.

Signature of Notary or Officer

Notarial Seal (stamped in black ink)  
OR  
Printed Name of Notary Public  
State of Florida Commission Number:

ACKNOWLEDGMENT  
(IF PRINCIPAL IS AN INDIVIDUAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_, by \_\_\_\_\_ of \_\_\_\_\_, who  
produced the following identification:

Signature of Notary or Officer

Notarial Seal (stamped in black ink)  
OR  
Printed Name of Notary Public State of  
Florida Commission Number:

ACKNOWLEDGMENT  
(IF PARTNERSHIP)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_, by \_\_\_\_\_ of \_\_\_\_\_, who  
produced the following identification:

and who acknowledged the execution of the foregoing instrument as such partner and as the  
official act of said partnership.

Signature of Notary or Officer

Notarial Seal (stamped in black ink)

OR

Printed Name of Notary Public

State of Florida Commission Number:



CERTIFICATE  
(For Partnership)

I HEREBY CERTIFY that a meeting of the partners of \_\_\_\_\_, a Partnership under the laws of the State of \_\_\_\_\_ held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED", that \_\_\_\_\_ as \_\_\_\_\_ of the Partnership, is hereby authorized to execute the Bid Form dated \_\_\_\_\_, 20\_\_\_\_, between the City of Lauderdale Lakes, Florida and this Partnership, and that his/her execution thereof, attested by the \_\_\_\_\_ of the Partnership be the official act and deed of this Partnership."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Signature)

(Title)

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ who o is personally known to me or who o has presented the following type of identification: \_\_\_\_\_.

Signature of Notary Public, State of Florida

Notary seal (stamped in black ink)

OR

Printed, typed or stamped name of Notary and  
Commission Number

CERTIFICATE  
(For Corporation)

I HEREBY CERTIFY that a meeting of the Board of Directors of \_\_\_\_\_, a corporation under the laws of the State of \_\_\_\_\_ held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was duly passed and adopted:

"RESOLVED", that \_\_\_\_\_, as \_\_\_\_\_ of the \_\_\_\_\_ Corporation, is hereby authorized to execute the Bid Form dated \_\_\_\_\_, 20 \_\_, between the City of Lauderdale Lakes, Florida and this Corporation, and that the execution thereof, attested by the Secretary of the Corporation and with corporate seal affixed, shall be the official act and deed of this Corporation".

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

Secretary

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ who o is personally known to me or who o has presented the following type of identification: \_\_\_\_\_.

Signature of Notary Public, State of Florida

Notary seal (stamped in black ink)

OR

Printed, typed or stamped name of Notary and  
Commission Number

## CHANGE ORDER

PROJECT: \_\_\_\_\_ CONTRACT ORDER # \_\_\_\_\_  
CONTRACT #: \_\_\_\_\_  
ISSUE DATE: \_\_\_\_\_ EFFECTIVE DATE: \_\_\_\_\_  
CONTRACTOR: \_\_\_\_\_

YOU ARE DIRECTED TO MAKE THE FOLLOWING CHANGES IN THIS CONTRACT:

1. DESCRIPTION:

2. REASON:

CHANGE IN CONTRACT PRICE:  
ORIGINAL CONTRACT PRICE

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

NET CHANGES FROM PREVIOUS CHANGE  
ORDERS No. \_\_\_\_\_ TO No: \_\_\_\_\_

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

CONTRACT PRICE PRIOR TO THIS CHANGE ORDER  
ORDER

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

NET INCREASE (DECREASE) OF THIS CHANGE  
ORDER

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

CONTRACT PRICE WITH ALL APPROVED CHANGE  
ORDERS

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

ENGINEER/CITY  
RECOMMENDED:

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

PRINTED: \_\_\_\_\_

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

DATE: \_\_\_\_\_

CHANGE IN CONTRACT TIME:  
ORIGINAL CONTRACT TIME

NET CHANGES FROM PREVIOUS CHANGE  
ORDERS No. \_\_\_\_\_ TO No: \_\_\_\_\_

COMPLETION DATE: \_\_\_\_\_  
DAYS

CONTRACT TIMES PRIOR TO THIS CHANGE

COMPLETION DATE: \_\_\_\_\_

NET INCREASE (DECREASE) OF THIS CHANGE  
ORDER

COMPLETION DATE: \_\_\_\_\_  
DAYS

CONTRACT TIME WITH ALL CHANGE ORDERS

COMPLETION DATE: \_\_\_\_\_

CONTRACTOR ACCEPTED:

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

PRINTED: \_\_\_\_\_

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

DATE: \_\_\_\_\_

APPROVED FOR FUNDS:

APPROVED BY:

FINANCE DIRECTOR

DATE

CITY MANAGER

DATE

Sample Contract Documents

### DAILY CONSTRUCTION REPORT

PROJECT: \_\_\_\_\_ DATE: \_\_\_\_\_  
NAME: \_\_\_\_\_ CONTRACTOR: \_\_\_\_\_  
WORK STARTED: \_\_\_\_\_ WORK COMPLETED: \_\_\_\_\_  
RPR HOURS THIS PROJECT: \_\_\_\_\_ OTHER WORK: \_\_\_\_\_

1. WEATHER  
☐ Sunny ☐ Overcast Temp. Range AM °F  
☐ Cloudy ☐ Windy PM °F  
Precipitation Type:  
Duration: \_\_\_\_\_
2. GROUND CONDITIONS  
☐ Saturated ☐ Dry ☐ Wet but workable
3. RECORD OF LABOR

CONTRACTOR	Type	No.	Hrs.	CONTRACTOR	Type	No.	Hrs.

4. EQUIPMENT

CONTRACTOR	Type	Model	Hrs.	Use

5. MATERIAL RECEIVED

Received By	Type	Quantity	Supplier	Use

Sample Contract Documents

Date \_\_\_\_\_

**FINAL WAIVER, RECEIPT AND RELEASE OF LIEN**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The undersigned CONTRACTOR being first duly sworn, deposes and says, as follows:

1. In consideration of the final payment in the amount of \$ \_\_\_\_\_, CONTRACTOR hereby waives and releases its lien and any and all right to claim a lien for labor, services or materials furnished to the City of Lauderdale Lakes (CITY) to the following described property:

PROJECT NAME

CONTRACT NO.

2. CONTRACTOR has fully completed all construction and work under the Contract and Title to all work, materials and equipment under the Contract passes to the CITY at the time of final payment, free and clear of all liens. Furthermore, all labors, and materials and SUB-CONTRACTORS have been paid in full for performing or furnishing the work under the Contract as evidenced by the attached signed copies of their Final Receipt and Release of Lien.

3. The above payment includes full and final payment for all extra work, material and incidentals.

4. All non-exempt taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

5. This statement under oath is given in compliance with Sections 713.05 and 713.06, Florida Statutes.

ATTEST:

Affiant CONTRACTOR

Corporate Secretary  
(SEAL)  
Title

Signature

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ who O is personally known to me or who O has presented the following type of identification: \_\_\_\_\_.

Signature of Notary Public, State of Florida

Notary seal (stamped in black ink)  
OR

Printed, typed or stamped name of Notary and  
Commission Number

## CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME \_\_\_\_\_

CONTRACT NO \_\_\_\_\_

TO: City of Lauderdale Lakes, Florida (CITY)

AND TO:  
(CONTRACTOR)

FROM: (CITY)

The WORK to which this Certificate applies has been inspected by authorized representatives of the CITY, CONTRACTOR and CITY, and that WORK is hereby declared to be substantially complete in accordance with the Contract Documents on:

(Date of Substantial Completion)

This Certificate of Substantial Completion applies to all WORK under the Contract Documents or to the following specified parts thereof:

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the WORK in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ days of Substantial Completion.

The responsibilities between the CITY and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

RESPONSIBILITIES:

CITY:

CONTRACTOR:



The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of WORK not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligation to complete the WORK in accordance with the Contract Documents.

Executed by CITY on \_\_\_\_\_, 20\_\_\_\_.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

CONTRACTOR accepts this Certificate of Substantial Completion:

Date:

CONTRACTOR:

By:

Title:

The CITY accepts this Certificate of Substantial Completion:

Date:

By:

Title:

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER:

PROJECT#:

APPLICATION NO: 0

PAGE ONE OF PAGES

Distribution to:

OWNER  
ENGINEER  
CONTRACTOR

PERIOD TO:

FROM CONTRACTOR:

VIA ENGINEER:

PROJECT NOS:

PROJECT NAME:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM
2. Net change by Change Orders
3. CONTRACT SUM TO DATE (Line 1 ± 2)
- \$
4. TOTAL COMPLETED & STORED TO

\$

\$ 0.00

\$ 0.00

\$ 0.00

CONTRACTOR:

DATE (Column G on G703)

5. RETAINAGE:

- a. % of Completed Work \$
- (Column D + E on G703)
- b. % of Stored Material \$
- (Column F on G703)
- Total Retainage (Lines 5a + 5b or

\$0.00

Included in above

Total in Column I of G703)

\$ 0.00

\$ 0.00

6. TOTAL EARNED LESS RETAINAGE  
(Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR  
PAYMENT (Line 6 from prior Certificate)

\$

\$ 0.00

8. CURRENT PAYMENT DUE

9. BALANCE TO FINISH, INCLUDING RETAINAGE \$  
(Line 3 less Line 6)

\$ 0.00

By:

Date:

State of:

County of:

Subscribed and sworn to before me this

day of

Notary Public:

My Commission expires:

ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED . . . . . \$

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner			
Total approved this Month			
TOTALS		\$0.00	\$0.00
NET CHANGES by Change Order		\$0.00	

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

SECTION IV: GENERAL CONDITIONS

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT  
FOR  
THE CITY OF LAUDERDALE LAKES, FLORIDA**

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## GENERAL CONDITIONS

### ARTICLE I - DEFINITIONS

Wherever used in the Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

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

1.2. **Application for Payment** - The form accepted by the CITY which is to be used by CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.3. **Bid** - The offer of the BIDDER submitted on the prescribed form setting forth the prices for the WORK.

1.4. **BIDDER** - One who submits a Bid directly to the CITY.

1.5. **Bid Documents** - Includes the Invitation to Bid, Instructions to Bidders, Bid Form, and proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.6. **Bonds** - Bid, Performance and Payment bonds and other instruments of security, per Florida Statutes.

1.7. **Change Order** - A document recommended by CITY, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion, or revision in the WORK or an adjustment in the Contract Price or Contract Time, issued on or after the Effective Date of the Contract.

1.8. **CITY** - The City of Lauderdale Lakes, Florida, a Florida municipal corporation, its authorized and legal representatives, the public entity with whom the CONTRACTOR has entered into the Contract and for whom the WORK is to be provided.

1.9. **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.

1.10. **Contract** - The written agreement between CITY and CONTRACTOR covering the WORK to be performed.

1.11. **Contract Documents** - The Contract Documents establish the rights and obligations of the parties and include the Contract, 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 Tentative Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Technical Specifications, and the Drawings as the same are more specifically identified in the Contract, together with all Written Amendments, Change Orders, Field Orders, and CITY'S written interpretations and clarifications issued on or after the Effective Date of the Contract. 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.

1.12. **Contract Price** - The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Document.

1.13. **Contract Time** - The number or numbers of successive days or dates stated in the Contract Documents for the completion of the WORK.

1.14. **CONTRACTOR** - The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Contract.

1.15. **Day** - A calendar day of 24 hours measured from midnight to the next midnight.

1.16. **Defective WORK** - WORK that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or WORK that has been damaged prior to the CITY'S recommendation of final payment.

1.17. **Drawings** - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the WORK, which have been prepared or approved by CITY are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

1.18. **Effective Date of the Contract** - The date indicated in the Contract, but if no such date is indicated it means the date on which the Contract is signed by the last of the two parties to sign the Contract.

1.19. **Field Order** - A written order issued by CITY which orders minor changes in the WORK but which does not involve a change in the Contract Price or the Contract Times.

1.20. **General Requirements** - See Special Conditions and Division 1 of the Technical Specifications.

1.21. **Laws and Regulations; Laws or Regulations** - Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

1.22. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

1.23. **Notice of Tentative Award** - The official written notice by the CITY to the apparent successful BIDDER stating that upon compliance by the apparent successful BIDDER with the conditions precedent enumerated therein within the time specified, the CITY may enter into a Contract.

1.24. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing

the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

1.25. **Partial Utilization** - Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the WORK.

1.26. **Project** - The total construction of which the WORK to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.27. **Resident Project Representative (RPR)** - The authorized representative of the CITY who is assigned to the Site or any part thereof.

1.28. **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the WORK, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the CONTRACTOR to illustrate material or equipment for some portion of the WORK.

1.29. **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK and certain administrative details applicable thereto.

1.30. **Sub-BIDDER** - One who submits a Bid to a BIDDER.

1.31. **SUB-CONTRACTOR** - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUB-CONTRACTOR for the performance of a part of the WORK at the Site.

1.37. **Substantial Completion** - The WORK (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY'S definitive certificate of Substantial Completion, all conditions and requirements accordance with the Contract Documents, so that the WORK (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any WORK refer to Substantial Completion thereof. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.

1.33. **SUCCESSFUL BIDDER** - The lowest, qualified, responsible and responsive BIDDER to whom CITY (on basis of CITY'S evaluation as hereinafter provided) makes an award.

1.34. **Supplementary General Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

1.35. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.36. **Surety** - Any person, firm or corporation which is bound by bid or contract bond with and for the CONTRACTOR.

of permits and regulatory agencies have been satisfied and the WORK is sufficiently complete, in Unit Price WORK - WORK to be paid for on the basis of unit prices.

1.38. **Utilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above ground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

1.39. **WORK** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. WORK includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Document.

1.40. **Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract and signed by the CITY, ordering an addition, deletion or revision in the WORK, or which references an emergency or unforeseen physical conditions under which the WORK is to be performed. A Work Change Directive may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work 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 Time.

1.41. **Written Amendment** - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non- technical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2 - PRELIMINARY MATTERS

### 2.1. DELIVERY OF BONDS AND INSURANCE CERTIFICATES:

2.1.1. When the CONTRACTOR delivers the signed Contracts to the CITY, the CONTRACTOR shall also deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents. The aforementioned documents must be submitted to the CITY prior to any WORK being performed.

### 2.2. COPIES OF DOCUMENTS:

2.2.1. The CITY shall furnish to CONTRACTOR ONE (1) copy (unless additional copies exist) of the Contract Documents for the execution of the WORK. CONTRACTOR shall be responsible for procuring additional copies.

### 2.3. NOTICE TO PROCEED:

2.3.1. The Contract Times will commence to run on the date stated in the Notice to Proceed.



## 2.4. STARTING THE WORK:

2.4.1. CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, but no WORK shall be done at the Site prior to said commencement date.

2.4.2. 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 pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CITY any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CITY before proceeding with any WORK affected thereby; however, CONTRACTOR shall not be liable to CITY for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

## 2.5. PRECONSTRUCTION CONFERENCE:

2.5.1. The CONTRACTOR is required to attend a preconstruction conference within twenty (20) days after the Contract Times start to run, but before any WORK at the site is started. This conference will be attended by the CITY, and others as appropriate in order to discuss the WORK.

2.5.2. The CONTRACTOR'S initial schedule for shop drawings submittals, obtaining permits and Plan of Operation and CPM Schedule will be reviewed and finalized. As a minimum, the CONTRACTOR'S representatives should include its project manager and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings will be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment will be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

## 2.6. FINALIZING SCHEDULES:

2.6.1. Within ten (10) days of receiving the Notice to Proceed the CONTRACTOR will submit the final schedule approved by the CITY. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the WORK to completion within the Contract Time, but such acceptance will neither impose on the CITY responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the CITY as to form and substance.

## ARTICLE 3 – USE OF CONTRACT DOCUMENTS

### 3.1. INTENT:

3.1.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the WORK. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed

in accordance with the laws of the State of Florida with venue in Broward County, Florida.

3.1.2. It is the intent of the Contract Documents to describe the WORK, functionally complete, 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.

### 3.2. REFERENCE TO STANDARDS:

3.2.1. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties or responsibilities of the CITY, CONTRACTOR or any of their agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

### 3.3. REVIEW OF CONTRACT DOCUMENTS

3.3.1. If, during the performance of the WORK, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so notify the CITY, in writing, at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification, except in an emergency as authorized by paragraph 6.13.

### 3.4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

3.4.1. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Change Order
2. Construction Contract
3. Addenda, with later date having greater priority
4. Bid Form
5. Supplemental General Conditions
6. Invitation to Bid
7. Instructions to Bidders
8. General Conditions
9. Technical Specifications
10. Contract Drawings

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to assist in locating and reading the provisions hereof.

3.4.2. With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/Change Order drawings govern over any other drawings
4. Drawings govern over standard drawings

3.4.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5, 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:

1. The provisions of any such standard, specification, manual, code or instruction (whether or note specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such 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).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or any of their SUB-CONTRACTORS, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or any of CITY's agents or employees any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.10. or any other provision of the Contract Documents.

#### 3.5. AMENDING CONTRACT DOCUMENTS:

3.5.1. The Contract Documents may be amended to provide for additions, deletions and revisions in the WORK or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10).

3.5.2. Additionally, 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:

3.5.2.1. a Field Order (pursuant to paragraph 9.5)

3.5.2.2. CITY'S approval of a Shop Drawing or sample (pursuant to paragraphs 6.14), or

3.5.2.3. CITY'S written interpretation or clarification (pursuant to paragraph 9.4).

#### 3.6. REUSE OF DOCUMENTS:

3.6.1. Neither CONTRACTOR nor any Sub-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the WORK under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents, drawings, technical specifications or other documents used on the WORK; and, they shall not reuse any of them on extensions of the Project or any other project without prior written consent of the CITY.

#### ARTICLE 4 – SITE OF THE WORK

#### 4.1. AVAILABILITY OF LANDS:

4.1.1. The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.1.2. Occupying Private Land: The CONTRACTOR shall not enter upon nor use any property not under the control of the CITY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property CITY, and a copy of said easement furnished to the CITY prior to said use; and, the CITY will not be liable for any claims or damages resulting from the CONTRACTOR'S trespass on or use of any such properties. The CONTRACTOR shall provide the CITY with a signed release from the property CITY confirming that the lands have been satisfactorily restored upon completion of the WORK.

4.1.3. WORK in State, County and CITY Rights-of-Way and Easements: When the WORK involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the CONTRACTOR shall (as the WORK progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance as part of the contract.

4.1.4. WORK Adjacent to Telephone, Power, Cable TV and Gas Company Structures: In all cases where WORK is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the CONTRACTOR shall provide written notification to the respective companies of the areas of which WORK is to be performed, prior to the actual performance of any WORK in these areas.

4.1.5. Use of Public Streets: The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. The CONTRACTOR shall remove any earth or excavated materials spilled from trucks and clean the streets to the satisfaction of the CITY, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

#### 4.2. REPORTS OF PHYSICAL CONDITIONS:

4.2.1. **Subsurface Explorations:** Where applicable, reference is made in the technical specifications, for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.2. **Existing Structures:** Where applicable, reference is made to the technical specifications, for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 herein) which are at or contiguous to the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.3 The CITY does not make any representation as to the completeness of the reports or drawings referred to in Paragraph 4.2.1. or 4.2.2. above or the accuracy of any data or information contained therein. CONTRACTOR may rely upon the general accuracy of the technical data contained in such reports and drawings but not for the completeness thereof for CONTRACTOR'S purposes including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. However, the CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.2.4 Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new WORK, the CONTRACTOR shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There shall be no additional cost to the CITY for CONTRACTOR'S failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR.

#### 4.3. PHYSICAL CONDITIONS -- UNDERGROUND FACILITIES:

4.3.1. **Indicated:** The information and data indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site is based on information and data furnished to the CITY by the owners of such Underground Utilities or by others.

4.3.1.1. The CITY shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 The CONTRACTOR shall notify the Underground Service Alert (USA) System, Phone No. 1-800-227-2600, and Sunshine State One Call Services (1-800-432-4770) at least 48 hours in advance of the commencement of WORK at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities.

4.3.1.3. The CONTRACTOR acknowledges that some (or all) of the utility companies with facilities shown on the drawings may not be members of the USA System or Sunshine State One Call Services; and, therefore, not automatically contacted by the above referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the USA System or Sunshine State One Call Services, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall be responsible for notifying all of the utilities at least 48 hours in advance of the commencement of

WORK at any site to allow the utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also be responsible for verifying that each utility has responsibly responded to such notification.

4.3.1.4. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. Further, the CONTRACTOR shall be responsible for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordination of the WORK with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.10, and repairing any damage thereto resulting from the WORK, the cost of all of which will be considered as having been included in the Contract Price.

4.3.1.5. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, shall be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR shall notify the CITY or occupant of such facilities both 48 hours before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR shall obtain permission from their CITY, or shall make suitable arrangements for their disconnection by their CITY. The CONTRACTOR shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly, as part of the work, as soon as the WORK has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new WORK are shown, but are to be verified in the field by the CONTRACTOR prior to performing the WORK. The CONTRACTOR shall uncover these pipes, ducts, cables, etc., carefully, by hand prior to installing his WORK. Any discrepancies or differences found shall be immediately brought to the attention of the CITY in order that necessary changes may be made to permit installation of the WORK.

4.3.2. **Not Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown, nor located by the facilities CITY and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK affected thereby (except in an emergency as permitted by paragraph 6.13), identify the CITY of such Underground Facility and give written notice thereof to that CITY. The CITY will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.12.

#### 4.4. DIFFERING SITE CONDITIONS

4.4.1. The CONTRACTOR shall notify the CITY, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than 14 days after their discovery) and

before they are disturbed:

4.4.1.1. Subsurface or latent physical conditions at the Site of the WORK differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Paragraph 4.2 and 4.3; and

4.2.3.2. Any unknown physical conditions and the Site of the WORK of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, including those reports and documents discussed in Paragraph 4.2 and 4.3.

4.4.2. CITY will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the CITY in writing (with a copy to the CONTRACTOR) of CITY'S findings and conclusions.

4.4.3. If CITY concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.

4.4.4. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Article 11 and 12.

4.4.5. The CONTRACTOR'S failure to give notice of differing Site conditions within 7 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

#### 4.5. REFERENCE POINTS:

4.5.1. The CITY shall provide, if available, engineering surveys to establish reference points for construction, which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the WORK.

4.5.2. CONTRACTOR shall be responsible for laying out the WORK (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR shall report to the CITY whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

#### ARTICLE 5 -- BONDS AND INSURANCE

##### 5.1. BONDS:

5.1.1. CONTRACTOR shall upon delivery of the executed Contract or receipt of a Notice of Tentative Award to the CITY furnish Performance and Payment Bonds, each in an amount at least ONE HUNDRED PERCENT (100%) of the Contract Price as security for the faithful performance

and payment of all CONTRACTOR'S obligations under the Contract Documents. Said bonds must be provided to the CITY within ten (10) business days of the Notice of Tentative Award or delivery of a contract to CONTRACTOR to execute, or the CITY, at its sole discretion and option may terminate the contract. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. Each Bond shall be furnished in an amount equal to ONE HUNDRED PERCENT 100% of the amount of the Contract award. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.2 The CONTRACTOR shall provide a Maintenance and Guaranty Bond in the amount of 50% of the Performance and Payment Bonds to provide a guarantee against defects in the WORK occurring during the year following the one-year correction period. The Bond shall be payable to the CITY, and be at the sole cost of the CONTRACTOR. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.3. The Surety shall be a nationally recognized Surety Company acceptable to the CITY, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, for projects not exceeding (\$500,000) five hundred thousand dollars and meet the other requirements of Florida Statutes Section 287.0935 (1989). For projects exceeding five hundred thousand dollars, all bonds shall be placed with sureties with a Best Rating of no less than A-IX. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties.

5.1.4. If the CONTRACTOR is a partnership, the Bond should be signed by each of the individuals who are partners; if a corporation, the Bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties; (b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where bond is executed by agent, officer or other representative of CONTRACTOR or Surety; (c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

5.1.5. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 5.1.2., CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 5.1.2. Under no circumstances shall the successful CONTRACTOR begin WORK until he/she has supplied to the CITY Performance and Payment Bonds and Affidavit for Bond using the CITY form, and the CITY has approved the bond.

## 5.2. INSURANCE:

5.2.1. CONTRACTOR shall purchase and maintain the insurance required under this Paragraph. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided herein. All insurance shall be maintained continuously during the life of the Contract up to the date of Substantial Completion and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing *Defective Work* in accordance with Paragraph 13.6. the CONTRACTOR'S liabilities under this Contract shall not be deemed limited in any way to the insurance coverage required.

5.2.2. All insurance required by the Contract Documents to be purchased and maintained by the CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized to issue insurance policies for the limits and coverages so required in the State of Florida. Such insurance companies shall have a current Best's Rating of at least an "A" (Excellent) general policy holder's rating and a Class VII financial size category and shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2.3. Before starting the WORK, the CONTRACTOR shall furnish the CITY, with copies to each additional insured who is indicated in the Supplementary General Conditions, with certificates and original endorsements showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice has been given the CITY and additional insureds by certified mail. All such insurance required herein (except for worker's compensation and employer's liability) shall name the CITY, and CITY'S officers, directors, agents, and employees as "additional insureds" under the policies. The CONTRACTOR shall purchase and maintain the following insurance:

5.2.3.1. **Workers' Compensation and Employer's Liability:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. CONTRACTOR shall require each SUB-CONTRACTOR similarly to maintain workers compensation during the term of the Contract and up to the date of final acceptance. CONTRACTOR shall defend, indemnify and save the CITY harmless from any damage resulting to them for failure of either CONTRACTOR or any SUB-CONTRACTOR to take out or maintain such insurance.

- a. Employers' Liability with Statutory Limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate.
- b. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and/or Jones Act if applicable.

5.2.3.2. **Comprehensive or Commercial General Liability:** Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy or Commercial General Liability filed by the Insurance Services Office, and must include:

a. Minimum Limits of total coverage shall be \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability, the basic policy to be in said form with any excess coverage (and the carrier) to meet \$2,000,000 minimum to be acceptable to the CITY.

5.2.3.3. **Business Auto Policy.** Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Service Office and must include:

a. Minimum limit of \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

b. Owned Vehicles

c. Hired and Non-Owned Vehicles

d. Employee Non-Ownership

5.2.3.4. **SUB-CONTRACTOR's Public Liability and Property Damage Insurance and vehicle Liability Insurance:** The CONTRACTOR shall either require each of the Sub-CONTRACTORS to procure and to maintain SUB-CONTRACTOR's public liability and property damage insurance and vehicle liability insurance of the type and in the amount indicated above in Paragraph 5.2.3.1., 5.2.3.2. and 5.2.3.3.

5.2.3.5. **Products and/or Completed Operations:** CONTRACTOR shall maintain in force until at least three (3) years after completion of all services required under the Contract, coverage for products and completed operations, including Broad Form Property Damage.

5.2.3.6. **All Risk Property Insurance:** When Applicable, coverage must include real and personal property and in an amount equal to the replacement cost of all real and personal property of the CITY'S for which the CONTRACTOR is responsible and over which he exercises control. Builders Risk insurance must be provided to cover Property under construction and an Installation Floater must cover all machinery, vessels, air conditioners or electric generators to be installed. This insurance shall include a waiver of subrogation as to the CITY, the CONTRACTOR, and their respective officers, agents, employees, and SUB-CONTRACTORS.

- a. Coverage to be provided on a full replacement cost basis.
- b. Losses in excess of ten thousand dollars (\$10,000) shall be jointly payable to the CONTRACTOR and the CITY.
- c. Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the CITY will not occupy the building(s), addition(s) or structure(s).
- d. Maximum Deductible - \$5,000 each claim.
- e. Flood Insurance. When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the CONTRACTOR and the CITY must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance

coverage available under the National Flood Program.

5.2.4. All policies shall also specify that the insurance provided by the CONTRACTOR will be considered primary and not contributory to any other insurance available to the CITY.

## ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

### 6.1. SUPERVISION AND SUPERINTENDENCE:

6.1.1. The CONTRACTOR has the obligation to deliver to the CITY the completed job in a good and workmanlike condition. CONTRACTOR shall supervise and direct the WORK completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents. The CONTRACTOR shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Final Acceptance. The supervision of the execution of this contract is vested wholly in the CONTRACTOR.

6.1.2. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

### 6.2. LABOR, MATERIALS AND EQUIPMENT:

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the WORK and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all WORK at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime WORK or the performance of WORK on Saturday, Sunday or any legal holiday without the CITY'S written consent (which shall not be unreasonably withheld) given after prior written notice to CITY. The CONTRACTOR is hereby informed, and understands that unless otherwise approved by the CITY, the CITY restricts the WORK between the hours of 5:00 p.m. and 8:00 a.m., unless emergency conditions exist that are endangering life or property as may be determined by the CITY. If the CONTRACTOR is authorized to operate equipment twenty-four (24) hours per day, the engines shall be provided with residential type silencers approved by the CITY. The CONTRACTOR shall receive no additional compensation for overtime WORK. However, additional compensation will be paid to the CONTRACTOR for overtime WORK only in the event extra WORK is ordered by the CITY and the change order specifically authorizes the use of overtime WORK and then only to such extent as overtime wages are regularly being paid by the

CONTRACTOR for overtime WORK of a similar nature in the same locality. All costs of inspection and testing performed by the CITY during overtime WORK by the CONTRACTOR which is allowed solely for the convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The CITY shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.

6.2.2. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and final completion of the WORK.

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CITY, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY, or any of the CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

### 6.3. SCHEDULE:

6.3.1. CONTRACTOR shall submit to CITY for review and comment (to the extent indicated in paragraph 2.6.) proposed adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. All approved changes shall be memorialized as change orders.

### 6.4. SUBSTITUTES OR "OR-EQUAL" ITEMS:

6.4.1. The technical specifications shall govern the use of substitute or "or-equal" items. The procedure for review by CITY will include the following as supplemented in the technical specifications. Requests for review of substitute items of material and equipment will not be accepted by CITY from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY for acceptance thereof, certifying that the proposed substitute will perform equally or better the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the WORK will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for WORK on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with

the WORK is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs and cost savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by CITY in evaluating the proposed substitute. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

6.4.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to CITY, if CONTRACTOR submits sufficient information to allow CITY to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by CITY will be similar to that provided in paragraph 6.4.1 as applied by CITY and as may be supplemented in the Technical Specifications.

6.4.3. CITY will be allowed a reasonable time within which to evaluate each proposed substitute. CITY will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CITY'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

#### 6.5. CONCERNING SUB-CONTRACTORS, SUPPLIERS AND OTHERS:

6.5.1. CONTRACTOR shall not employ any SUB-CONTRACTOR, Supplier or other person or organization (including those acceptable to the CITY as indicated in paragraph 6.5.2), whether initially or as a substitute, against whom the CITY may have reasonable objection. CONTRACTOR shall not be required to employ any SUB-CONTRACTOR, Supplier or other person or organization to furnish or perform any of the WORK against whom CONTRACTOR has reasonable objection.

6.5.2. If the Technical Specifications or Contract Documents require the identity of certain SUB-CONTRACTORS, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) shall be submitted to the CITY for acceptance by the CITY, and if CONTRACTOR has submitted a list thereof, the CITY'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid documents or the Contract Documents) of any such SUB-CONTRACTOR, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. If after bid opening and prior to the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the contract price or contract time. If the contract price or contract time is

increased, the CITY may return the bid bond and award the contract to the next qualified, competent BIDDER. If after the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY shall permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the CITY. No acceptance by the CITY of any such SUB-CONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of the CITY to reject *defective* WORK.

6.5.3. CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the SUB-CONTRACTORS, Suppliers and other persons and organizations performing or furnishing any of the WORK under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such SUB-CONTRACTOR, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such SUB-CONTRACTOR, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.5.4. The divisions and sections of the Technical Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the WORK among SUB-CONTRACTORS or Suppliers or delineating the WORK to be performed by any specific trade.

6.5.5. All WORK performed for CONTRACTOR by a SUB-CONTRACTOR will be pursuant to an appropriate agreement between CONTRACTOR and the SUB-CONTRACTOR which specifically binds the SUB-CONTRACTOR to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

#### 6.6. PATENT FEES AND ROYALTIES:

6.6.1. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of WORK or the incorporation in the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the WORK and if to the actual knowledge of the CITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to other, the existence of such rights shall be disclosed by the CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless the CITY and anyone directly or indirectly employed by the CITY from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### 6.7. PERMITS:

6.7.1. CONTRACTOR shall obtain and pay for all construction permits and licenses without limitation as required by Laws or Regulations. The CITY shall assist

CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for prosecution of the WORK, which are applicable at the time of opening of Bids. There will be no cost for permits issued by the CITY. CONTRACTOR shall pay all charges for utility connections to the WORK.

#### 6.8. LAWS AND REGULATIONS:

6.8.1. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to furnishing and performance of the WORK. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, the CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any Laws, ordinances, rules or regulations.

6.8.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws, ordinances, rules or regulations, CONTRACTOR shall give CITY prompt, written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.5. If CONTRACTOR performs any WORK knowing or having reason to know that it is contrary to such laws, ordinances, rules or regulations, and without such notice to the CITY, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations unless they are at variance with construction practices recognized as industry standards.

#### 6.9. TAXES:

6.9.1. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws, ordinances and regulations of the place of the Project which are applicable during the performance of the WORK.

#### 6.10. USE OF PREMISES:

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits and easements, and shall not reasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the CITY or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against the CITY by any such CITY or occupant because of the performance of the WORK, CONTRACTOR shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. CONTRACTOR shall, to the fullest extent permitted by laws and regulations, indemnify and hold the CITY harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK.

6.10.2. During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other and other debris resulting from the WORK. At the completion of the WORK CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.10.3. 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.

#### 6.11. RECORD DOCUMENTS:

6.11.1. CONTRACTOR shall maintain in accordance with the Technical Specifications in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. The record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the CITY for reference. Upon completion of the WORK, these record documents, samples, and Shop Drawings will be delivered to the CITY.

#### 6.12. SAFETY AND PROTECTION:

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

6.12.1.1. all employees on the WORK and other persons and organizations who may be affected thereby;

6.12.1.2. all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.12.1.3. 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.

6.12.2. CONTRACTOR shall comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the WORK and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.12.1.2. or 6.12.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUB-CONTRACTOR,



Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK for anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and CITY has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 14.6. that the WORK is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.12.3. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

6.12.4. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of an accident in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

6.12.5. Safety Representative: CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

6.12.6. Hazard Communication Programs: 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 employees at the Site in accordance with Laws and Regulations.

#### 6.13. EMERGENCIES AND PRECAUTIONS DURING ADVERSE WEATHER:

6.13.1. In emergencies affecting the safety or protection of persons or the WORK or property at the site or adjacent thereto. CONTRACTOR, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the WORK or variations from the Contract Documents have been caused thereby. If CITY determines that a change in the Contract Documents is required because of the action taken in response to an emergency, or Change Order will be issued to document the consequences of the changes or variations.

6.13.2. During adverse weather, and against the possibility thereof, the CONTRACTOR shall take all

necessary precautions to ensure that the WORK shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The CONTRACTOR shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he shall take such precautions and procure such additional insurance as he deems prudent. The CITY may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

#### 6.14. SUBMITTALS: SHOP DRAWINGS AND SAMPLES:

6.14.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to CITY for review in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.5.2.), ordinances, rules and all Shop Drawings which will bear the stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CITY may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

6.14.2. CONTRACTOR shall also submit to CITY for review and approval with such promptness as to cause no delay in WORK, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended. Please note – samples may not be returned by CITY. Samples are to be supplied at no expense to the CITY and CONTRACTOR is hereby put on notice that said samples may not be returned.

6.14.3. Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the WORK and the Contract Documents.

6.14.4. At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition shall cause a specific notation to be made on each Shop Drawing submitted to CITY for review of each such variation.

6.14.5. CITY will review within ten days of receipt thereof, Shop Drawings and samples but CITY'S review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or

procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by CITY, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CITY on previous submittals. CITY will review one (1) re-submittal for each shop drawing or product data. All costs of reviewing additional submittals shall be at the CONTRACTOR'S expense.

6.14.6. CITY'S review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CITY'S attention to each such variation at the time of submission as required by paragraph 6.14.4 and CITY has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any review by CITY relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.14.3.

6.14.7. Where a Shop Drawing or sample is required by the Specifications, any related WORK performed prior to CITY'S review and acceptance of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

#### 6.15. CONTINUING THE WORK:

6.15.1. CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the CITY. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 15 or as CONTRACTOR and the CITY may otherwise agree in writing.

#### 6.16. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

6.16.1. CONTRACTOR warrants and guarantees to CITY that all work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.16.1.1. Abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, SUB-CONTRACTORS or Suppliers; or

6.16.1.2. Normal wear and tear under normal usage.

6.16.2. 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:

6.16.2.1. observations by CITY;

6.16.2.2. recommendation of any progress or final payment by CITY;

6.16.2.3. the issuance of a certificate of Substantial Completion or any payment by CITY to CONTRACTOR under the Contract Documents;

6.16.2.4. use or occupancy of the WORK or any part thereof by CITY;

6.16.2.5. any acceptance by CITY or any failure to do so;

6.16.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by CITY pursuant to paragraph 14.10;

6.16.2.7. Any inspection, test or approval by others; or

6.16.2.8. Any correction of *defective* WORK by CITY.

#### 6.17. INDEMNIFICATION:

6.17.1. In consideration of ten dollars (\$10.00) and other valuable consideration, the CONTRACTOR shall defend, indemnify and save harmless the CITY, its officers, agents and employees, from or on account of any claims, losses, injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding the sole negligence of the CITY), in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the said CONTRACTOR or his SUB-CONTRACTORS, agents, servants or employees. CONTRACTOR agrees to defend, indemnify and save harmless the CITY, its officers, agents and employees, against any liability arising from or based upon the violation of any Federal, State, County or CITY laws, by-laws, ordinances or regulations by the CONTRACTOR, his SUB-CONTRACTORS, agents, servants or employees.

6.17.2. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

6.17.3. The indemnification provided above shall obligate the CONTRACTOR to defend at his own expense or to pay for such defense, at the CITY'S option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY which may result from the operations and activities under this Contract whether the construction operations be performed by the CONTRACTOR, his SUB-CONTRACTOR or by anyone directly or indirectly employed by either.

6.17.4. This indemnification includes all costs and fees including attorney's fees and costs at trial and appellate levels. The CITY will pay to the CONTRACTOR the specific

consideration of ten dollars and other good and valuable consideration as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06 of the Florida Statutes. Furthermore, the CONTRACTOR acknowledges that the bid price includes said consideration for the indemnification provision.

#### ARTICLE 7 -- OTHER WORK

##### 7.1. RELATED WORK AT SITE:

7.1.1. The CITY may perform other WORK related to the Project at the site by the CITY'S own forces, let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other WORK is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other WORK; and, if CONTRACTOR believes that such performance will involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. If the performance of additional WORK by other CONTRACTOR or the CITY is noted in the Contract Documents, no additional adjustment of time or compensation shall be considered.

7.1.2. CONTRACTOR shall afford the CITY and other CONTRACTORS who are a party to such a direct contract (or the CITY, if the CITY is performing the additional WORK with the CITY'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such WORK, and shall properly connect and coordinate the WORK with theirs. CONTRACTOR shall do all cutting, fitting and patching of the WORK that may be required to make its several parts come together properly and integrate with such other WORK. CONTRACTOR shall not endanger any WORK of others by cutting, excavating or otherwise altering their WORK and will only cut or alter their WORK with the written consent of the CITY and the others whose WORK will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and other CONTRACTORS to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and other CONTRACTORS.

7.1.3. If any part of CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other CONTRACTOR other than CONTRACTOR'S OWN SUB-CONTRACTOR, (or the CITY), CONTRACTOR shall inspect and promptly report to CITY in writing any delays, defects or deficiencies in such other WORK that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR'S WORK. CONTRACTOR'S failure to report will constitute an acceptance of the other WORK as fit and proper for integration with CONTRACTOR'S WORK except for latent defects and deficiencies in the other WORK.

##### 7.2. COORDINATION:

7.2.1. If the CITY contracts with others for the performance of other WORK on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime CONTRACTORS will be identified in the Technical Specifications and the specific matters to be covered by such authority and responsibility will be itemized, and the

extent of such authority and responsibilities will be provided in the Technical Specifications. Unless otherwise provided in the Technical Specifications, the CITY shall not have any authority or responsibility in respect of such coordination.

#### ARTICLE 8 -- THE CITY'S RESPONSIBILITIES

##### COMMUNICATIONS TO CONTRACTOR:

8.1.1. CITY shall issue all communications to CONTRACTOR through CITY'S Project Manager.

##### 8.2. FURNISH DATA:

8.2.1. CITY shall promptly furnish the data required of the CITY under the Contract Documents.

##### 8.3. PAYMENTS:

8.3.1. CITY shall make payments to CONTRACTOR promptly when they are due as provided in Sections 14.5 and 14.10.

##### 8.4. LANDS, EASEMENTS: REPORTS AND TESTS:

8.4.1. The CITY'S duties in respect of providing lands and easements and providing engineering surveys, if available, to establish reference points are set forth in paragraphs 4.1.1 and 4.5.1.

8.4.2. The CITY will identify and make available to CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures that have been utilized in preparing the Contract Documents as set forth in Paragraph 4.22 and 4.2.3.

##### 8.5. CHANGE ORDERS

8.5.1. The CITY is obligated to execute Change Orders as indicated in Article 10.

##### 8.6. SUSPENSION OF WORK

8.6.1. In connection with the CITY'S right to stop WORK or suspend WORK see paragraph 13.5 and 15.1. Paragraph 15.2 deals with the CITY'S right to terminate services of CONTRACTOR.

#### ARTICLE 9 -- CITY'S STATUS DURING CONSTRUCTION:

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##### 9.1. CITY'S REPRESENTATIVE:

9.1.1. The CITY will be the CITY'S representative during the construction period. The duties and responsibilities and the limitations of authority of CITY'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the CITY.

##### 9.2. VISITS TO SITE:

9.2.1. After written notice to proceed with the WORK, the CITY shall make visits to the site at intervals

appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the Contract Documents; he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction and he will not be responsible for the CONTRACTOR'S failure to perform the construction WORK in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the WORK; and during such visits and on the basis of his on-site observations, as an experienced and qualified design professional, he will keep the CITY informed of the progress of the WORK, will endeavor to guard the CITY against defects and deficiencies in the WORK of the CONTRACTOR and may reject WORK as failing to conform to the Contract Documents.

### 9.3. PROJECT REPRESENTATION:

9.3.1. A Resident Project Representative may be assigned to assist CITY in carrying out his responsibilities to CITY at the site. Resident Project Representative is CITY'S agent at site, will act as directed by and under the supervision of CITY, and will confer with CITY regarding Resident Representative's actions. Resident Project Representative's dealing in matters pertaining to the on-site WORK shall in general be with CITY and CONTRACTOR keeping the CITY advised as necessary. Resident Project Representative's dealings with SUB-CONTRACTORS shall only be through or with the full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with the CITY with the knowledge of and under the direction of CITY.

9.3.2. Resident Project Representative shall where applicable:

9.3.2.1. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with CITY concerning its general acceptability.

9.3.2.2. Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

9.3.2.3. Working principally through CONTRACTOR'S superintendent, assist CITY in serving as the CITY's liaison with CONTRACTOR, when CONTRACTOR'S operations affect the CITY's on-site operations.

9.3.2.4. Assist in obtaining from the CITY additional details or information, when required for proper execution of the WORK.

9.3.2.5. Record date of receipt of Shop Drawings and samples.

9.3.2.6. Receive samples which are furnished at the site by CONTRACTOR, and notify the CITY of availability of samples for examination.

9.3.2.7. Advise the CITY and CONTRACTOR of the commencement of any WORK requiring a Shop Drawing if the submittal has not been approved by the CITY.

9.3.2.8. Conduct on-site observations of the WORK in progress to assist the CITY in determining if the WORK is, in general, proceeding in accordance with the Contract Documents.

9.3.2.9. Report to the CITY whenever Residential Project Representative believes that any WORK is unsatisfactory, faulty or *defective* or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the CITY of WORK that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein shall relieve the CONTRACTOR or the CITY from the duties imposed by contract.

9.3.2.10. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to the CITY appropriate details relative to the test procedures and startups.

9.3.2.11. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the CITY.

9.3.2.12. Report to CITY when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by the CITY.

9.3.2.13. Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the CITY. Transmit to CONTRACTOR decisions as issued by the CITY.

9.3.2.14. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, CITY'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

9.3.2.15. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the CITY.

9.3.2.16. Record all names, addresses and telephone numbers of the CONTRACTOR, all SUB-CONTRACTORS and major suppliers of material and equipment.

9.3.2.17. Furnish the CITY periodic reports as required of progress of the WORK of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

9.3.2.18. Consult with the CITY in advance of schedule major tests, inspections or start of important phases of the WORK.

9.3.2.19. Draft proposed Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to the CITY, Change Orders, Work Change Directives, and Field Orders.

9.3.2.20. Report immediately to the CITY upon the occurrence of any accident.

9.3.2.21. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the CITY, noting particularly the relationship of the payment requested to the schedule of values, WORK completed and materials and equipment delivered at the site but not incorporated in the WORK.

9.3.2.22. During the course of the WORK, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the CITY for review and forwarding to CITY prior to final payment for the WORK.

9.3.2.23. Before the CITY issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

9.3.2.24. Conduct final inspection in the company of the CITY and the CONTRACTOR and prepare a final list of items to be completed or corrected.

9.3.2.25. Observe that all items on final list have been completed or corrected and make recommendations to the CITY concerning acceptance.

9.3.3. The Resident Project Representative shall not:

9.3.3.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment.

9.3.3.2. Exceed limitations of the CITY'S authority as set forth in the Contract Documents.

9.3.3.3. Undertake any of the responsibilities of CONTRACTOR, SUB-CONTRACTORS, or CONTRACTOR'S superintendent.

9.3.3.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

9.3.3.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the WORK.

9.3.3.6. Accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.

9.3.3.7. Authorize the CITY to occupy the Project in whole or in part.

9.3.3.8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the CITY.

#### 9.4. CLARIFICATIONS AND INTERPRETATIONS:

9.4.1. The CITY will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CITY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification of interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

#### 9.5. AUTHORIZED VARIATIONS OF WORK:

9.5.1. CITY may authorize minor variations in the WORK from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field Order and will be binding on the CITY, and also on CONTRACTOR who shall perform the WORK involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 9.6. REJECTING DEFECTIVE WORK

9.6.1. The CITY will have authority to disapprove or reject WORK which CITY believes to be *defective* or believes to be in nonconformance with the intent of the contract documents, and will also have authority to require special inspection or testing of the WORK as provided in Section 13.3, whether or not the WORK is fabricated, installed or completed.

#### 9.7. SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

9.7.1. In connection with CITY'S responsibility for Shop Drawings and samples, see Sections 6.11 and 6.14.

9.7.2. In connection with CITY'S responsibilities as to Change Orders see Article 10, 11, and 12.

9.7.3. In connection with CITY'S responsibilities in respect of Applications for Payment, etc., see Article 14.

#### 9.8. DETERMINATIONS FOR UNIT PRICES:

9.8.1. CITY will determine the actual quantities and classifications of Unit Price WORK performed by CONTRACTOR. CITY will review with CONTRACTOR CITY'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CITY'S written decisions thereon will be final and binding upon the CITY or CONTRACTOR unless, within ten days after the date of any such decision, either the CITY or CONTRACTOR delivers to the other party

to the Contract and to CITY written notice of intention to appeal from such a decision.

#### 9.9. DECISIONS ON DISPUTES:

9.9.1. The CITY 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 or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the WORK and claims under Article 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to CITY in writing with a request for a formal decision in accordance with this paragraph, which CITY will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to CITY and the other party to the Contract promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to CITY and the other party within thirty (30) days after such occurrence unless CITY allows an additional period of time to ascertain more accurate data in support of such claim, dispute or other matter.

9.9.2. The opposing party shall submit any response to CITY and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless CITY allows additional time). CITY will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. CITY's written decision on such claim, dispute or other matter will be final and binding upon CITY and CONTRACTOR unless: (i) an appeal from CITY's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between CITY and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from

CITY's written decision is delivered by CITY or CONTRACTOR to the other and to CITY within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction 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 within sixty (60) days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.3 When functioning as interpreter and judge under paragraphs 9.8.1, 9.9.1 and 9.9.2, CITY will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by CITY pursuant to paragraphs 9.8.1, 9.9.1 and 9.9.2 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 14.11.) 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 pursuant to Article 16.

#### 9.10. LIMITATIONS ON CITY:

9.10.1. Neither CITY'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by CITY either to exercise or not exercise such authority shall give rise to any duty or responsibility of CITY to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, or any other person or organization performing any of the WORK, or to any surety for any of them.

9.10.2. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the WORK, it is intended that such requirement, direction, review or judgment will be solely to evaluate the WORK for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

9.10.3. CITY will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CITY will not be responsible to CONTRACTOR for CONTRACTOR'S failure to perform or furnish the WORK in accordance with the Contract Documents.

9.10.4. CITY will not be responsible for the acts or omissions of CONTRACTOR or of any SUB-CONTRACTOR, any Supplier, or of any other person or organization performing or furnishing any of the WORK.

#### ARTICLE 10 -- CHANGES IN THE WORK

##### 10.1. AUTHORIZED CHANGES IN THE WORK

10.1.1. Without invalidating the Contract and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the WORK; these will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the WORK involved that will be performed under the applicable conditions of the Contract Documents, except as otherwise specifically provided.

10.1.2. If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.

##### 10.2. UNAUTHORIZED CHANGES IN THE WORK

10.2.1. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Section 3.2, except in the case of an emergency as provided in

paragraph 6.13.1 and except in the case of uncovering WORK as provided in paragraph 13.4.2.

### 10.3. EXECUTION OF CHANGE ORDERS

10.3.1. The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.3.1.1. Changes in the WORK, which are ordered by the CITY pursuant to paragraph 10.1.1, are required because of acceptance of *defective* WORK under paragraph 13.7.4 or correcting *defective* WORK under paragraph 13.9.3, or are agreed to by the parties.

10.3.1.2. Changes in the Contract Price or Contract time which the parties agree to.

10.3.1.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CITY pursuant to paragraph 9.9.1; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the WORK and adhere to the progress schedule as provided in paragraph 6.15.1.

10.3.2. **Surety.** It is distinctly agreed and understood that any changes made in the Contract Documents for this WORK (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR shall in no way annul, release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the WORK or the provisions of the Contract Documents (including, but not limited to, Contract Price or contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.3.3. Notwithstanding, anything to the contrary contained within the contract documents, all change orders involving additional cost or extensions of time, shall be governed by the ordinances of the City of Lauderdale Lakes.

## ARTICLE 11 -- CHANGE OF CONTRACT PRICE

### 11.1. GENERAL

11.1.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the WORK. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.1.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting

data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by CITY in accordance with paragraph 9.9.1 if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.1.2.

11.1.3. The value of any WORK covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.1.3.1. Where the WORK involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Section 11.5, inclusive).

11.1.3.2. By mutual acceptance of a lump sum (which shall include an allowance for overhead and profit in accordance with paragraph 11.3.1.2.a).

11.1.3.3. On the basis of the Cost of the WORK (determined as provided in Section 11.2, inclusive) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Section 11.3, inclusive).

### 11.2. COST OF THE WORK:

11.2.1. **General.** The term Cost of the WORK means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.2.2:

11.2.1.1. **Labor.** Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the WORK under schedules of job classification agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the CITY.

11.2.1.2. **Materials and Equipment.** Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and

equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.

11.2.1.3. SUB-CONTRACTOR. Payments made by CONTRACTOR to the SUB-CONTRACTORS for WORK performed by SUB-CONTRACTORS. If required by the CITY, CONTRACTOR shall obtain competitive bids from SUB-CONTRACTORS acceptable to CONTRACTOR and shall deliver such bids to the CITY who will then determine, with the advice of the CITY, which bids will be accepted. If a subcontract provides that the SUB-CONTRACTOR is to be paid on the basis of Cost of the WORK Plus a Fee, the SUB-CONTRACTOR's Cost of the WORK shall be determined in the same manner as CONTRACTOR'S Cost of WORK. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.2.1.4. Costs of special CITY's (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the WORK.

11.2.1.5. Supplemental costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers, which are consumed in the performance of WORK, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

b. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front end loaders, backhoes, and tractors, or other equipment, required for the economical performance of the authorized WORK, the CONTRACTOR shall receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate blue book for Construction Equipment, published by Equipment Guide Book Co., reduced by 25 percent. Equipment cost shall be calculated based upon the actual time the equipment is used in the WORK. If said WORK required the use of machinery not on the WORK or not to be used on the WORK, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the WORK shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract.

c. Sales, consumer, use or similar taxes related to the WORK and for which CONTRACTOR is liable, imposed by laws and regulations.

d. Royalty payments and fees for permits and licenses.

e. The site costs of utilities, fuel and sanitary facility.

f. Cost of premiums for additional bonds and insurance required because of changes in the WORK.

11.2.2. The term Cost of the WORK shall not include any of the following:

11.2.2.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.2.1.1 or specifically covered by paragraph 11.2.1.4 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

11.2.2.2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

11.2.2.3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the WORK and charges against CONTRACTOR for delinquent payments.

11.2.2.4. Cost of premiums for all Bonds and for all Insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.2.1.5f above).

11.2.2.5. Costs due to the negligence or intentional acts of the CONTRACTOR, any SUB-CONTRACTOR, or anyone whose acts any of them may be liable, including but not limited to, the correction of *defective* WORK, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.2.2.6. Costs associated with fringe benefits that are greater than actual costs; i.e., where worker hours exceed a typical 8-hour day and 40-hour workweek.

11.2.2.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.2.

11.3. CONTRACTOR'S FEE:

11.3.1. The CONTRACTOR'S Fee for overhead and profits shall be determined as follows:

11.3.1.1. A mutually acceptable fixed fee; or if none can be agreed upon,

11.3.1.2. A fee based on the following percentages of the various portions of the Cost of the WORK:

a. For costs incurred under paragraphs 11.2.1.1 and 11.2.1.2, the CONTRACTOR'S Fee shall be five (5%) percent;

b. For costs incurred under paragraph 11.2.1.3, the CONTRACTOR'S Fee shall be five percent; and if a subcontract is on the basis of Cost of the WORK Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all SUB-CONTRACTORS shall be five (5%) percent;



c. No fee shall be payable on the basis of costs itemized under paragraphs 11.2.1.4, 11.2.1.5 and 11.2.2;

d. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in accordance with paragraphs 11.3.1.2a through 11.3.1.2d, inclusive.

11.3.2. Whenever the cost of any WORK is to be determined pursuant to paragraph 11.2.1 or 11.2.2, CONTRACTOR will submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

#### 11.4. CASH ALLOWANCES:

11.4.1. 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 done by such SUB-CONTRACTORS or Suppliers and for such sums within the limit of the allowances as may be acceptable to the CITY, CONTRACTOR agrees that:

11.4.1.1. 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

11.4.1.2. 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. No demand for additional payment on account of any thereof will be valid.

11.4.1.3. Prior to final payment, an appropriate Change order will be issued as recommended by CITY to reflect actual amounts due CONTRACTOR on account of WORK covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.5. UNIT PRICE WORK:

11.5.1. Where the Contract Documents provide that all or part of the WORK is to be Unit Price WORK, initially the Contract Price will be deemed to include for all Unit Price WORK an amount equal to the sum of the established unit prices for each separately identified item of Unit Price WORK times the estimated quantity of each item as indicated in the Contract. 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 CITY in accordance with Paragraph 9.8.

11.5.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

11.5.3. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

11.5.4. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CITY believes that CONTRACTOR has incurred reduced expense as a result thereof, CITY may make a claim for a decrease in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such decrease.

#### 11.6. OMITTED WORK:

11.6.1. The CITY may at any time, by written order, without Notice to the Sureties, require omission of such contract WORK as it may find necessary or desirable. An order for omission of WORK shall be valid only by an executable change order. All WORK so ordered must be omitted by the CONTRACTOR. The amount by which the contract price shall be reduced shall be determined as follows:

11.6.1.1. By such applicable unit prices, or rates for WORK of a similar nature or character as set forth in the contract; or,

11.6.1.2. By the appropriate lump sum price set forth in the Contract; or,

11.6.1.3. By the reasonable and fair estimated cost of such omitted WORK and profit percentage as determined by the CONTRACTOR and the CITY, and approved by the CITY.

### ARTICLE 12 -- CHANGE OF CONTRACT TIME

#### 12.1 GENERAL

12.1.1. The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an extension or shortening of the Contract time shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment of the Contract Time shall be determined by CITY in accordance with Section 9.9 if the CITY and CONTRACTOR cannot otherwise agree.

No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.1.

12.1.2. All time limits stated in the Contract Documents are of the essence of the Contract.

12.1.3. 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 therefore as provided in paragraph 12.1.1. 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. Delays attributable to and within the control of a SUB-CONTRACTOR or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.1.4. 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. In no event shall CITY be liable to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other CONTRACTORS performing other work as contemplated by Article 7.

12.1.5 Liquidated Damages. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph 2.3 of the General Conditions and the Notice To Proceed, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with a certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.3 of the General Conditions, and paragraph 3.1 of the Construction Contract for substantial completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 2.3 of the General Conditions and paragraph 3.1 of the construction contract for completion and readiness for final payment.

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

### 13.1. NOTICE OF DEFECTS:

13.1.1. Prompt notice of all defects for which CITY has actual knowledge will be given to CONTRACTOR. All *defective* WORK, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

13.1.2. Un-remedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment, which are remedied as a result of obligations of the guarantee, shall subject the remedied portion of the WORK to an extended guarantee period of one year after the defect has been remedied. The Surety shall be bound with and for the CONTRACTOR in the CONTRACTOR's faithful observance of the guarantee.

### 13.2. ACCESS TO WORK:

13.2.1 CITY and CITY'S representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the WORK at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### 13.3. TESTS AND INSPECTIONS:

13.3.1. CONTRACTOR shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals.

13.3.2. If Laws or Regulations of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the CITY'S requirements or CITY'S acceptance of a Supplier of materials or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the WORK.

13.3.3. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the CITY.

13.3.4. If any WORK (including the WORK of others) that is to be inspected, tested or approved is covered without written concurrence of CITY, it must, if requested by CITY, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CITY timely notice of CONTRACTOR'S intention to cover the same and CITY has not acted with reasonable promptness in response to such notice.

13.3.5. Neither observations by CITY nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligation's to perform the WORK in accordance with the Contract Documents.

#### 13.4. UNCOVERING WORK:

13.4.1. If any WORK is covered contrary to the request of CITY, it must, if requested by CITY, be uncovered for CITY'S observation and replaced, at CONTRACTOR'S expense.

13.4.2. If CITY considers it necessary or advisable that covered WORK be observed by CITY or inspected or tested by others, CONTRACTOR, at CITY'S request shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the WORK in question, furnishing all necessary labor, material and equipment. If it is found that such WORK is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such WORK is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 13.5. CITY MAY STOP THE WORK:

13.5.1. If the WORK is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the Contract Documents, the CITY may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the WORK shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

#### 13.6. CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.6.1. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective WORK, whether or not fabricated, installed or completed, or, if the WORK has been rejected by CITY, remove it from the site and replace it with non-*defective* WORK. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### 13.7. ONE-YEAR CORRECTION PERIOD:

13.7.1. If within one year after the date of Acceptance of WORK or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable

special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any WORK is found to be *defective*, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such *defective* WORK, or, if it has been rejected by the CITY, remove it from the site and replace it with non-*defective* WORK.

13.7.2. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the *defective* WORK corrected or the rejected WORK removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

13.7.3. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance 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.

13.7.4. Nothing herein shall be deemed a waiver of the statute of limitations as provided in Florida Law.

13.7.5. Where *defective* WORK (and damage to other WORK resulting therefrom) has been corrected, removed or replaced under this paragraph 13.7., 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.

#### 13.8. ACCEPTANCE OF DEFECTIVE WORK:

13.8.1. If, instead of requiring correction or removal and replacement of *defective* WORK, CITY (and, prior to CITY's recommendation of final payment, also CITY) prefers to accept it, CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY'S evaluation of and determination to accept such *defective* WORK (such costs to be approved by CITY as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

13.8.2. If any such acceptance occurs prior to CITY'S recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, CONTRACTOR will pay an appropriate amount to the CITY.

#### 13.9. CITY MAY CORRECT DEFECTIVE WORK:

13.9.1. If CONTRACTOR fails within thirty days (30) after written notice of CITY to proceed to correct and to correct *defective* WORK or to remove and replace rejected WORK as required by CITY in accordance with paragraph 13.7.1, or if CONTRACTOR fails to perform the WORK in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

13.9.2. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the WORK, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, the CITY'S representative, agents and employees such access to the site as may be necessary to enable the CITY to exercise the rights and remedies under this paragraph.

13.9.3. All direct, indirect and consequential costs of the CITY in exercising such rights and remedies will be charged against CONTRACTOR by CITY and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and/or replacement of WORK of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective WORK. CONTRACTOR shall also be responsible for restoring any other sites affected by such repairs or remedial work at no cost to CITY. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the WORK attributable to the exercise by the CITY of the CITY'S rights and remedies hereunder.

## ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.1. SCHEDULE OF VALUES

14.1.1. The schedule of values established as provided in paragraph 2.6.1 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY.

### 14.2. UNIT PRICE BID SCHEDULE

14.2.1. Progress payments on account of Unit Price WORK will be based on the number of units completed.

### 14.3. APPLICATION FOR PROGRESS PAYMENTS:

14.3.1. Unless otherwise prescribed by law, at the end of each month, the CONTRACTOR shall submit to the CITY for review, an Application for Progress Payment filled out and signed by the CONTRACTOR covering the WORK completed as of the date of the Application and accomplished by such supporting documentation as is required by the Contract Documents.

14.3.2. The Application for Progress Payment shall identify, as a subtotal, the amount of the CONTRACTOR'S Total Earnings to Date, plus the Value of Materials Stored which have not yet been incorporated in the WORK, less a deductive adjustment for materials stored which have been

installed which were not previously incorporated in the WORK, but for which payment was allowed.

14.3.3. The Net Payment Due to the CONTRACTOR shall be the above- mentioned subtotal from which shall be deducted the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by the CONTRACTOR. Retainage shall be calculated based upon the above-mentioned subtotal.

The above calculation in tabular form is as follows:

Total Earnings to Date . . . . .	\$
Value of Materials Stored . . . . .	\$
Less Value of Materials Stored for which payment was allowed and which have been installed . . . . .	(\$ )
Sub Total	\$
Less Retainage (based on sub total)	(\$ )
Less total of all previous approved Applications for Progress Payment	(\$ )
NET PAYMENT DUE	\$

14.3.4. The Value of Materials Stored shall be an amount equal to the specified percent of the value of same as set forth in the Contract or Schedule of Values. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the WORK but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the WORK and is planned for installation within the following thirty (30) days. The Application for Progress Payment shall also be accompanied by a Bill of Sale, paid invoice, or other documentation warranting that the CITY has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY'S interest therein, all of which shall be satisfactory to the CITY.

### 14.4. CONTRACTOR'S WARRANTY OF TITLE:

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

### 14.5. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

14.5.1. CITY will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CITY'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Thirty days after receipt of the Application for Payment by the CITY with CITY'S recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.5.4) become due and when due will be paid by the CITY to CONTRACTOR.

14.5.2. CITY'S recommendation of any

payment requested in the application for payment shall not prohibit the CITY from withholding payment or prohibit the CITY from paying additionally sums regarding other matters or issues between the parties.

14.5.3. CITY'S recommendation of final payment will constitute an additional representation by CITY's Project Manager that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.10 have been fulfilled.

14.5.4. CITY may refuse to recommend the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such representations to the CITY. The CITY may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CITY'S opinion to protect the CITY from loss, including but not limited to:

14.5.4.1. The WORK is *defective*, or completed WORK has been damaged requiring correction or replacement.

14.5.4.2. The Contract Price has been reduced by a Written Amendment or Change Order.

14.5.4.3. The CITY has been required to correct *defective* WORK or complete WORK in accordance with paragraph 13.9.1, or

14.5.4.4. Of CITY'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1.1 through 15.2.1.9 inclusive.

14.5.5. The CITY may refuse to make payment of the full amount recommended by the CITY because claims have been made against the CITY on account of CONTRACTOR'S performance or furnishing of the WORK, or there are other items entitling the CITY to credit against the amount recommended, but the CITY must give CONTRACTOR written notice (with a copy to CITY) stating the reasons for such action.

#### 14.6. SUBSTANTIAL COMPLETION:

(60) When the CONTRACTOR considers the entire WORK ready for its intended use, the CONTRACTOR shall notify the CITY in writing that the WORK is substantially complete and request that the CITY prepare a Certificate of Substantial Completion. For construction projects having an estimated cost of less than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK shall make an inspection of the WORK within thirty (30) calendar days after the notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. For construction projects having an estimated cost of more than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK within thirty (30) calendar days unless otherwise extended by contract not to exceed sixty calendar days after notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. If the CITY does not consider the WORK substantially complete, the CITY shall notify the CONTRACTOR in writing giving the reasons therefor. If the CITY considers the WORK to be

substantially complete, the CITY will prepare and deliver to the CITY for its execution and recordation the Certificate of Substantial Completion signed by the CITY and CONTRACTOR, which shall fix the Date of Substantial Completion.

14.6.1. The CITY shall have the right to exclude CONTRACTOR from the WORK after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the "punch list".

#### 14.7. PARTIAL UTILIZATION:

14.7.1. Use by the CITY of any finished part of the WORK, which has specifically been identified in the Contract Documents, or which the CITY and CONTRACTOR agree constitutes a separately functioning and useable part of the WORK that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the WORK, may be accomplished prior to Substantial Completion of all WORK subject to the following:

14.7.1.1. The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the WORK which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to the CITY that said part of the WORK is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. CONTRACTOR at any time may notify the CITY in writing that CONTRACTOR considers any such part of the WORK ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. Within a reasonable time after either such request, the CITY, CONTRACTOR and CITY shall make an inspection of that part of WORK to determine its status of completion. If CITY does not consider that part of the WORK to be substantially complete, CITY will notify the CITY and CONTRACTOR in writing giving the reasons therefor. If CITY considers that part of the WORK to be substantially complete, the provisions of paragraphs 14.6.1 and 14.6.2 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.

14.7.1.2. The CITY may at any time request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the WORK although it is not substantially complete. A copy of such request will be sent to CITY and within a reasonable time thereafter the CITY, CONTRACTOR and CITY shall make an inspection of that part of the WORK to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY that such part of the WORK is not ready for separate operation by the CITY will finalize the list of items to be completed or corrected and will deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the WORK which will become binding upon the CITY and CONTRACTOR at the time when

the CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed CITY). During such operation and prior to Substantial Completion of such part of the WORK, the CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related WORK.

#### 14.8. FINAL INSPECTION:

14.8.1. Upon written notice from CONTRACTOR that the entire WORK or an agreed portion thereof is complete, CITY will make a final inspection with the CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the WORK is incomplete, *defective*, or not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### 14.9. FINAL APPLICATION FOR PAYMENT:

14.9.1. After CONTRACTOR has completed in writing all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 14.6) and other documents--all as required by the Contract Documents, and after CITY has indicated in writing that the WORK is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the WORK.

#### 14.10. FINAL PAYMENT AND ACCEPTANCE:

14.10.1. Upon receipt of written notice from the CONTRACTOR that the WORK has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment, Final Receipt and Release of Lien and accompanying documentation, the CITY shall promptly examine the WORK and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed WORK by a properly qualified and experienced Professional CITY, shall satisfy himself that the CONTRACTOR'S statement appears to be correct and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled. He shall then inform the CITY in writing that he has examined the WORK and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the WORK for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY does not in any way relieve the CONTRACTOR from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CITY liable for any faulty WORK done

or defective materials or equipment used by the CONTRACTOR.

14.10.2. The CITY will then make a final estimate of the value of all WORK done and will deduct all previous payments which have been made. The CITY will report such estimate to the CITY together with the recommendation as to the acceptance of the WORK or his findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CITY'S estimate and recommendation, the CITY will make final payment to the CONTRACTOR of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including, but not limited to, Liquidated Damages, as applicable. Title passes and warranty begins at final acceptance.

14.10.3. All prior estimates are subject to correction in the final estimate. Thirty days after approval by the CITY of the application for final payment, the amount recommended by CITY shall become due and will be paid to CONTRACTOR.

#### 14.11. WAIVER OF CLAIMS:

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

14.11.1.1. 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 14.8, 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

14.11.1.2 a waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and still unsettled.

### ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

#### CITY MAY SUSPEND WORK:

15.1.1. The CITY may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CITY 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 increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

#### 15.2. CITY MAY TERMINATE

15.2.1. Upon the occurrence of any one or more of the following events:

15.2.1.1. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to the bankruptcy or

insolvency;

15.2.1.2. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.1.3. If CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.1.4. If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

15.2.1.5. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.1.6. If CONTRACTOR fails to perform the WORK in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.6 as revised from time to time);

15.2.1.7. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.1.8. If CONTRACTOR disregards the authority of CITY; or

15.2.1.9. If CONTRACTOR otherwise violates any provisions of the Contract Documents;

the CITY may, after giving CONTRACTOR and Surety seven days written notice of any default and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the WORK and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere, and finish the WORK as the CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the Contract Price exceeds the expense of completing the WORK including compensation for additional managerial and administrative services, plus the CITY'S direct, indirect and consequential losses, damages and costs because of the CONTRACTOR'S default (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) such excess will be paid to CONTRACTOR. If such expenses and costs plus the CITY'S losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly on demand. Such costs incurred by the CITY will be approved as to reasonableness by CITY and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the CITY shall not be required to obtain the lowest price for the WORK performed.

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

15.2.3. The CITY may terminate this Contract without cause by giving seven (7) days prior written notice to the CONTRACTOR, and in such event, the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination, plus reasonable termination expenses. The CITY also will reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of the WORK and paid directly by the CONTRACTOR, not including overhead, general expenses or profit. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to SUB-CONTRACTORS or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY shall reimburse the CONTRACTOR for major materials or equipment purchased before termination if the CONTRACTOR can show proof of said purchases prior to notice of termination) inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same.

#### 15.3. CONTRACTOR MAY STOP WORK OR TERMINATE:

15.3.1. If, through no act or fault of CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or CITY fails to act on any Application for Payment within thirty (30) days after it is submitted, or the CITY fails for sixty (60) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to the CITY, terminate the Contract and the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination plus reasonable termination expenses. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same. In addition and in lieu of terminating the Contract, if CITY has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven days written notice to the CITY stop the WORK until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.13 to

carry on the WORK in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

#### ARTICLE 16 – DISPUTE RESOLUTION

16.1. All claims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.11) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to CITY initially for the decision in accordance with paragraph 9.9 will be made until the earlier of (a) the date on which CITY has rendered a written decision or (b) the thirty-first (31<sup>st</sup>) day after the parties have presented their evidence to CITY if a written decision has not been rendered by CITY before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty (30) days after the date on which CITY has rendered a written decision in respect thereof in accordance with paragraph 9.9; and the failure to demand arbitration within said thirty (30) days' period will result in CITY's decision being final and binding upon CITY and CONTRACTOR. If CITY renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of CITY rendered in accordance with paragraph 9.8 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.8.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration, and a copy will be sent to CITY for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph, 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including CITY and the officers, directors, agents, employees or any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceeding, and

16.4.3. the written consent of the other person or entity sought to be included and of CITY and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between CITY and CONTRACTOR involves the Work of a SUB-CONTRACTOR, either CITY or CONTRACTOR may join such SUB-CONTRACTOR as a party to the arbitration between CITY and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.5.5 a specific provision whereby the SUB-CONTRACTOR consents to being joined in arbitration between CITY and CONTRACTOR involving the Work of such SUB-CONTRACTOR. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of SUB-CONTRACTOR and against CITY that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. CITY and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in questions between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

#### ARTICLE 17 -- MISCELLANEOUS

##### 17.1. GIVING NOTICE:

17.1.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### 17.2. COMPUTATION OF TIME:

17.2.1. 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.

### 17.3. NOTICE OF CLAIM:

17.3.1. Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### 17.4. CUMULATIVE REMEDIES:

17.4.1. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to the CITY thereunder, are in addition to , and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy to which they apply. All representations warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract.

### 17.4. ACCIDENT AND PREVENTION:

17.4.1. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of and in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

### 17.5. NATIONAL EMERGENCY

17.5.1. In the event the CITY is prevented from proceeding with any or all of this WORK as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, CITY, Town, or County regulations, orders, restrictions, or due to circumstances beyond the CITY'S control, then the CITY

herein reserves the right to either suspend the WORK to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the WORK herein has already been commenced, then the CITY herein shall be liable for only the cancellation or suspension without the addition of prospective profits or other changes whatsoever.

### 17.6. FLORIDA PRODUCTS AND LABOR:

17.6.1. The CONTRACTOR'S attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

### 17.7. EMPLOYEES:

17.7.1. All labor described in these specifications or indicated on the Drawings and the WORK specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.7.2. Any person employed on the WORK who fails, refuses or neglects to obey the instructions of the CONTRACTOR in anything relating to this WORK or who appears to the CITY to be disorderly, intoxicated, insubordinate, or incompetent, shall upon the order of the CITY, be at once discharged and not again employed in any part of the WORK. Any interference with, or abuse or threatening conduct toward the CITY or their inspectors by the CONTRACTOR or his employees or agents, shall be authority for the CITY to annul the Contract and re-let the WORK. No intoxicating substance shall be allowed on the WORK site.

### 17.8. NON-DISCRIMINATION:

17.8.1. The CONTRACTOR shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The CONTRACTOR will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all SUB-CONTRACTORS and it is the responsibility of the SUB-CONTRACTOR compliance.

### 17.9. DRUG-FREE WORKPLACE:

17.9.1. The CITY requires all prospective CONTRACTORS to maintain a drug free work place and have their Drug Free Workplace policy posted in their offices and available for inspection by the CITY.

### 17.10. PUBLIC ENTITY CRIMES:

17.10.1. Pursuant to F.S. 287.133, as amended: a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not

submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a CONTRACTOR, supplier, SUB-CONTRACTOR, or CITY under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO or higher for a period of 36 months from the date of being placed on the convicted vendor list.

17.11. ASSIGNMENT:

17.11.1. This Contract, nor any monies due hereunder, or any part thereof, shall not be assigned, or transferred, by CONTRACTOR, nor shall the CITY be liable to any assignee or transferee, without the written consent of the CITY, to the assignment, or transfer. The CITY shall not release or discharge CONTRACTOR from any obligation hereunder. The CITY shall not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

17.12. VENUE:

17.12.1. This Contract shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Contract is fixed in Broward County, Florida.

17.13. ASBESTOS:

17.13.1. If the CONTRACTOR during the course of the WORK observes the existence of asbestos in any structure, building or facility, the CONTRACTOR shall promptly notify the CITY. The CITY shall consult with the CITY regarding removal or encapsulation of the asbestos material and the CONTRACTOR shall not perform any WORK pertinent to the asbestos material prior to receipt of special instructions from the CITY.

17.14. RIGHT TO AUDIT:

17.14.1. If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR'S books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR'S plants, or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all SUB-CONTRACTORS. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR'S normal business hours at the office of the CONTRACTOR. The accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the CITY.

(END)

**1**

**PROPOSAL FORM**

**BID FORM**

## SECTION II: PROPOSAL FORM

### BID FORM

#### COMPREHENSIVE PARK IMPROVEMENT PROJECT PROJECT NO: 17-1302-05B

(Submit One (1) Original + Four (4) copies of this form to City of Lauderdale Lakes,  
Financial Services Department, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319)

Submitted By: Victory Engineers and General Contractors LLC Date: March 2, 2017  
(BIDDER)

to furnish and deliver all materials and to do and perform all WORK as is required for the project scope.

In order to be considered for this project, **the Bidder must** have successfully completed a minimum of three (3) projects of similar scope and complexity over the past five (5) years, in the State of Florida, and must be able to document the required experience upon request.

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Contract with the CITY to perform and furnish all WORK as specified herein for the Contract Price and within the Contract Period indicated in this Bid.
2. This Bid will remain subject to acceptance for ninety (90) days after the day of Bid opening. BIDDER will sign and submit the necessary documents required by the CITY within fifteen (15) days after the date of CITY'S Notice of Tentative Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Contract, that
  - a. BIDDER has examined the Bid Documents, including the following addenda:

Number	Date	Number	Date
ITB No. 17-1302-05B	February 4, 2017	ITB No. 17-1302-05B	February 9, 2017
_____			
_____			
_____			

of all of which is hereby acknowledged;

- b. BIDDER has familiarized itself with the nature and extent of the Bid Documents, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the WORK.
    - c. BIDDER has given the CITY written notice of all conflicts, errors or discrepancies that it has discovered in the Bid Documents and the written resolution thereof by the CITY is acceptable to BIDDER.
4. BIDDER proposes to furnish the WORK in conformity with the specifications and at the Bid Prices referenced below in the Schedule of Bid Prices. The Bid Prices quoted have been checked and certified to be correct. Said Bid Prices are fixed and firm and shall be paid to BIDDER for the successful completion of its obligation as specified in the Bid Documents.

5. It is the intent of the CITY to award this bid to the lowest responsible and Responsive BIDDER. The CITY reserves the right to accept or reject any or all bids and to waive any informality concerning the bids when such rejection or waiver is deemed to be in the best interest of The CITY OF LAUDERDALE LAKES. The CITY reserves the right to award the bid on a split order basis, lump sum or individual item basis unless otherwise stated.
6. BIDDER agrees that the WORK will be substantially completed within 60 calendar days after the receipt of the Notice to Proceed and final completion will occur within 15 calendar days after the Notice of Substantial Completion.
7. BIDDER accepts the provisions of the Contract as to liquidated damages in the event of failure to complete the WORK on time.
8. Communications concerning this Bid shall be as follows:

Contact Person Balakrishnan Vinayagar  
Business Address 6175 NW 167<sup>th</sup> Street, Suite G-20  
CITY, State, Zip Code Hialeah, FL 33015  
Business Phone Number 305-378-1991  
Fax Number 305-378-1997  
Cell Phone Number 305-244-5424  
E-mail Address vmb@fietl.com

9. Other pertinent information is as follows:

License Number CGC 1515166  
(Please Attach Copy)  
Federal Tax ID# \_\_\_\_\_  
Federal Employment ID # 26-0650258

Submitted on this 2 day of March, 2017 .

- a. (If an individual, partnership, or non-incorporated organization)

Signature of BIDDER *VMB Vinayagar*  
By Balakrishnan Vinayagar

- b. (If a corporation)

(Affix Seal)

Signature of BIDDER \_\_\_\_\_  
By \_\_\_\_\_

Attested by

Secretary

V. Saikala  
Saikala Balasubramani

Incorporated under the laws of the State of Florida.

BID PRICES WITHOUT THE MANUAL SIGNATURE OF AN AUTHORIZED AGENT OF THE BIDDER SHALL BE REJECTED AS NON-RESPONSIVE, NON-CONFORMING AND INELIGIBLE FOR AWARD.

CERTIFICATE  
(For Partnership)

I HEREBY CERTIFY that a meeting of the partners of Victory Engineers and General Contractors LLC a Partnership under the laws of the State of FL held on February 21, 2017, the following resolution was duly passed and adopted:

"RESOLVED, that Balakrishnan Vinayagar as Managing Member of the Partnership, is hereby authorized to execute the Bid Form dated February 21, 2017, between the City of Lauderdale Lakes, Florida, and this Partnership, and that the execution thereof, attested by the Managing Member of the Partnership be the official act and deed of this Partnership."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 3 day of March, 2017.

(Signature)

Balakrishnan Vinayagar

(Title) Managing Member

STATE OF FLORIDA

COUNTY OF Miami Dade

Sworn to and subscribed before me on this 2 day of March, 2017 by Balakrishnan Vinayagar who ☒ is personally known to me or who ☐ has presented the following type of identification: FL DRIVER LICENCE V526-078-76-011-0



Notary Seal (stamped in black ink)

OR

Printed, typed or stamped name of Notary and Commission Number



**2**

## **Bidders Qualification Statement**



## BIDDER'S QUALIFICATIONS STATEMENT

### BIDDER'S GENERAL INFORMATION:

BIDDER shall furnish the following information. Failure to comply with this requirement will render Bid non-responsive and may cause its rejection. Additional sheets shall be attached as required.

1. BIDDER'S Name, Principal Address, Phone and Fax Number:

Victory Engineers and General Contractors LLC  
6175 NW 167<sup>th</sup> Street, Suite G-20  
Hialeah, FL 33015  
P: 305-378-1991  
F: 305-378-1997

2. Number of years as a CONTRACTOR in this type of work: 10 Years

3. Names and titles of all officers, partners or individuals doing business under trade name:

Balakrishnan Vinayagar                      Managing Member

Saiskala Balasubramani                      Member

4. The business is a:    Sole Proprietorship ☐                      Partnership ☒                      Corporation ☐

5. Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract:

Odalis Cabrera  
10131 S.W. 40th St.  
Miami, FL 33165  
305/552-5414  
1-800-780-5414  
Fax 305/226-7876

6. What is the last project of this nature that you have completed?

Rolling Green Condo-E  
Villa San Miguel Condominium

7. Have you ever failed to complete work awarded to you. If so, when, where and why?

None

8. Have you personally inspected the proposed WORK and do you have a complete plan for its performance?

Yes

9. List CM's or GC's your company has worked for within the past three years

CM/GC No. 1	Hooper Construction	Contact Person: Richard Zwilling	Tel: 954-336-1530 Fax:
CM/GC No. 2	Friendly Roofing	Contact Person: Svika Elmalah	Tel: 561-674-1478 Fax:

10. List three SIGNIFICANT PROJECTS completed within the past five years.

Project No. 1	Location:	Date Completed:	December 2016
City of Lauderdale Lakes	4300 NW 36 <sup>th</sup> Street Lauderdale Lakes, FL 33319	Your Subcontract Amount:	\$32,000.00
Contracting Agency:	City of Lauderdale Lakes	Contact Person: Dean Decker	Tel: 954-410-6723 Fax: 954-731-5309

Project No. 2	Location: Miami Airport	Date Completed:	February 5, 2017
Miami Airport Car Rental Building		Your Subcontract Amount:	\$15,000.00
Contracting Agency:	Miami Airport Authority	Contact Person: Ms. Julie	Tel: 305-968-2313 Fax:

Project No. 3	Location: Village Homes at Palmetto Bay	17255 SW 95 <sup>th</sup> Avenue Palmetto Bay, FL 33157	Date Completed:	January 2016
		Your Subcontract Amount:	\$225,000.00	
Contracting Agency:	Vilar Associates	Contact Person: Teresa Vilar	Tel: 305-219-1720 Fax:	

11. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).

Balakrishnan Vinayagar (VMB) is a Licensed State of Florida Professional Engineer and State Licensed General and Roofing contractor. Have extensive knowledge and experience in the design, budgeting, scheduling and completion of the construction projects with more than 13 years of experience.

12. State the name and licensing of the individual who will have personal supervision of the WORK.

Balakrishnan Vinayagar, General Contractor CGC 1515166

13. Will you sublet any part of this WORK? If so, give details.

Flexipave pavements and kids play area resurfacing  
Basket Ball Court resurfacing  
Sealcoating and Striping at the swimming pool project parking lot

14. What equipment do you own that is available for the WORK? (Attach additional sheets as necessary)

Boom  
Tile Removing Machine (Tile stripper)

15. What equipment will you purchase for the proposed WORK?

None

16. What equipment will you rent for the proposed WORK?

Rent Boom for hoisting the nets in the play ground where they play cricket

17. Principal Materials Manufacturer and SUB-CONTRACTORS. The BIDDER who proposes to perform WORK per the project scope is submitting this Bid Form. The Schedule of Bid Prices shown on the preceding pages(s) has been calculated and tabulated using basic material prices. The following is a list of material manufacturers and SUB-CONTRACTORS whose materials and services said BIDDER proposes to furnish and utilize if awarded a CONTRACT for the WORK specified herein. It is understood that the following list is not complete, but includes the names of manufacturers of the principal components and SUB-CONTRACTORS supplying principal services to said project. It is also understood that if awarded a Contract, the BIDDER will furnish the materials of the manufacturers and utilize the services of the SUB-CONTRACTORS stated herein and that if for any reason whatsoever BIDDER wishes to substitute materials or SUB-CONTRACTORS BIDDER shall request permission in writing from the CITY stating fully the reason for making such a request prior to ordering same.

All manufacturers or their authorized vendors have been made aware of all the appropriate portions of the Bid Documents and agree that their materials will meet all of the requirements stated therein and deliveries will be scheduled so as not to impede the progress of the WORK.

Materials:

Item	Manufacturer
Flexipave	KBI Flexi-Pave
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____
_____ :	_____

SUB-CONTRACTORS:

Name	License #	Duties	Contract Amount \$	% of Contract
Pisces Contractors	CGC 1509654	Basket Ball Court Resurfacing	\$30,000.00	15%
Exceltec Inc	CGC1514167	Sealcoat and Striping	\$30,000.00	15%

The BIDDER acknowledges and understands that the information contained in response to this Qualification's Statement shall be relied upon by CITY in awarding the contract and such information is warranted by BIDDER to be true. The discovery of any omission or misstatement that materially affects the BIDDER'S qualifications to perform under the contract shall cause the CITY to reject the Bid, and if after the award, to cancel and terminate the award and/or contract.

The BIDDER also acknowledges that all information listed above may be checked by the CITY and authorizes all entities or persons listed above to answer any and all questions. BIDDER hereby indemnifies the CITY and persons or entities listed above and hold them harmless from any claim arising from such authorization or the exercise thereof, including the dissemination of information requested above.

By VM B. Kala  
(Signature)

Date 3/2/17

**AFFIDAVIT FOR CO-PARTNERSHIP**

State of Florida  
County of Miami Dade

Balatrishnan Vinayagar is a member of the firm of Victory Engineers and General Contractors LLC, being duly sworn  
deposes and says that:

- A. the foregoing financial statements are a true and accurate statement of the financial position of said firm as of the date thereof and the answers to the interrogatories contained therein are true;
- B. the statements and answers to the interrogatories of the foregoing experience questionnaire are correct and true as of the date of this affidavit;
- C. he/she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and
- D. the City of Lauderdale Lakes considers such action on the part of the applicant to constitute good cause for denial of submitting a proposal for City construction projects or the suspension or revocation of existing work or contracts being performed by Contractor for the City of Lauderdale Lakes, FL.

(Member of Firm)

Sworn to me before this March 2<sup>nd</sup> day of 2017, by Balatrishnan Vinayagar (name of affiant).

He/she is personally known to me or has produced State of FL Driver License  
V526-078-76-AL-D (type of  
identification) as identification.

(Notary)



SEAL

# **3**

## **SCHEDULE OF BID PRICES**

ITEM #	BID ITEM DESCRIPTION	BID QUANTITY	UNIT	UNIT COST	TOTAL COST
W1	Resurface existing basketball court (Double Court)	13,650	SF	\$2.40	\$32,760.00
W2	Remove existing floor covering inside the fitness center and replace with Heavy duty 1/2" rubber matting (Minimum 4 ft. wide)	1,250	SF	\$6.00	\$7,500.00
W3	Remove and Replace Tiles in Auditorium (20"x20" Porcelain. Thickness: 3/8in.)	1,480	SF	\$11.00	\$16,280.00
W4	Remove and Replace Tiles in Hallway (20"x20" Porcelain. Thickness: 3/8in)	840	SF	\$11.00	\$9,240.00
W5	Remove and Replace Tiles in Lobby (20"x20" Porcelain tiles. Thickness: 3/8in.)	240	SF	\$11.00	\$2,640.00
W6	Remove and Replace Tiles in Vending Machine Area (20"x20" Porcelain tiles. Thickness: 3/8in.)	216	SF	\$11.00	\$2,376.00
W7	Removal and Replacement of Playground canopy	1	LS	\$3,000.00	\$3,000.00
W8	Resurface existing playground rubber surface	3,600	SF	\$1.00	\$3,600.00
W9	Furnishing and Installing 30 ft high Soccer Field Netting	1,570	LS	\$14.00	\$21,980.00
W10	Removal and replacement of outdoor walkways (Flexipave ONLY). See attached detail. See corrected C-3 Drawing	1,500	SF	\$7.00	\$10,500.00
W11	Mobilization	1	LF	\$500.00	\$500.00
W12	Maintenance of Traffic	1	SF	\$500.00	\$500.00
W13	Clearing and Grubbing	1	LS	\$500.00	\$500.00
W14	Allowance for Engineering Design	1	LS	\$15,000.00	\$15,000.00
W15	Contingency	1	LS	\$5,000.00	\$5,000.00
W16	Permit Allowance	1	AL	\$500.00	\$500.00
SUB-TOTAL WILLIE L. WEBB PARK					\$131,876.00

**NOTE:**

- Item # **W1**: Price shall include all resurfacing material, painting, marking and sealing of asphalt as needed.
- Item # **W3, W4, W5 and W6**: Price shall include all removal and disposal of existing tiles, furnishing and installing new 20"x20" porcelain tiles with a minimum thickness of 3/8" including base material. Color to be determined by the City and shall be porcelain tile.
- Item # **W7**: Playground canopy size is approximately 3,796 SF. New canopy to be adjusted to a new height of approximately 4 feet higher than existing to prevent reach of kids.
- Item # **W8**: Proposed playground surface shall be 1/2 inch thick with bounded rubber with a minimum of 2 colors to be determined by the City.
- Item # **W9**: New field netting shall be 22 feet high, made of #15x1-3/4" black nylon diamond mesh barrier netting, 125 lb. single strand tensile strength with a 3/8" black dacron rope. The existing netting poles shall be utilized. Price shall also include all required hardware including insulated cable.
- Item # **W14**: This allowance is to compensate for the preparation of engineering and/or architectural design as required for permitting by the City's Building Department and any other agencies having jurisdiction.
- Item # **W15**: This is a contingency item to be utilized ONLY as authorized by the CITY. Payment will be made for authorized additional work to the contractor as unforeseen conditions.
- Item # **W16**: payment for permit fees will be based upon the actual permit fees required by the CONTRACTOR from the various agencies having jurisdiction for construction of the project, all in accordance with the Contract Documents. The allowance permit fee amount shown on the Bid Schedule is an estimate of permit fees required for the project and is a cost pass through item.



# SCHEDULE OF BID PRICES- PERFORMANCE BOND TO BE REIMBURSED FROM CITY TO CONTRACTOR

## POOL FACILITY IMPROVEMENTS

ITEM #	BID ITEM DESCRIPTION	BID QUANTITY	UNIT	UNIT COST	TOTAL COST
P1	Repair pool liner	1	LS	\$3,375.00	\$3,375.00
P2	Replace pool deck expansion joints	380	LF	\$5.75	\$2,185.00
P3	Repair pool deck	7,257	LS	\$1.30	\$9,434.10
P4	Removal and disposal of existing VC tiles inside of existing building. An allowance for asbestos testing is included at P17.	1,140	SF	\$1.00	\$1,140.00
P5	Furnishing and installing new epoxy floor coating inside of existing building	1,140	SF	\$5.00	\$5,700.00
P6	Repair and repaint existing canopy posts	8	EA	\$300.00	\$2,400.00
P7	Building painting (Exterior: APPROX AREA = 12,500 sf)	12,500	LS	\$1.20	\$15,000.00
P8	Building painting (Interior: APPROX. AREA = 1,340 sf)	1,340	LS	\$1.30	\$1,742.00
P9	Furnishing and installing barbwire	400	LF	\$1.50	\$600.00
P10	Remove and dispose shrubs around the perimeter of the property	1,600	SF	\$1.00	\$1,600.00
P11	Installation St. Augustine Sod	1,600	SF	\$2.00	\$3,200.00
P12	Re-coat and striping of existing parking lot	15,164	LS	\$0.75	\$11,373.00
P13	Mobilization	1	LS	\$500.00	\$500.00
P14	Maintenance of Traffic	1	LS	\$500.00	\$500.00
P15	Clearing and Grubbing	1	LS	\$500.00	\$500.00
P16	Contingency	1	LS	\$5,000.00	\$5,000.00
P17	Allowance for Asbestos testing	1	LS	\$700.00	\$700.00
SUB-TOTAL POOL FACILITY IMPROVEMENTS					
TOTAL BID PRICE (WILLIE WEBB PARK + POOL FACILITY)					\$196,825.10

### NOTES:

**Item # P1:** The size of the existing pool is approximately 3,375 SF. There are multiple visible damaged areas to the liner on the surface of the pool and the plastic area around the pool. Existing liner shall be repaired to prevent the leaks.

**Item # P2:** All proposed expansion joints must be the full depth of the concrete section in which they are located.

**Item # P3:** Approximate surface area of the pool deck is 7,257 square feet. Price shall include saw cutting, removal and repair of broken/crack concrete slabs in various locations, installation of new expansion joints and the installation of a new deck surface with anti-slip characteristics to bare feet and sandals when wet. Color to be determined by the City. **Saw cut for expansion to the north side of the pool deck is 200 linear feet.**

**Item # P4:** Price shall include removal and proper disposal of existing VC tile inside of the building.

**Item # P5:** Price shall include furnishing and installing a new epoxy floor coating inside of the building.

**Item # P6:** Price shall include cleaning, polishing, rust removal and coating with 2 part epoxy for 8 existing posts.

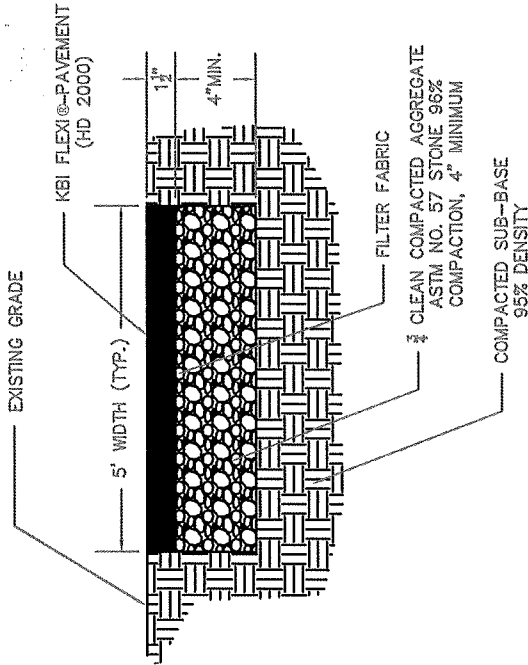
**Item # P7 and P8:** Exterior building surface area is approximately 12,500 square feet; Interior building surface area is approximately 1,340 square feet. Price shall include surface preparation. Paint shall be marine base. Color to be determined by the City.

**Item # P9:** Proposed barbwire shall match existing. Price shall include all support and hardware as required.

**Item # P12:** The dimension of the existing parking lot is approximately 10,200 SF. Price shall include striping for 21 parking spaces including 2 handicap spaces. All existing wheelstops shall be painted. Color to be determined by the City.

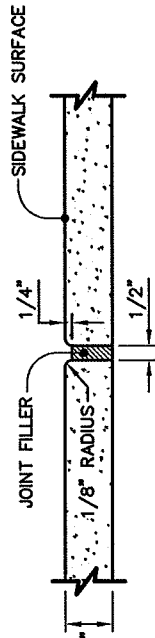
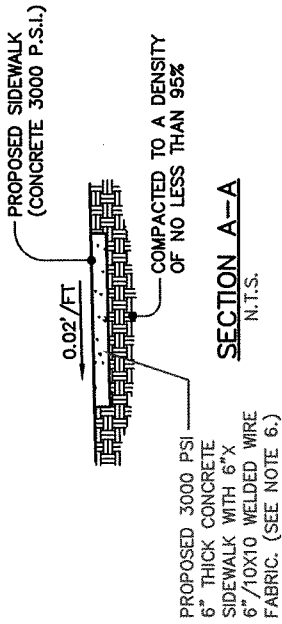
**Item # P16:** This is a contingency item to be utilized ONLY as authorized by the CITY. Payment will be made for authorized additional work to the contractor as unforeseen conditions.

**Item # P17:** This lump sum allowance of \$700 is associated with item P4 for asbestos testing only.



KBI FLEXI@-PAVE HD 2000  
SIDEWALK DETAILS

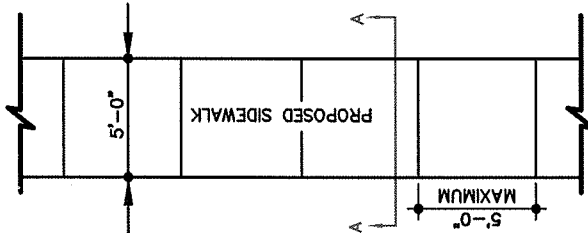
N.T.S.



TRANSVERSE EXPANSION JOINT

N.T.S.

EXPANSION JOINT  
(TYP.)



PLAN VIEW

NOTES: N.T.S.

1. PROVIDE TOOLED JOINTS AT DISTANCES MATCHING THE WIDTH.
2. IF SOME PHYSICAL OBSTRUCTION EXISTS WHICH PREVENTS THE PLACING OF SIDEWALKS AS SHOWN, CONTACT THE CITY ENGINEER FOR ALTERNATE LOCATION OR DESIGN.
3. WOODEN AND OTHER SPACERS WILL NOT BE PERMITTED IN SIDEWALKS.
4. ALL CONCRETE SHALL BE 3000 PSI MIN. @ 28 DAYS CURING
5. CONCRETE SURFACE TO BE LIGHT BROOM FINISH.
6. CONCRETE SIDEWALK CONSTRUCTION SHALL BE 6" THICK W 6"x 6" #10 WELDED WIRE MESH REINFORCEMENT.
7. TRANSVERSE EXPANSION JOINTS TO BE A MAXIMUM OF 50 FEET.
8. ALL CONCRETE TO BE FINISHED WITH CURING COMPOUND.

CONCRETE SIDEWALK DETAILS

N.T.S.



**4**

**NON COLLUSION AND DRUG FREE  
WORKPLACE CERTIFICATION**

## DRUG FREE WORKPLACE CERTIFICATION

IDENTICAL TIE BIDS: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quantity, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program (Florida Statutes Section 287.087). In order to have a drug-free workplace program, a business shall:

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

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

BIDDER'S Signature

*VM Bheekalana*

(Print or Type Name)

Balakrishnan

*Vinayagar*

# NON-COLLUSION AFFIDAVIT

STATE OF FLORIDA

COUNTY OF Miami Dade

Balakrishnan Vinayaga, being first duly sworn, deposes and says that:

1. BIDDER Victory Engineers and General Contractors is Balakrishnan Vinayaga, the  
(Owner, Partner, Officer, Representative or Agent)

2. BIDDER is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

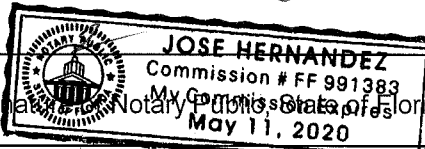
3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the said BIDDER nor any of its officers, partners, owners, agents, representative, employees or parties in interest, including this affidavit, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other BIDDER, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted; or to refrain from bidding in connection with such Contract; or have in any manner, directly or indirectly, sought by agreement or collusion, or communications, or conference with any BIDDER, firm, or person to fix the price or prices in the attached Bid or any other BIDDER, or to fix any overhead, profit, or cost element of the Bid Price or the Bid Price of any other BIDDER, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against CITY, or any person interested in the proposed Contract;

5. The price of items quoted in the attached Bid are fair and proper and are not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the BIDDER or any other of its agents, representatives, owners, employees or parties in interest.

By VM B Venkatesan

Sworn to and subscribed before me on this 2 day of March,  
2017 by Balakrishnan Vinayaga who ☒ is personally known to me or who ☐ has presented the  
following type of identification: State of FL Dir. License V526-078-76-011-0

 JOSE HERNANDEZ  
Commission # FF 991383  
My Comm. Expires May 11, 2020  
Signature of Notary Public, State of Florida

Notary seal (stamped in black ink) OR  
Printed, typed or stamped name of Notary  
and Commission Number



**5**

## **TRENCH SAFETY ACT COMPLIANCE**

### TRENCH SAFETY ACT COMPLIANCE

BIDDER acknowledges that the Florida Trench Safety Act, Section 553.60 et. seq., which became effective October 1, 1990, shall be in effect during the period of construction of the project. The BIDDER by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with the applicable trench safety standards. The BIDDER further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance.

Method of Compliance	Cost
None for the scope of work	N/A

BIDDER acknowledges that this cost is included in the applicable items of the Bid Form and in the Grand Total Bid Price. Failure to complete the above and sign below may result in the bid being declared non-responsive.

The BIDDER is, and the CITY are not, responsible to review or assess CITY's safety precautions, programs or costs, or the means, methods, techniques or technique adequacy, reasonableness of cost, sequences or procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Florida Statute Section 553.60 et. seq. cited as the "Trench Safety Act". BIDDER is, and the CITY are not, responsible to determine if any safety or safety related standards apply to the project, including, but not limited to, the "Trench Safety Act".

Bidders Signature



(Print or Type Name) Balakrishnan Vinayagar

**6**

## **WARRANTIES**



## WARRANTIES

In consideration of, and to induce the Award of **THE CITY OF LAUDERDALE LAKES, FLORIDA**, Construction Contract described in these Bid Documents, the CONTRACTOR represents and warrants to the City of Lauderdale Lakes, Florida:

1. The CONTRACTOR is financially solvent and sufficiently experienced and competent to perform all of the work required of the CONTRACTOR in the Construction Contract; and
2. That the facts stated in the CONTRACTOR's Bid and information given the CONTRACTOR pursuant to the request or proposal for Bids, instructions to CONTRACTORS and Specifications are true and correct in all respects; and
3. That the CONTRACTOR has read and complied with all of the requirements set forth in the request for Bids, instructions to CONTRACTORS and Specifications; and
4. That the CONTRACTOR warrants all materials supplied by it under the terms of the Construction Contract are delivered to the City of Lauderdale Lakes, Florida, free from any security interest, and other lien, and that the CONTRACTOR is a lawful owner having the right to sell the same and will defend the conveyance to the City of Lauderdale Lakes, Florida, against all persons claiming the whole or any part thereof; and
5. That the materials supplied to the City of Lauderdale Lakes, Florida, under the Construction Contract are free from the rightful claims of any persons whomsoever, by way of patent or trademark infringement or the like; and
6. That the materials supplied under the Construction Contract are merchantable within the meaning of the Uniform Commercial Code Section 2-314; and
7. That the materials supplied under the Construction Contract are free from defects in materials and workmanship under normal use and service and that any such materials found to be defective shall be replaced by the CONTRACTOR as per the attached Warranty.
8. That the materials supplied pursuant to the Construction Contract are fit for the purposes for which they are intended to be used; that under normal use and maintenance the material will continue to be fit for such purposes for the warranty period after delivery, provided that the CITY shall give the CONTRACTOR notice that the materials failed to fulfill the warranty; such notice shall state in what respect the materials have failed to fulfill the warranty, where upon the CONTRACTOR shall be allowed a reasonable time after receipt of such notice to correct the defect and the CITY agrees to cooperate in this regard. If the materials cannot be made to fulfill the Contract within the warranty period the CONTRACTOR will either furnish duplicate materials, or at its option refund the amount paid, which shall constitute a settlement in full for all damages occasioned by reason at this warranty of fitness; and
9. That this Warranty is included in exposures for which the CONTRACTOR has products liability and completed operations insurance, in minimum amounts of One Hundred Thousand (\$100,000.00) Dollars for property damage and Three Hundred Thousand (\$300,000.00) Dollars for personal injury as shown on the Certificates of such Insurance attached hereto, and the CONTRACTOR agrees to keep such insurance coverage during the period of this Warranty; and
10. That it is an express condition of this Warranty that the item(s) hereby warranted shall be operated and maintained by the CITY in accordance with the manufacturer's recommendations as to those portions of the item(s) that are not fabricated by the CONTRACTOR, and in accordance with the CONTRACTOR's recommendations, a copy

of which has either been supplied to the City of Lauderdale Lakes should maintain complete and accurate records made at the time of performance of maintenance showing compliance with such instructions, and by acceptance of this Warranty, the City of Lauderdale Lakes, Florida, agrees to present such records to the CONTRACTOR upon request in the event of a claim hereunder by the CITY;

11. The foregoing Warranties apply as a minimum and are supplemental to other Warranties offered. They are not substituted, but in addition to, any other Warranties offered; and
12. That it is agreed and understood by the CONTRACTOR that the City of Lauderdale Lakes, Florida, is induced to enter the Construction Contract in reliance upon this Warranty.

**SIGNED**, sealed and delivered on this day of March 2<sup>nd</sup>, 2017.

(SEAL)

CONTRACTOR: Victory Engineers and General Contractors LLC  
By VMB Venkatesh

**ATTEST:**

Secretary V Seal

**7**

**BID BOND**

**BID BOND**

STATE OF FLORIDA  
COUNTY OF MIAMI DADE

KNOW ALL MY BY THESE PRESENTS that Balakrishnan Vinayaga as Principal,  
hereinafter called BIDDER and City of Lauderdale Lakes as Surety, are held  
and firmly bound unto the CITY Lauderdale Lakes, Florida, hereinafter called the CITY in the  
penal sum of:

Cashier's Check Dollars \$ 9,841.25

lawful money of the United States, for the payment of which sum will and truly to be made, we  
bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly  
by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas the BIDDER has  
submitted the accompanying Bid, dated Feb 22, 2017, for:

PROJECT NAME: Comprehensive Park Project  
BID NO: ITB No. 17-1302-05B

NOW, THEREFORE,

1. It is a condition precedent to the submission of said Bid that a certified check, cashiers  
check or bid bond in the amount of five percent (5%) of the base Bid be submitted with said Bid  
as a guarantee that BIDDER will, if awarded the contract, enter into a written contract with CITY.
2. If the BIDDER shall not withdraw said bond within ninety (90) days after date of the  
same, and shall within fifteen (15) days after the prescribed forms are presented to him for  
signature, enter into a written contract with the CITY in accordance with the Bid as accepted, and  
give bonds with good and sufficient surety or sureties, as may be required, for the faithful  
performance and proper fulfillment of such contract, then the above obligation shall be void and of  
no effect, otherwise the sum herein stated shall be due and payable to CITY and the Surety  
herein agrees to pay said sum immediately upon demand of the CITY in good and lawful money  
of the United States of America as liquidated damages for failure thereof of said BIDDER.

IN WITNESS WHEREOF, the above-bounded parties executed this instrument under their several seals, this 2 day of March 2017, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required. If Corporation, Secretary Only will attest and affix seal.)

WITNESSES:

BIDDER

(AFFIX SEAL)

VMB Ventales  
By (Signature & Title) Managing Member  
Typed Name & Title signed above

ATTEST:

Secretary V. Seale

CORPORATE SURETY (Affix Seal)

By (Signature & Title)

Typed Name & Title signed above

ATTEST:

Business Phone

Secretary

(AFFIX SEAL)

Attorney in Fact (Affix Seal)

305-378-1991

Business Address 6175 NW 167th St, Sk 6-20

CITY Healech State DC

Name of Local Insurance Agency

**8**

## **PROOF OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/02/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Sunflowers Insurance Group Inc 11401 SW 40th St. Ste 311 Miami, FL 33165 Phone (305) 553-4949 Fax (305) 553-4958		<b>CONTACT NAME:</b> LILIANA <b>PHONE (A/C, No, Ext):</b> (305)553-4949 <b>FAX (A/C, No):</b> (305)553-4958 <b>E-MAIL ADDRESS:</b> sunflowersins@live.com	
<b>INSURED</b> Victory Engineers and General Contractors LLC 6175 NW 167 ST SUITE G-20 MIAMI FL 33015		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> UNITED SPECIALTY INSURANCE COMPANY <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	


<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	Y		GL-201935-01	11/25/2016	11/25/2017	EACH OCCURRENCE \$ 1,000,000.00 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000.00 MED EXP (Any one person) \$ 5,000.00 PERSONAL & ADV INJURY \$ 1,000,000.00 GENERAL AGGREGATE \$ 2,000,000.00 PRODUCTS - COMP/OP AGG \$ 2,000,000.00 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/>						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						EACH OCCURRENCE \$ AGGREGATE \$ \$ <input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

"City of Lauderdale Lakes and theirs officers, directors, agents and employees."

"The coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice that will be given to the City of Lauderdale Lakes and additional insured by certificate mail"

<b>CERTIFICATE HOLDER</b> City of Lauderdale Lakes 4300 Nw 36th St. Lauderdale Lakes , FL 33319	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--



**9**

**GENERAL, ROOFING AND BUSINESS TAX  
LICENSE**





**DBPR ONLINE SERVICES**

[Main Menu](#) | [Update Profile](#) | [Logoff](#) | [Contact Us](#)

**Certified General Contractor #CGC1515166**

Logged in as **Vinayagar Murugar, Balakrishnan V.**

**License Menu**

Select the function you wish to perform.  
Press "Back" to return to the main menu.

License Issued To:	<b>BALAKRISHNAN, VINAYAGAR M</b>
DBA Name:	<b>VICTORY ENGINEERS AND GENERAL CONTRACTORS LLC</b>
License Status:	<b>Current, Active</b>
Originally Licensed On:	<b>04/03/2008</b> (mm/dd/yyyy)
Expires On:	<b>08/31/2018</b> (mm/dd/yyyy)
Modifiers:	<b>Construction Business 04/03/2008</b> (mm/dd/yyyy)

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Under Florida law, email addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact the office by phone or by traditional mail. If you have any questions, please contact 850.487.1395. \*Pursuant to Section 455.275(1), Florida Statutes, effective October 1, 2012, licensees licensed under Chapter 455, F.S. must provide the Department with an email address if they have one. The emails provided may be used for official communication with the licensee. However email addresses are public record. If you do not wish to supply a personal address, please provide the Department with an email address which can be made available to the public.

Please see our [Chapter 455](#) page to determine if you are affected by this change.



## DBPR ONLINE SERVICES

[Main Menu](#) | [Update Profile](#) | [Logoff](#) | [Contact Us](#)

**Certified Roofing Contractor #CCC1328728**

Logged in as **Vinayagar Murugar, Balakrishnan V.**

### License Menu

Select the function you wish to perform.  
Press "Back" to return to the main menu.

License Issued To:	<b>BALAKRISHNAN, VINAYAGAR M</b>
DBA Name:	<b>VICTORY ENGINEERS AND GENERAL CONTRACTORS LLC</b>
License Status:	<b>Current, Active</b>
Originally Licensed On:	<b>08/01/2008 (mm/dd/yyyy)</b>
Expires On:	<b>08/31/2018 (mm/dd/yyyy)</b>
Modifiers:	<b>Construction Business 08/01/2008 (mm/dd/yyyy)</b>

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Under Florida law, email addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact the office by phone or by traditional mail. If you have any questions, please contact 850.487.1395. \*Pursuant to Section 455.275(1), Florida Statutes, effective October 1, 2012, licensees licensed under Chapter 455, F.S. must provide the Department with an email address if they have one. The emails provided may be used for official communication with the licensee. However email addresses are public record. If you do not wish to supply a personal address, please provide the Department with an email address which can be made available to the public.  
Please see our [Chapter 455](#) page to determine if you are affected by this change.

# Local Business Tax Receipt

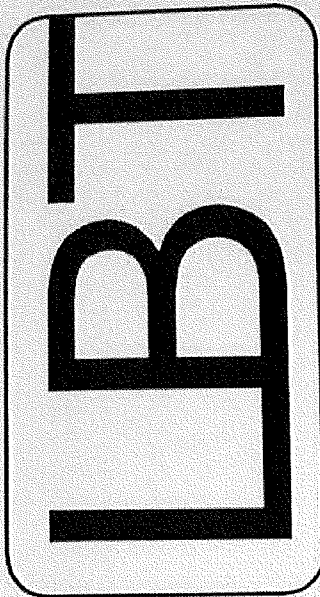
Miami-Dade County, State of Florida

-THIS IS NOT A BILL - DO NOT PAY

6603014

BUSINESS NAME/LOCATION  
**VICTORY ENGINEERS &  
GENERAL CONTRACTORS LLC**  
6175 NW 167 ST STE G 20  
HIALEAH, FL 33015

RECEIPT NO.  
**RENEWAL**  
6873740



**EXPIRES**  
**SEPTEMBER 30, 2017**

Must be displayed at place of business  
Pursuant to County Code  
Chapter 8A - Art. 9 & 10

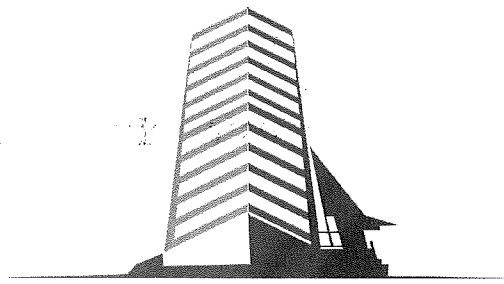
OWNER	SEC. TYPE OF BUSINESS	PAYMENT RECEIVED
VICTORY ENGINEERS & GENERAL	196 GENERAL BUILDING	BY TAX COLLECTOR
CONTRACTORS LLC	CONTRACTOR	82.50 03/03/2017
Worker(s)	3 CGC1515166	0237-17-002791

This Local Business Tax Receipt only confirms payment of the Local Business Tax. The Receipt is not a license, permit, or a certification of the holder's qualifications, to do business. Holder must comply with any governmental or nongovernmental regulatory laws and requirements which apply to the business.

The RECEIPT NO. above must be displayed on all commercial vehicles - Miami-Dade Code Sec 8a-276

For more information, visit [www.miamidade.gov/taxcollector](http://www.miamidade.gov/taxcollector)





VICTORY ENGINEERS  
AND  
GENERAL CONTRACTORS

## **Victory Engineers and General Contractors LLC**

6175 NW 167<sup>th</sup> Street, Suite G-20, Miami, Florida 33015

Ph: 305-378-1991

Fax: 305-378-1997 Mob: 305-244-5424

License #: CCC-1327680 CGC-1515166

---

# **Proposal For**

## **WILLIE L. WEBB PARK & POOL FACILITY IMPROVEMENTS**

### **PROJECT ASSESSMENT:**

Our review of the referenced project slated for the above referenced project convinces us that we can complete this project to your total satisfaction. It is of the utmost importance to both you and Victory Engineers and General Contractors LLC (Victory) to maintain a high standard of Workmanship, while maintaining a tight and timely work schedule.

We are "*Committed to Excellence*" and our goal is to provide the "*Highest Quality and Service at the Fairest of Prices*".

## SCOPE OF WORK 1

### OUR SERVICES

### WILLIE L. WEBB PARK

### SPECIFICATIONS AS PROVIDED BY CITY OF LAUDERDALE LAKES

W1	Resurface existing basketball court (Double Court)	13,650	SF
W2	Remove existing floor covering inside the fitness center and replace with Heavy duty 1/2" rubber matting (Minimum 4 ft. wide)	1,250	SF
W3	Remove and Replace Tiles in Auditorium (20"x20" Porcelain. Thickness: 3/8in.)	1,480	SF
W4	Remove and Replace Tiles in Hallway (20"x20" Porcelain. Thickness: 3/8in	840	SF
W5	Remove and Replace Tiles in Lobby (20"x20" Porcelain tiles. Thickness: 3/8in.)	240	SF
W6	Remove and Replace Tiles in Vending Machine Area (20"x20" Porcelain tiles. Thickness: 3/8in. )	216	SF
W7	Removal and Replacement of Playground canopy	1	LS
W8	Resurface existing playground rubber surface	3,600	SF
W9	Furnishing and Installing 30 ft high Soccer Field Netting	1,570	LS
W10	Removal and replacement of outdoor walkways (Flexipave ONLY). See attached detail. See corrected C-3 Drawing	1,500	SF
W11	Mobilization	1	LF
W12	Maintenance of Traffic	1	SF
W13	Clearing and Grubbing	1	LS
W14	Allowance for Engineering Design	1	LS

### PRICE:

VICTORY, proposes and agrees to perform all work which is defined in the scope of work for the total sum of: \$131,876(One hundred and thirty one thousand and eight hundred and seventy six dollars)

## SCOPE OF WORK 2

### OUR SERVICES

### WILLIE L. WEBB PARK

### SPECIFICATIONS AS PROVIDED BY CITY OF LAUDERDALE LAKES

ITEM #	BID ITEM DESCRIPTION	BID QUANTITY	UNIT
P1	Repair pool liner	1	LS
P2	Replace pool deck expansion joints	380	LF
P3	Repair pool deck	7,257	LS
P4	Removal and disposal of existing VC tiles inside of existing building. An allowance for asbestos testing is included at P17.	1,140	SF
P5	Furnishing and installing new epoxy floor coating inside of existing building	1,140	SF
P6	Repair and repaint existing canopy posts	8	EA
P7	Building painting (Exterior: APPROX AREA = 12,500 sf)	12,500	LS
P8	Building painting (Interior: APPROX. AREA = 1,340 sf)	1,340	LS
P9	Furnishing and installing barbwire	400	LF
P10	Remove and dispose shrubs around the perimeter of the property	1,600	SF
P11	Installation St. Augustine Sod	1,600	SF
P12	Re-coat and striping of existing parking lot	15,164	LS
P13	Mobilization	1	LS
P14	Maintenance of Traffic	1	LS
P15	Clearing and Grubbing	1	LS
P16	Contingency	1	LS
P17	Allowance for Asbestos testing	1	LS

### PRICE:

VICTORY, proposes and agrees to perform all work which is defined in the scope of work for the total sum of: \$64,949(Sixty four thousand nine hundred and forty nine thousand and forty one dollars)

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: Yes

Contract Requirement: Yes

#### Title

RESOLUTION 2017-049 AWARDDING RFP #17-6365-06R TO E AND F ENTERPRISES, INC. DBA CREATIVE CONTRACTING GROUP FOR THE NW 41ST STREET ENTRYWAY IMPROVEMENTS PROJECT, AS THE MOST RESPONSIVE AND RESPONSIBLE PROPOSER, ON A REQUEST FOR PROPOSAL IN AN AMOUNT UP TO THIRTY-FOUR THOUSAND DOLLARS (\$34,000).

#### Summary

This Resolution awards RFP #17-6365-06R to the most responsible and responsive proposer. The Purchasing Division and Evaluation Committee recommends to the Mayor and City Commission, E and F Enterprises, Inc. dba Creative Contracting Group. The firm will renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41st Street and State Road 441. The objective of the NW 41st Street Entryway Improvements Project (Oakland Estates Entry Wall) is to make the entryway more decorative and aesthetically pleasant. The scope of services includes the furnishing of all labor, materials, machinery, equipment, tools, and supervision necessary to perform the required tasks associated with the project.

#### Staff Recommendation

##### **Background:**

Staff recommends that the Mayor and City Commission accepts the recommended contractor, E and F Enterprises, Inc. dba Creative Contracting Group. The firm was evaluated independently by an Evaluation Committee of three (3) members, which rated the firm an overall score of 240 out of a possible 300.

The scope of service includes construction services to renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41st Street and State Road 441.

The term of the contract of one (1) year with an option to renew on a year-to-year basis for one additional year for a total of two (2) years. Effective date of the contract is May 1, 2017 through April 30, 2018.

The estimated cost of the project is \$34,000.

##### **Funding Source:**

For FY 2017, there is adequate funding available in the NW 41st Street Improvement Project budget.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO, Director of Financial Services and Magsood M. Nasir, PE, City

**Meeting Date:** 4/11/2017

##### **ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Resolution 2017-049 NW 41st Street Entryway Improvements Project	Resolution
<input type="checkbox"/> RFP - NW 41st Street Entryway Improvements Project	Backup Material
<input type="checkbox"/> Exhibit A - Draft Agreement - NW 41st Street Entryway Improvements Project	Exhibit
<input type="checkbox"/> Purchasing Memo and Committee Results	Backup Material
<input type="checkbox"/> E & F Enterprises, Inc. Proposal	Backup Material

## RESOLUTION 2017-049

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT BETWEEN THE CITY OF LAUDERDALE LAKES AND E AND R ENTERPRISES, INC. DBA CREATIVE CONTRACTING GROUP, UNDER THE CONTRACT #17-6365-06R TO RENOVATE THE EXISTING ENTRYWAY WALLS, FOUNTAINS, AND LANDSCAPE AT THE WEST INTERSECTION OF NW 41<sup>ST</sup> STREET AND STATE ROAD 441 FOR THE TERM OF MAY 1, 2017 THROUGH APRIL 30, 2018, IN AN AMOUNT UP TO THIRTY-FOUR THOUSAND DOLLARS (\$34,000.00); A SUMMARY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 11, 2017, the City publicized a Request for Proposal #17-6365-06R for NW 41<sup>st</sup> Street Entryway Improvements Project, using the electronic bid system Demandstar.com,

WHEREAS, one thousand six hundred eighty-one (1,681) vendors were notified through DemandStar, and

WHEREAS, pursuant to request for proposal requirements in connection with which a contract is to be awarded, the awardee will be required to renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41<sup>st</sup> Street and State Road 441, and

WHEREAS, in accordance with the City's Procurement Code, bids for the services were solicited, advertised and, ultimately, opened on February 22, 2017 at 3:30 p.m., and

WHEREAS, two (2) proposals were received and publically opened, and



WHEREAS, the proposals were evaluated, as follows:

<b>Proposer</b>	<b>Responsive</b>	<b>Cost Proposal</b>	<b>Score</b>
E and F Enterprises, Inc. dba Creative Contracting Group	Responsive	\$34,000.00	240
Victory Engineers and General Contracting, Inc.	Non-Responsive	\$33,999.00	0

WHEREAS, as a result of an extensive review by an evaluation committee, staff and administration, it was determined that E and F Enterprises, Inc. dba Creative Contracting Group was the most responsive and responsible proposer, and

WHEREAS, the City Staff recommends that the term of the Contract be one (1) year, with one (1) additional year option to renew, and that the City Manager has authority to add to or delete from the scope of services and/or service locations to the Contract, as the budget allows, and to terminate the awarded Contract,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement between the City of Lauderdale Lakes and E and F Enterprises, Inc. dba Creative Contracting Group, in an amount up to Thirty-Four Thousand Dollars (\$34,000.00), a summary of which is

attached as **Exhibit A**, and the City Manager is hereby authorized, in accordance with such Agreement, to delete or add to the scope of services and/or service locations as the budget will allow, as well as terminate the awarded contract,

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to E and F Enterprises, Inc. dba Creative Contracting Group, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

---

MAYOR HAZELLE ROGERS

ATTEST:

---

SHARON HOUSLIN, CITY CLERK

JCB:jla

Sponsored by: SUSAN GOODING-LIBURD, MBA, CPA, CGFO, Financial Services Director and Masgood M. Nasir, PE, City Engineer

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)

# CITY OF LAUDERDALE LAKES

## REQUEST FOR PROPOSAL

### NW 41st STREET ENTRWAY IMPROVEMENTS PROJECT

RFP NO. 17-6365-06R



Department of Financial Services  
Purchasing Division

4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319  
(954) 535-2700  
[purchasing@lauderdalelakes.org](mailto:purchasing@lauderdalelakes.org)



CITY OF LAUDERDALE LAKES  
PURCHASING DIVISION  
4300 NW 36<sup>TH</sup> STREET  
LAUDERDALE LAKES, FL 33319-5599

## REQUEST FOR PROPOSAL

**Request For Proposal #RFP17-6365-06R**

**Request For Proposal:** NW 41<sup>st</sup> Street Entryway Improvements Project (Oakland Estates Entry Wall) – RE-BID

**Pre-Proposal Conference:** There is no pre-bid conference scheduled for this solicitation. Questions must be submitted no later than February 16, 2017. For site inspection, please contact Bobbi Williams @ [bobbiew@lauderdalelakes.org](mailto:bobbiew@lauderdalelakes.org) or Geeta Ramharry @ [geetar@lauderdalelakes.org](mailto:geetar@lauderdalelakes.org).

**Request For Proposal Opening Day, Date, and Time:** Wednesday, February 22, 2017 at 3:30 P.M.  
**Note this meeting is open to the public. Location:** City Commission Chambers, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319.

**CONTACT FOR THIS RFP: Please direct all inquiries to:**

From: Bobbi Williams
Tel: 954-535-2700
Fax: 954-535-1892
Email: <a href="mailto:bobbiew@lauderdalelakes.org">bobbiew@lauderdalelakes.org</a>
Date Issued: February 11, 2017

### **Scope of Work:**

The City of Lauderdale Lakes is requesting quotations from qualified contractors to renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41<sup>st</sup> Street and State Road 441. The objective of the NW 41<sup>st</sup> Street Entryway **Improvements Project (Oakland Estates Entry Wall)** is to make the entryway more decorative and aesthetically pleasant per the attached renderings. The renderings were prepared based on the scope assumptions of removing existing stone finish, hauling away demolished debris, columns to receive stucco finish, stucco bands & cap, providing new smooth stucco finish, stucco band & control joints at the front side of the wall, priming and painting wall both sides. The scope also includes renovations of the existing fountains. The intent is to improve/renovate the existing wall, landscape and fountains, for outstanding architectural beauty.

This project does not require permits nor bid or performance bond.

Renderings: Plants & Shrubs are: Loropetalum 7gl.; Loropetalum 3gl.; Ilex Schillings 7gl.; Ilex Schillings 3gl.; Lantana 1gl. : color options: Yellow, Purple, White, Confetti, Red; Pentas 1gl. : color options: Red, Pink, Purple, White

Project Budget: \$34,999. Project budget is estimated.

This project requires that you have a minimum experience of three (3) similar projects within the last five (5) years.

An original proposals must be sealed and submitted along with four (4) copies to the following:

Attn: Department of Financial Services  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

**Request for Proposal Submittal Signature**

I, the undersigned Proposal, do hereby certify that the items Proposal meet or exceed the City of Lauderdale Lake's Specifications.

Date of Bid

Company

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Fed. ID# or SSN

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Contact Person

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

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

**PRICE PROPOSAL SHEET:**

Please see attached renderings. Price proposal must include labor, equipment, supplies, materials, removal, installation, etc.

Items	Price	Items	Price
Renovation of existing fountains			
Renovation of existing wall			
Landscape			
Removal of stone finish			
Debris removal			
Delivery Costs			

Days to Complete: \_\_\_\_\_

Upon execution of contract, a timeline will be established.

Liquidated damages. Contractor shall pay in the amount of \$500 per day to the City for each day the project is not completed per the established timeline without proper approved extension.

**CONTRACT PERIOD:** Contract/agreement period is through completion of the project. It is anticipated that this project will take no more than three-four months to complete.

**TERMS OF PAYMENT:**

**CASH DISCOUNTS:** Although cash discounts may be offered for prompt payment; such discounts shall not be considered in determining the lowest net cost for proposal evaluation. However, cash discounts may be considered when assessing overall value of a proposal to the City.

**TERMS:** \_\_\_\_\_% for payment within \_\_\_\_\_DAYS. Partial payments are authorized. Invoices must indicate the % complete and % remaining. Invoices must be detailed in order to determine the level of work completed. Final invoice will be not paid until final review and acceptance of project by designated Project/Contract Administrator. Invoices must be addressed City of Lauderdale Lakes, 4300 N.W. 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319.

**DELIVERY/COMPLETION:**

**DELIVERY:** Your quotation shall indicate the number of days required for delivery after receipt of a Contract or Purchase Order in the space provided below. All delivery costs and handling charges must be included in your proposal price. Any and all exceptions must be noted. Failure to do so may be cause for rejection of the quotation. The City reserves the right to cancel orders or any part thereof, without obligation if delivery is not made in the time specified in the quotation accepted by the City.

**REFERENCE LIST**

ENTITY/CONTACT PERSON	ADDRESS	PROJECT VALUE \$	TELEPHONE NUMBER
1.			
2.			
3.			

I understand that all information listed above may be checked by the city of Lauderdale Lakes and I authorize all entities or persons listed above to answer any and all questions. I hereby indemnify the City of Lauderdale Lakes and the persons and entities listed above and hold them harmless from any claim arising from such authorization or the exercise thereof, including the dissemination.

## GENERAL INFORMATION

THE TERMS BIDDER AND CONTRACTOR WILL BE USED INTERCHANGEABLY, AND WHEN SO USED, DEEMED TO MEAN BIDDER. THE TERMS BID AND QUOTE WILL BE USED INTERCHANGEABLY, AND WHEN SO USED, DEEMED TO MEAN BID.

Submittal of a bid in response to this Request For Informal Quotation constitutes an offer by the Bidder. Bids which do not comply with these requirements may be rejected at the option of the City.

1. **TERM:** The Contract and/or Purchase Order will be in force as stated on the Purchase Order.
2. **EXECUTION OF BID:** Bid must contain a manual signature, in ink, of an authorized representative, who has the legal ability to bind the Bidder in Contractual obligations. Bid must be typed or legibly printed in ink. Use of erasable ink is not permitted. All corrections made by Bidder to any part of the bid document must be initialed in ink.
3. **INVOICING AND PAYMENT:** Payment for any and all invoice(s) shall meet the following conditions to be considered as a valid payment request.

3.1 Submission of a properly certified invoice(s) in accordance with the Contract or Purchase Order document, and submitted to:

City of Lauderdale Lakes  
Attn: Accounts Payable  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, Florida 33319

3.2 All invoices submitted shall consist of an original and one (1) copy; clearly reference the subject Contract or Purchase Order number; provide a sufficient salient description to identify goods or service for which payment is requested; contain date of delivery; original or legible copy of a signed delivery receipt including both manual signature and printed name of a designated City employee or authorized agent; be clearly marked as "partial", "complete" or "final" invoice. The City will accept partial deliveries of several units, not component parts.

3.3 The invoice shall contain the Bidder's Federal Employer Identification number.

3.4 The City's terms are "Net 30 Days" after acceptance of goods or services and receipt of an acceptable invoice as described herein. Any other items of payment must have been previously approved by the City, and appear on

the Contract or Purchase Order document to be binding on the City.

4. **ADDITIONAL TERMS AND CONDITIONS:** No additional terms and conditions included with the bid response shall be evaluated or considered, have no force or effect, and are inapplicable to this bid. It is understood and agreed that the conditions in these Bid Documents are the only conditions applicable to this bid and the Bidder's authorized signature on the Bid Form attests to this.
5. **CONFLICT OF INTEREST:** All Bidders must disclose with their bid the name of each of its employees, agents, or relatives who are also employees of the City. Further, all Bidders must disclose the name of any City employee known to it, who owns, directly or indirectly, an interest of five (5%) percent or more in the Bidder's firms or any of its branches.
6. **BID EXEMPT:** Prices shall not exceed Bidder's current Contract pricing or pricing given by Bidder to other public entity or State of Florida Contract. The City reserves the right to exempt any item or service if deemed to be in the best interest of the City.
7. **AWARDS:** As the best interest of the City may require, at its sole discretion, the right is reserved to reject the bid of any vendor who has previously failed in the proper performance of an Award or to deliver on time Contracts of a similar nature or who is not in a position to perform properly under this Award and to make Award(s) by individual item, group of items, "All or None", or a combination thereof; with one or more suppliers; to reject any or all bids, or waive any minor irregularity or technicality in bids received and may, at its sole discretion, request a re-bid. Bidders are cautioned to make no assumption until the City has entered into a Contract or Purchase Order.
8. **PROMOTIONAL PRICING:** Bidder shall offer to the City during the Contract period any item(s) offered on a "promotional" basis from the manufacturer. It will be the successful Bidder's responsibility to monitor said item(s) and report any that are or will be offered at lower price.

9. **REPRESENTATION**: A Bidder must have, at the time of the bid submission, an operational facility, or be a fully authorized agent or representative of the product bid, and capable of producing or providing the items bid, and so certify upon request.

10. **ALTERNATES**: Unless otherwise specified, the mention of the particular manufacturer's brand name or number in the Specifications does not imply that this particular product is the only one that will be considered for purchase. This reference is intended solely to designate the type or quality of merchandise that will be acceptable. Alternate offers will be considered and must include descriptive literature and Specifications. Failure to provide descriptive literature and Specifications with alternate offers may be cause for disqualification of the Alternate.

The determination of whether or not any alternate product or service is or is not equal shall be made by the Purchasing and Contracts Manager or his designee and such determination shall be final and binding upon all Bidders.

11. **EXCEPTIONS TO SPECIFICATIONS**: Any exceptions to Specifications must be listed and explained. Failure to list any exceptions means Bidder is complying 100% with the Specifications. All materials may be inspected by the City upon delivery for compliance with the Specifications. Deviations will not be tolerated and will be cause for rejection unless they were originally listed in Bidder's proposal or approved (in writing) by the City.

12. **BIDS TO REMAIN OPEN**: All bids shall remain open for sixty (60) days after the date of bid opening prior to award.

13. **ANNUAL APPROPRIATION**: This Bid is conditional upon the City having funding to implement the Contract.

14. **COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**: Bidder certifies that all material, equipment, etc., contained in his/her bid meets all applicable O.S.H.A. requirements. Bidder further certifies that, if he/she is the successful Bidder, and the material, equipment, etc., delivered is subsequently found to be defective in any applicable O.S.H.A. requirement effect on the date of delivery, all costs necessary

to comply with the requirements shall be borne by the Bidder.

15. **SAMPLES**: Samples of items, when required, must be furnished free of expense and, if not destroyed, will, upon request, be returned at the Bidder's expense. Request for the return of samples must be made within 30 days following opening of bids. Each individual sample must be labeled with Bidder's name, bid number and item number. Failure of Bidder to either deliver required samples or to clearly identify samples as indicated may be reason for rejection of the bid. Unless otherwise indicated, samples should be delivered to the Purchasing and Contracts Manager, City of Lauderdale Lakes, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319

16. **DISPUTES**: In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of the Purchasing and Contracts Manager or designee shall be final and binding on both parties.

17. **LOCAL PREFERENCE** Pursuant to City Ordinance # 99-21, Section 23-64 ½ of the Code of Ordinances, the City of Lauderdale Lakes is required to give preference to vendors who meet the definition of a "qualified local business" as that term is defined in Section 23-64 ½ as follows:

If a qualified local business submits a response to either an inquiry made pursuant to informal competitive conditions or a formal Request For Quotation as required in Section 23-65 of the code, and the original bid of the qualified local business is within five percent (5%) of the low bid, then the City shall give the qualified local business the opportunity to meet the price of the low bid. The order of preference by which the qualified local business shall be given the opportunity to match the low bid shall be from the lowest to the highest bid, as long as the initial bid was within five percent (5%) of the low bid.

18. **REJECTION**: Failure to comply with the following may result in rejection of the bid.

- c. Bid responses **MUST** be listed on, and according to our form of Request For Proposal. (Bids not complying with the foregoing will be rejected!)

b. Listing clients on the Client List.

c. Executing the bid



19. **ESTIMATED QUANTITIES:** Whenever a bid is sought, seeking a source of supply for a specified time for materials or services, the quantities or usage shown are estimated only. No guarantee or warranty is given or implied by the City as to the total amount that may or may not be purchased from any resulting Contracts. These quantities are for Bidders information only and will be used for tabulation and presentation of bid. Usages listed are estimates only and the City reserves the right to increase or decrease usages as required.

20. **WARRANTIES:** Bidder warrants that the products and installation of same (if applicable) supplied under the contract/purchase order are free from defects in materials and workmanship for one (1) year under normal use and service and that any such materials found to be defective shall be replaced by the Bidder and installed (if applicable) at no additional charge to the City. Said warranty expressly includes warranty of fitness for a particular use and warranty of merchantability.

21. **INSURANCE REQUIRED, GENERAL, SERVICE, DELIVERY, ETC.**

The Bidder shall not commence work on any City Property until all insurance required as stated herein has been obtained and such insurance has been approved by the City.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Bidder shall include current certificates of insurance with the bid package. The certificates shall clearly indicate that the Bidder has obtained insurance of the type, amount, and classification as required for strict compliance with insurance requirements as stated herein, and that no change or

cancellation of the insurance shall be effective without 30 days prior written notice to the City. Non-compliance with the foregoing requirements shall not relieve the vendor of their liability and obligations under this Contract.

The Bidder shall maintain commercial liability insurance in the amount of \$1,000,000 per occurrence including products/completed operations.

The Bidder shall maintain comprehensive automobile liability insurance in the following amounts:

Bodily Injury and/or Property Damage  
\$300,000 each occurrence  
\$500,000 aggregate or

Combined Single Limit  
\$500,000 each occurrence/aggregate

These limits are to protect the Bidder and the City from claims for damage, which may arise from general operations or from the ownership, use or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations are by the vendor or by anyone directly or indirectly employed by the vendor.

The Bidder shall maintain Worker's Compensation Insurance as per statutory requirements and Employer's Liability limits no less than \$500,000 per occurrence each accident; \$500,000 disease policy limit; \$100,000 disease each employee.

**UPON AWARD, WITH THE EXCEPTION OF WORKER'S COMPENSATION, THE BIDDER WILL FURNISH CERTIFICATES OF INSURANCE TO THE CITY WITH THE CITY NAMED AS ADDITIONAL INSURED.**

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT  
FOR  
THE CITY OF LAUDERDALE LAKES, FLORIDA**

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## GENERAL CONDITIONS

### ARTICLE I - DEFINITIONS

Wherever used in the Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

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

1.2. **Application for Payment** - The form accepted by the CITY which is to be used by CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.3. **Bid** - The offer of the BIDDER submitted on the prescribed form setting forth the prices for the WORK.

1.4. **BIDDER** - One who submits a Bid directly to the CITY.

1.5. **Bid Documents** - Includes the request for proposal, Instructions to Bidders, Bid Form, and proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.6. **Bonds** - Bid, Performance and Payment bonds and other instruments of security, per Florida Statutes.

1.7. **Change Order** - A document recommended by CITY, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion, or revision in the WORK or an adjustment in the Contract Price or Contract Time, issued on or after the Effective Date of the Contract.

1.8. **CITY** - The City of Lauderdale Lakes, Florida, a Florida municipal corporation, its authorized and legal representatives, the public entity with whom the CONTRACTOR has entered into the Contract and for whom the WORK is to be provided.

1.9. **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.

1.10. **Contract** - The written agreement between CITY and CONTRACTOR covering the WORK to be performed.

1.11. **Contract Documents** - The Contract Documents establish the rights and obligations of the parties and include the Contract, 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 Tentative Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Technical Specifications, and the Drawings as the same are more specifically identified in the Contract, together with all Written Amendments, Change Orders, Field Orders, and CITY'S written interpretations and clarifications issued on or after the Effective Date of the Contract. 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.

1.12. **Contract Price** - The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Document.

1.13. **Contract Time** - The number or numbers of successive days or dates stated in the Contract Documents for the completion of the WORK.

1.14. **CONTRACTOR** - The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Contract.

1.15. **Day** - A calendar day of 24 hours measured from midnight to the next midnight.

1.16. **Defective WORK** - WORK that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or WORK that has been damaged prior to the CITY'S recommendation of final payment.

1.17. **Drawings** - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the WORK, which have been prepared or approved by CITY are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

1.18. **Effective Date of the Contract** - The date indicated in the Contract, but if no such date is indicated it means the date on which the Contract is signed by the last of the two parties to sign the Contract.

1.19. **Field Order** - A written order issued by CITY which orders minor changes in the WORK but which does not involve a change in the Contract Price or the Contract Times.

1.20. **General Requirements** - See Special Conditions and Division 1 of the Technical Specifications.

1.21. **Laws and Regulations; Laws or Regulations** - Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

1.22. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

1.23. **Notice of Tentative Award** - The official written notice by the CITY to the apparent successful BIDDER stating that upon compliance by the apparent successful BIDDER with the conditions precedent enumerated therein within the time specified, the CITY may enter into a Contract.

1.24. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing

the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

**1.25. Partial Utilization** - Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the WORK.

**1.26. Project** - The total construction of which the WORK to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

**1.27. Resident Project Representative (RPR)** - The authorized representative of the CITY who is assigned to the Site or any part thereof.

**1.28. Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the WORK, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the CONTRACTOR to illustrate material or equipment for some portion of the WORK.

**1.29. Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK and certain administrative details applicable thereto.

**1.30. Sub-BIDDER** - One who submits a Bid to a BIDDER.

**1.31. SUB-CONTRACTOR** - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUB-CONTRACTOR for the performance of a part of the WORK at the Site.

**1.37. Substantial Completion** - The WORK (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY'S definitive certificate of Substantial Completion, all conditions and requirements accordance with the Contract Documents, so that the WORK (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any WORK refer to Substantial Completion thereof. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.

**1.33. SUCCESSFUL BIDDER** - The lowest, qualified, responsible and responsive BIDDER to whom CITY (on basis of CITY'S evaluation as hereinafter provided) makes an award.

**1.34. Supplementary General Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

**1.35. Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**1.36. Surety** - Any person, firm or corporation which is bound by bid or contract bond with and for the CONTRACTOR.

of permits and regulatory agencies have been satisfied and the WORK is sufficiently complete, in Unit Price WORK - WORK to be paid for on the basis of unit prices.

**1.38. Utilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above ground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

**1.39. WORK** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. WORK includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Document.

**1.40. Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract and signed by the CITY, ordering an addition, deletion or revision in the WORK, or which references an emergency or unforeseen physical conditions under which the WORK is to be performed. A Work Change Directive may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work 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 Time.

**1.41. Written Amendment** - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2 - PRELIMINARY MATTERS

### 2.1. DELIVERY OF BONDS AND INSURANCE CERTIFICATES:

**2.1.1.** When the CONTRACTOR delivers the signed Contracts to the CITY, the CONTRACTOR shall also deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents. The aforementioned documents must be submitted to the CITY prior to any WORK being performed.

### 2.2. COPIES OF DOCUMENTS:

**2.2.1.** The CITY shall furnish to CONTRACTOR ONE (1) copy (unless additional copies exist) of the Contract Documents for the execution of the WORK. CONTRACTOR shall be responsible for procuring additional copies.

### 2.3. NOTICE TO PROCEED:

**2.3.1.** The Contract Times will commence to run on the date stated in the Notice to Proceed.

**2.4. STARTING THE WORK:**

2.4.1. CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, but no WORK shall be done at the Site prior to said commencement date.

2.4.2. 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 pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CITY any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CITY before proceeding with any WORK affected thereby; however, CONTRACTOR shall not be liable to CITY for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

**2.5. PRECONSTRUCTION CONFERENCE:**

2.5.1. The CONTRACTOR is required to attend a preconstruction conference within twenty (20) days after the Contract Times start to run, but before any WORK at the site is started. This conference will be attended by the CITY, and others as appropriate in order to discuss the WORK.

2.5.2. The CONTRACTOR'S initial schedule for shop drawings submittals, obtaining permits and Plan of Operation and CPM Schedule will be reviewed and finalized. As a minimum, the CONTRACTOR'S representatives should include its project manager and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings will be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment will be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

**2.6. FINALIZING SCHEDULES:**

2.6.1. Within ten (10) days of receiving the Notice to Proceed the CONTRACTOR will submit the final schedule approved by the CITY. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the WORK to completion within the Contract Time, but such acceptance will neither impose on the CITY responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the CITY as to form and substance.

**ARTICLE 3 – USE OF CONTRACT DOCUMENTS****3.1. INTENT:**

3.1.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the WORK. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed

in accordance with the laws of the State of Florida with venue in Broward County, Florida.

3.1.2. It is the intent of the Contract Documents to describe the WORK, functionally complete, 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.

**3.2. REFERENCE TO STANDARDS:**

3.2.1. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties or responsibilities of the CITY, CONTRACTOR or any of their agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

**3.3. REVIEW OF CONTRACT DOCUMENTS**

3.3.1. If, during the performance of the WORK, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so notify the CITY, in writing, at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification, except in an emergency as authorized by paragraph 6.13.

**3.4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS**

3.4.1. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Change Order
2. Construction Contract
3. Addenda, with later date having greater priority
4. Bid Form
5. Supplemental General Conditions
6. request for proposal
7. Instructions to Bidders
8. General Conditions
9. Technical Specifications
10. Contract Drawings

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to assist in locating and reading the provisions hereof.

3.4.2. With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/Change Order drawings govern over any other drawings
4. Drawings govern over standard drawings

3.4.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5, 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:

1. The provisions of any such standard, specification, manual, code or instruction (whether or note specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such 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).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or any of their SUB-CONTRACTORS, agents or employees from those set forth in the Contract Documents, no shall it be effective to assign to CITY or any of CITY's agents or employees any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.10. or any other provision of the Contract Documents.

#### 3.5. AMENDING CONTRACT DOCUMENTS:

3.5.1. The Contract Documents may be amended to provide for additions, deletions and revisions in the WORK or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10).

3.5.2. Additionally, 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:

3.5.2.1. a Field Order (pursuant to paragraph 9.5)

3.5.2.2. CITY'S approval of a Shop Drawing or sample (pursuant to paragraphs 6.14), or

3.5.2.3. CITY'S written interpretation or clarification (pursuant to paragraph 9.4).

#### 3.6. REUSE OF DOCUMENTS:

3.6.1. Neither CONTRACTOR nor any Sub-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the WORK under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents, drawings, technical specifications or other documents used on the WORK; and, they shall not reuse any of them on extensions of the Project or any other project without prior written consent of the CITY.

#### ARTICLE 4 – SITE OF THE WORK

#### 4.1. AVAILABILITY OF LANDS:

4.1.1. The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.1.2. Occupying Private Land: The CONTRACTOR shall not enter upon nor use any property not under the control of the CITY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property CITY, and a copy of said easement furnished to the CITY prior to said use; and, the CITY will not be liable for any claims or damages resulting from the CONTRACTOR'S trespass on or use of any such properties. The CONTRACTOR shall provide the CITY with a signed release from the property CITY confirming that the lands have been satisfactorily restored upon completion of the WORK.

4.1.3. WORK in State, County and CITY Rights-of-Way and Easements: When the WORK involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the CONTRACTOR shall (as the WORK progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance as part of the contract.

4.1.4. WORK Adjacent to Telephone, Power, Cable TV and Gas Company Structures: In all cases where WORK is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the CONTRACTOR shall provide written notification to the respective companies of the areas of which WORK is to be performed, prior to the actual performance of any WORK in these areas.

4.1.5. Use of Public Streets: The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. The CONTRACTOR shall remove any earth or excavated materials spilled from trucks and clean the streets to the satisfaction of the CITY, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

#### 4.2. REPORTS OF PHYSICAL CONDITIONS:

4.2.1. **Subsurface Explorations:** Where applicable, reference is made in the technical specifications, for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CITY in preparation of the Contract Documents.



4.2.2. **Existing Structures:** Where applicable, reference is made to the technical specifications, for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 herein) which are at or contiguous to the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.3 The CITY does not make any representation as to the completeness of the reports or drawings referred to in Paragraph 4.2.1. or 4.2.2. above or the accuracy of any data or information contained therein. CONTRACTOR may rely upon the general accuracy of the technical data contained in such reports and drawings but not for the completeness thereof for CONTRACTOR'S purposes including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. However, the CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.2.4 Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new WORK, the CONTRACTOR shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There shall be no additional cost to the CITY for CONTRACTOR'S failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR.

#### 4.3. PHYSICAL CONDITIONS -- UNDERGROUND FACILITIES:

4.3.1. **Indicated:** The information and data indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site is based on information and data furnished to the CITY by the owners of such Underground Utilities or by others.

4.3.1.1. The CITY shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 The CONTRACTOR shall notify the Underground Service Alert (USA) System, Phone No. 1-800-227-2600, and Sunshine State One Call Services (1-800-432-4770) at least 48 hours in advance of the commencement of WORK at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities.

4.3.1.3. The CONTRACTOR acknowledges that some (or all) of the utility companies with facilities shown on the drawings may not be members of the USA System or Sunshine State One Call Services; and, therefore, not automatically contacted by the above referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the USA System or Sunshine State One Call Services, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall be responsible for notifying all of the utilities at least 48 hours in advance of the commencement of

WORK at any site to allow the utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also be responsible for verifying that each utility has responsibly responded to such notification.

4.3.1.4. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. Further, the CONTRACTOR shall be responsible for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordination of the WORK with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.10, and repairing any damage thereto resulting from the WORK, the cost of all of which will be considered as having been included in the Contract Price.

4.3.1.5. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, shall be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR shall notify the CITY or occupant of such facilities both 48 hours before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR shall obtain permission from their CITY, or shall make suitable arrangements for their disconnection by their CITY. The CONTRACTOR shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly, as part of the work, as soon as the WORK has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new WORK are shown, but are to be verified in the field by the CONTRACTOR prior to performing the WORK. The CONTRACTOR shall uncover these pipes, ducts, cables, etc., carefully, by hand prior to installing his WORK. Any discrepancies or differences found shall be immediately brought to the attention of the CITY in order that necessary changes may be made to permit installation of the WORK.

4.3.2. **Not Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown, nor located by the facilities CITY and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK affected thereby (except in an emergency as permitted by paragraph 6.13), identify the CITY of such Underground Facility and give written notice thereof to that CITY. The CITY will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.12.

#### 4.4. DIFFERING SITE CONDITIONS

4.4.1. The CONTRACTOR shall notify the CITY, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than 14 days after their discovery) and

before they are disturbed:

4.4.1.1. Subsurface or latent physical conditions at the Site of the WORK differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Paragraph 4.2 and 4.3; and

4.2.3.2. Any unknown physical conditions and the Site of the WORK of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, including those reports and documents discussed in Paragraph 4.2 and 4.3.

4.4.2. CITY will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the CITY in writing (with a copy to the CONTRACTOR) of CITY'S findings and conclusions.

4.4.3. If CITY concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.

4.4.4. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Article 11 and 12.

4.4.5. The CONTRACTOR'S failure to give notice of differing Site conditions within 7 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

#### 4.5. REFERENCE POINTS:

4.5.1. The CITY shall provide, if available, engineering surveys to establish reference points for construction, which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the WORK.

4.5.2. CONTRACTOR shall be responsible for laying out the WORK (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR shall report to the CITY whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

#### ARTICLE 5 -- BONDS AND INSURANCE

##### 5.1. BONDS:

5.1.1. CONTRACTOR shall upon delivery of the executed Contract or receipt of a Notice of Tentative Award to the CITY furnish Performance and Payment Bonds, each in an amount at least ONE HUNDRED PERCENT (100%) of the Contract Price as security for the faithful performance

and payment of all CONTRACTOR'S obligations under the Contract Documents. Said bonds must be provided to the CITY within ten (10) business days of the Notice of Tentative Award or delivery of a contract to CONTRACTOR to execute, or the CITY, at its sole discretion and option may terminate the contract. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. Each Bond shall be furnished in an amount equal to ONE HUNDRED PERCENT 100% of the amount of the Contract award. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.2 The CONTRACTOR shall provide a Maintenance and Guaranty Bond in the amount of 50% of the Performance and Payment Bonds to provide a guarantee against defects in the WORK occurring during the year following the one-year correction period. The Bond shall be payable to the CITY, and be at the sole cost of the CONTRACTOR. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.3. The Surety shall be a nationally recognized Surety Company acceptable to the CITY, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, for projects not exceeding (\$500,000) five hundred thousand dollars and meet the other requirements of Florida Statutes Section 287.0935 (1989). For projects exceeding five hundred thousand dollars, all bonds shall be placed with sureties with a Best Rating of no less than A-IX. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties.

5.1.4. If the CONTRACTOR is a partnership, the Bond should be signed by each of the individuals who are partners; if a corporation, the Bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties; (b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where bond is executed by agent, officer or other representative of CONTRACTOR or Surety; (c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

5.1.5. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 5.1.2., CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 5.1.2. Under no circumstances shall the successful CONTRACTOR begin WORK until he/she has supplied to the CITY Performance and Payment Bonds and Affidavit for Bond using the CITY form, and the CITY has approved the bond.

## 5.2. INSURANCE:

5.2.1. CONTRACTOR shall purchase and maintain the insurance required under this Paragraph. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided herein. All insurance shall be maintained continuously during the life of the Contract up to the date of Substantial Completion and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing Defective Work in accordance with Paragraph 13.6. the CONTRACTOR'S liabilities under this Contract shall not be deemed limited in any way to the insurance coverage required.

5.2.2. All insurance required by the Contract Documents to be purchased and maintained by the CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized to issue insurance policies for the limits and coverages so required in the State of Florida. Such insurance companies shall have a current Best's Rating of at least an "A" (Excellent) general policy holder's rating and a Class VII financial size category and shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2.3. Before starting the WORK, the CONTRACTOR shall furnish the CITY, with copies to each additional insured who is indicated in the Supplementary General Conditions, with certificates and original endorsements showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice has been given the CITY and additional insureds by certified mail. All such insurance required herein (except for worker's compensation and employer's liability) shall name the CITY, and CITY'S officers, directors, agents, and employees as "additional insureds" under the policies. The CONTRACTOR shall purchase and maintain the following insurance:

5.2.3.1. **Workers' Compensation and Employer's Liability:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. CONTRACTOR shall require each SUB-CONTRACTOR similarly to maintain workers compensation during the term of the Contract and up to the date of final acceptance. CONTRACTOR shall defend, indemnify and save the CITY harmless from any damage resulting to them for failure of either CONTRACTOR or any SUB-CONTRACTOR to take out or maintain such insurance.

- a. Employers' Liability with Statutory Limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate.
- b. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and/or Jones Act if applicable.

5.2.3.2. **Comprehensive or Commercial General Liability:** Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy or Commercial General Liability filed by the Insurance Services Office, and must include:

- a. Minimum Limits of total coverage shall be \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability, the basic policy to be in said form with any excess coverage (and the carrier) to meet \$2,000,000 minimum to be acceptable to the CITY.

5.2.3.3. **Business Auto Policy.** Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Service Office and must include:

- a. Minimum limit of \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- b. Owned Vehicles
- c. Hired and Non-Owned Vehicles
- d. Employee Non-Ownership

5.2.3.4. **SUB-CONTRACTOR's Public Liability and Property Damage Insurance and vehicle Liability Insurance:** The CONTRACTOR shall either require each of the Sub-CONTRACTORS to procure and to maintain SUB-CONTRACTOR's public liability and property damage insurance and vehicle liability insurance of the type and in the amount indicated above in Paragraph 5.2.3.1., 5.2.3.2. and 5.2.3.3.

5.2.3.5. **Products and/or Completed Operations:** CONTRACTOR shall maintain in force until at least three (3) years after completion of all services required under the Contract, coverage for products and completed operations, including Broad Form Property Damage.

5.2.3.6. **All Risk Property Insurance:** When Applicable, coverage must include real and personal property and in an amount equal to the replacement cost of all real and personal property of the CITY'S for which the CONTRACTOR is responsible and over which he exercises control. Builders Risk insurance must be provided to cover Property under construction and an Installation Floater must cover all machinery, vessels, air conditioners or electric generators to be installed. This insurance shall include a waiver of subrogation as to the CITY, the CONTRACTOR, and their respective officers, agents, employees, and SUB-CONTRACTORS.

- a. Coverage to be provided on a full replacement cost basis.
- b. Losses in excess of ten thousand dollars (\$10,000) shall be jointly payable to the CONTRACTOR and the CITY.
- c. Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the CITY will not occupy the building(s), addition(s) or structure(s).
- d. Maximum Deductible - \$5,000 each claim.
- e. Flood Insurance. When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the CONTRACTOR and the CITY must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance

coverage available under the National Flood Program.

5.2.4. All policies shall also specify that the insurance provided by the CONTRACTOR will be considered primary and not contributory to any other insurance available to the CITY.

## ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

### 6.1. SUPERVISION AND SUPERINTENDENCE:

6.1.1. The CONTRACTOR has the obligation to deliver to the CITY the completed job in a good and workmanlike condition. CONTRACTOR shall supervise and direct the WORK completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents. The CONTRACTOR shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Final Acceptance. The supervision of the execution of this contract is vested wholly in the CONTRACTOR.

6.1.2. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

### 6.2. LABOR, MATERIALS AND EQUIPMENT:

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the WORK and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all WORK at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime WORK or the performance of WORK on Saturday, Sunday or any legal holiday without the CITY'S written consent (which shall not be unreasonably withheld) given after prior written notice to CITY. The CONTRACTOR is hereby informed, and understands that unless otherwise approved by the CITY, the CITY restricts the WORK between the hours of 5:00 p.m. and 8:00 a.m., unless emergency conditions exist that are endangering life or property as may be determined by the CITY. If the CONTRACTOR is authorized to operate equipment twenty-four (24) hours per day, the engines shall be provided with residential type silencers approved by the CITY. The CONTRACTOR shall receive no additional compensation for overtime WORK. However, additional compensation will be paid to the CONTRACTOR for overtime WORK only in the event extra WORK is ordered by the CITY and the change order specifically authorizes the use of overtime WORK and then only to such extent as overtime wages are regularly being paid by the

CONTRACTOR for overtime WORK of a similar nature in the same locality. All costs of inspection and testing performed by the CITY during overtime WORK by the CONTRACTOR which is allowed solely for the convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The CITY shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.

6.2.2. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and final completion of the WORK.

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CITY, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY, or any of the CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

### 6.3. SCHEDULE:

6.3.1. CONTRACTOR shall submit to CITY for review and comment (to the extent indicated in paragraph 2.6.) proposed adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. All approved changes shall be memorialized as change orders.

### 6.4. SUBSTITUTES OR "OR-EQUAL" ITEMS:

6.4.1. The technical specifications shall govern the use of substitute or "or-equal" items. The procedure for review by CITY will include the following as supplemented in the technical specifications. Requests for review of substitute items of material and equipment will not be accepted by CITY from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY for acceptance thereof, certifying that the proposed substitute will perform equally or better the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the WORK will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for WORK on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with

the WORK is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs and cost savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by CITY in evaluating the proposed substitute. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

6.4.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to CITY, if CONTRACTOR submits sufficient information to allow CITY to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by CITY will be similar to that provided in paragraph 6.4.1 as applied by CITY and as may be supplemented in the Technical Specifications.

6.4.3. CITY will be allowed a reasonable time within which to evaluate each proposed substitute. CITY will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CITY'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

#### 6.5. CONCERNING SUB-CONTRACTORS, SUPPLIERS AND OTHERS:

6.5.1. CONTRACTOR shall not employ any SUB-CONTRACTOR, Supplier or other person or organization (including those acceptable to the CITY as indicated in paragraph 6.5.2), whether initially or as a substitute, against whom the CITY may have reasonable objection. CONTRACTOR shall not be required to employ any SUB-CONTRACTOR, Supplier or other person or organization to furnish or perform any of the WORK against whom CONTRACTOR has reasonable objection.

6.5.2. If the Technical Specifications or Contract Documents require the identity of certain SUB-CONTRACTORS, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) shall be submitted to the CITY for acceptance by the CITY, and if CONTRACTOR has submitted a list thereof, the CITY'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid documents or the Contract Documents) of any such SUB-CONTRACTOR, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. If after bid opening and prior to the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the contract price or contract time. If the contract price or contract time is

increased, the CITY may return the bid bond and award the contract to the next qualified, competent BIDDER. If after the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY shall permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the CITY. No acceptance by the CITY of any such SUB-CONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of the CITY to reject defective WORK.

6.5.3. CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the SUB-CONTRACTORS, Suppliers and other persons and organizations performing or furnishing any of the WORK under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such SUB-CONTRACTOR, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such SUB-CONTRACTOR, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.5.4. The divisions and sections of the Technical Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the WORK among SUB-CONTRACTORS or Suppliers or delineating the WORK to be performed by any specific trade.

6.5.5. All WORK performed for CONTRACTOR by a SUB-CONTRACTOR will be pursuant to an appropriate agreement between CONTRACTOR and the SUB-CONTRACTOR which specifically binds the SUB-CONTRACTOR to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

#### 6.6. PATENT FEES AND ROYALTIES:

6.6.1. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of WORK or the incorporation in the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the WORK and if to the actual knowledge of the CITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to other, the existence of such rights shall be disclosed by the CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless the CITY and anyone directly or indirectly employed by the CITY from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### 6.7. PERMITS:

6.7.1. CONTRACTOR shall obtain and pay for all construction permits and licenses without limitation as required by Laws or Regulations. The CITY shall assist

CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for prosecution of the WORK, which are applicable at the time of opening of Bids. There will be no cost for permits issued by the CITY. CONTRACTOR shall pay all charges for utility connections to the WORK.

#### 6.8. LAWS AND REGULATIONS:

6.8.1. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to furnishing and performance of the WORK. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, the CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any Laws, ordinances, rules or regulations.

6.8.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws, ordinances, rules or regulations, CONTRACTOR shall give CITY prompt, written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.5. If CONTRACTOR performs any WORK knowing or having reason to know that it is contrary to such laws, ordinances, rules or regulations, and without such notice to the CITY, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations unless they are at variance with construction practices recognized as industry standards.

#### 6.9. TAXES:

6.9.1. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws, ordinances and regulations of the place of the Project which are applicable during the performance of the WORK.

#### 6.10. USE OF PREMISES:

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits and easements, and shall not reasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the CITY or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against the CITY by any such CITY or occupant because of the performance of the WORK, CONTRACTOR shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. CONTRACTOR shall, to the fullest extent permitted by laws and regulations, indemnify and hold the CITY harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK.

6.10.2. During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other and other debris resulting from the WORK. At the completion of the WORK CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.10.3. 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.

#### 6.11. RECORD DOCUMENTS:

6.11.1. CONTRACTOR shall maintain in accordance with the Technical Specifications in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. The record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the CITY for reference. Upon completion of the WORK, these record documents, samples, and Shop Drawings will be delivered to the CITY.

#### 6.12. SAFETY AND PROTECTION:

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

6.12.1.1. all employees on the WORK and other persons and organizations who may be affected thereby;

6.12.1.2. all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.12.1.3. 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.

6.12.2. CONTRACTOR shall comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the WORK and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.12.1.2. or 6.12.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUB-CONTRACTOR,

Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK for anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and CITY has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 14.6. that the WORK is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.12.3. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

6.12.4. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of an accident in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

6.12.5. Safety Representative: CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

6.12.6. Hazard Communication Programs: 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 employees at the Site in accordance with Laws and Regulations.

#### 6.13. EMERGENCIES AND PRECAUTIONS DURING ADVERSE WEATHER:

6.13.1. In emergencies affecting the safety or protection of persons or the WORK or property at the site or adjacent thereto. CONTRACTOR, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the WORK or variations from the Contract Documents have been caused thereby. If CITY determines that a change in the Contract Documents is required because of the action taken in response to an emergency, or Change Order will be issued to document the consequences of the changes or variations.

6.13.2. During adverse weather, and against the possibility thereof, the CONTRACTOR shall take all

necessary precautions to ensure that the WORK shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The CONTRACTOR shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he shall take such precautions and procure such additional insurance as he deems prudent. The CITY may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

#### 6.14. SUBMITTALS: SHOP DRAWINGS AND SAMPLES:

6.14.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to CITY for review in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.5.2.), ordinances, rules and all Shop Drawings which will bear the stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CITY may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

6.14.2. CONTRACTOR shall also submit to CITY for review and approval with such promptness as to cause no delay in WORK, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended. Please note – samples may not be returned by CITY. Samples are to be supplied at no expense to the CITY and CONTRACTOR is hereby put on notice that said samples may not be returned.

6.14.3. Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the WORK and the Contract Documents.

6.14.4. At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition shall cause a specific notation to be made on each Shop Drawing submitted to CITY for review of each such variation.

6.14.5. CITY will review within ten days of receipt thereof, Shop Drawings and samples but CITY'S review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or

procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by CITY, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CITY on previous submittals. CITY will review one (1) re-submittal for each shop drawing or product data. All costs of reviewing additional submittals shall be at the CONTRACTOR'S expense.

6.14.6. CITY'S review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CITY'S attention to each such variation at the time of submission as required by paragraph 6.14.4 and CITY has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any review by CITY relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.14.3.

6.14.7. Where a Shop Drawing or sample is required by the Specifications, any related WORK performed prior to CITY'S review and acceptance of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

#### 6.15. CONTINUING THE WORK:

6.15.1. CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the CITY. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 15 or as CONTRACTOR and the CITY may otherwise agree in writing.

#### 6.16. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

6.16.1. CONTRACTOR warrants and guarantees to CITY that all work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.16.1.1. Abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, SUB-CONTRACTORS or Suppliers; or

6.16.1.2. Normal wear and tear under normal usage.

6.16.2. 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:

6.16.2.1. observations by CITY;

6.16.2.2. recommendation of any progress or final payment by CITY;

6.16.2.3. the issuance of a certificate of Substantial Completion or any payment by CITY to CONTRACTOR under the Contract Documents;

6.16.2.4. use or occupancy of the WORK or any part thereof by CITY;

6.16.2.5. any acceptance by CITY or any failure to do so;

6.16.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by CITY pursuant to paragraph 14.10;

6.16.2.7. Any inspection, test or approval by others; or

6.16.2.8. Any correction of *defective* WORK by CITY.

#### 6.17. INDEMNIFICATION:

6.17.1. In consideration of ten dollars (\$10.00) and other valuable consideration, the CONTRACTOR shall defend, indemnify and save harmless the CITY, its officers, agents and employees, from or on account of any claims, losses, injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding the sole negligence of the CITY), in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the said CONTRACTOR or his SUB-CONTRACTORS, agents, servants or employees. CONTRACTOR agrees to defend, indemnify and save harmless the CITY, its officers, agents and employees, against any liability arising from or based upon the violation of any Federal, State, County or CITY laws, by-laws, ordinances or regulations by the CONTRACTOR, his SUB-CONTRACTORS, agents, servants or employees.

6.17.2. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

6.17.3. The indemnification provided above shall obligate the CONTRACTOR to defend at his own expense or to pay for such defense, at the CITY'S option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY which may result from the operations and activities under this Contract whether the construction operations be performed by the CONTRACTOR, his SUB-CONTRACTOR or by anyone directly or indirectly employed by either.

6.17.4. This indemnification includes all costs and fees including attorney's fees and costs at trial and appellate levels. The CITY will pay to the CONTRACTOR the specific



consideration of ten dollars and other good and valuable consideration as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06 of the Florida Statutes. Furthermore, the CONTRACTOR acknowledges that the bid price includes said consideration for the indemnification provision.

#### ARTICLE 7 -- OTHER WORK

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##### 7.1. RELATED WORK AT SITE:

7.1.1. The CITY may perform other WORK related to the Project at the site by the CITY'S own forces, let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other WORK is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other WORK; and, if CONTRACTOR believes that such performance will involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. If the performance of additional WORK by other CONTRACTOR or the CITY is noted in the Contract Documents, no additional adjustment of time or compensation shall be considered.

7.1.2. CONTRACTOR shall afford the CITY and other CONTRACTORS who are a party to such a direct contract (or the CITY, if the CITY is performing the additional WORK with the CITY'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such WORK, and shall properly connect and coordinate the WORK with theirs. CONTRACTOR shall do all cutting, fitting and patching of the WORK that may be required to make its several parts come together properly and integrate with such other WORK. CONTRACTOR shall not endanger any WORK of others by cutting, excavating or otherwise altering their WORK and will only cut or alter their WORK with the written consent of the CITY and the others whose WORK will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and other CONTRACTORS to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and other CONTRACTORS.

7.1.3. If any part of CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other CONTRACTOR other than CONTRACTOR'S OWN SUB-CONTRACTOR, (or the CITY), CONTRACTOR shall inspect and promptly report to CITY in writing any delays, defects or deficiencies in such other WORK that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR'S WORK. CONTRACTOR'S failure to report will constitute an acceptance of the other WORK as fit and proper for integration with CONTRACTOR'S WORK except for latent defects and deficiencies in the other WORK.

##### 7.2. COORDINATION:

7.2.1. If the CITY contracts with others for the performance of other WORK on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime CONTRACTORS will be identified in the Technical Specifications and the specific matters to be covered by such authority and responsibility will be itemized, and the

extent of such authority and responsibilities will be provided in the Technical Specifications. Unless otherwise provided in the Technical Specifications, the CITY shall not have any authority or responsibility in respect of such coordination.

#### ARTICLE 8 -- THE CITY'S RESPONSIBILITIES

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##### COMMUNICATIONS TO CONTRACTOR:

8.1.1. CITY shall issue all communications to CONTRACTOR through CITY'S Project Manager.

##### 8.2. FURNISH DATA:

8.2.1. CITY shall promptly furnish the data required of the CITY under the Contract Documents.

##### 8.3. PAYMENTS:

8.3.1. CITY shall make payments to CONTRACTOR promptly when they are due as provided in Sections 14.5 and 14.10.

##### 8.4. LANDS, EASEMENTS: REPORTS AND TESTS:

8.4.1. The CITY'S duties in respect of providing lands and easements and providing engineering surveys, if available, to establish reference points are set forth in paragraphs 4.1.1 and 4.5.1.

8.4.2. The CITY will identify and make available to CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures that have been utilized in preparing the Contract Documents as set forth in Paragraph 4.22 and 4.2.3.

##### 8.5. CHANGE ORDERS

8.5.1. The CITY is obligated to execute Change Orders as indicated in Article 10.

##### 8.6. SUSPENSION OF WORK

8.6.1. In connection with the CITY'S right to stop WORK or suspend WORK see paragraph 13.5 and 15.1. Paragraph 15.2 deals with the CITY'S right to terminate services of CONTRACTOR.

#### ARTICLE 9 -- CITY'S STATUS DURING CONSTRUCTION:

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##### 9.1. CITY'S REPRESENTATIVE:

9.1.1. The CITY will be the CITY'S representative during the construction period. The duties and responsibilities and the limitations of authority of CITY'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the CITY.

##### 9.2. VISITS TO SITE:

9.2.1. After written notice to proceed with the WORK, the CITY shall make visits to the site at intervals

appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the Contract Documents; he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction and he will not be responsible for the CONTRACTOR'S failure to perform the construction WORK in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the WORK; and during such visits and on the basis of his on-site observations, as an experienced and qualified design professional, he will keep the CITY informed of the progress of the WORK, will endeavor to guard the CITY against defects and deficiencies in the WORK of the CONTRACTOR and may reject WORK as failing to conform to the Contract Documents.

### 9.3. PROJECT REPRESENTATION:

9.3.1. A Resident Project Representative may be assigned to assist CITY in carrying out his responsibilities to CITY at the site. Resident Project Representative is CITY'S agent at site, will act as directed by and under the supervision of CITY, and will confer with CITY regarding Resident Representative's actions. Resident Project Representative's dealing in matters pertaining to the on-site WORK shall in general be with CITY and CONTRACTOR keeping the CITY advised as necessary. Resident Project Representative's dealings with SUB-CONTRACTORS shall only be through or with the full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with the CITY with the knowledge of and under the direction of CITY.

9.3.2. Resident Project Representative shall where applicable:

9.3.2.1. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with CITY concerning its general acceptability.

9.3.2.2. Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

9.3.2.3. Working principally through CONTRACTOR'S superintendent, assist CITY in serving as the CITY's liaison with CONTRACTOR, when CONTRACTOR'S operations affect the CITY's on-site operations.

9.3.2.4. Assist in obtaining from the CITY additional details or information, when required for proper execution of the WORK.

9.3.2.5. Record date of receipt of Shop Drawings and samples.

9.3.2.6. Receive samples which are furnished at the site by CONTRACTOR, and notify the CITY of availability of samples for examination.

9.3.2.7. Advise the CITY and CONTRACTOR of the commencement of any WORK requiring a Shop Drawing if the submittal has not been approved by the CITY.

9.3.2.8. Conduct on-site observations of the WORK in progress to assist the CITY in determining if the WORK is, in general, proceeding in accordance with the Contract Documents.

9.3.2.9. Report to the CITY whenever Residential Project Representative believes that any WORK is unsatisfactory, faulty or *defective* or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the CITY of WORK that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein shall relieve the CONTRACTOR or the CITY from the duties imposed by contract.

9.3.2.10. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to the CITY appropriate details relative to the test procedures and startups.

9.3.2.11. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the CITY.

9.3.2.12. Report to CITY when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by the CITY.

9.3.2.13. Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the CITY. Transmit to CONTRACTOR decisions as issued by the CITY.

9.3.2.14. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, CITY'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

9.3.2.15. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the CITY.

9.3.2.16. Record all names, addresses and telephone numbers of the CONTRACTOR, all SUB-CONTRACTORS and major suppliers of material and equipment.

9.3.2.17. Furnish the CITY periodic reports as required of progress of the WORK of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

9.3.2.18. Consult with the CITY in advance of schedule major tests, inspections or start of important phases of the WORK.

9.3.2.19. Draft proposed Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to the CITY, Change Orders, Work Change Directives, and Field Orders.

9.3.2.20. Report immediately to the CITY upon the occurrence of any accident.

9.3.2.21. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the CITY, noting particularly the relationship of the payment requested to the schedule of values, WORK completed and materials and equipment delivered at the site but not incorporated in the WORK.

9.3.2.22. During the course of the WORK, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the CITY for review and forwarding to CITY prior to final payment for the WORK.

9.3.2.23. Before the CITY issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

9.3.2.24. Conduct final inspection in the company of the CITY and the CONTRACTOR and prepare a final list of items to be completed or corrected.

9.3.2.25. Observe that all items on final list have been completed or corrected and make recommendations to the CITY concerning acceptance.

9.3.3. The Resident Project Representative shall not:

9.3.3.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment.

9.3.3.2. Exceed limitations of the CITY'S authority as set forth in the Contract Documents.

9.3.3.3. Undertake any of the responsibilities of CONTRACTOR, SUB-CONTRACTORS, or CONTRACTOR'S superintendent.

9.3.3.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

9.3.3.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the WORK.

9.3.3.6. Accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.

9.3.3.7. Authorize the CITY to occupy the Project in whole or in part.

9.3.3.8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the CITY.

#### 9.4. CLARIFICATIONS AND INTERPRETATIONS:

9.4.1. The CITY will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CITY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification of interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

#### 9.5. AUTHORIZED VARIATIONS OF WORK:

9.5.1. CITY may authorize minor variations in the WORK from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field Order and will be binding on the CITY, and also on CONTRACTOR who shall perform the WORK involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 9.6. REJECTING DEFECTIVE WORK

9.6.1. The CITY will have authority to disapprove or reject WORK which CITY believes to be *defective* or believes to be in nonconformance with the intent of the contract documents, and will also have authority to require special inspection or testing of the WORK as provided in Section 13.3, whether or not the WORK is fabricated, installed or completed.

#### 9.7. SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

9.7.1. In connection with CITY'S responsibility for Shop Drawings and samples, see Sections 6.11 and 6.14.

9.7.2. In connection with CITY'S responsibilities as to Change Orders see Article 10, 11, and 12.

9.7.3. In connection with CITY'S responsibilities in respect of Applications for Payment, etc., see Article 14.

#### 9.8. DETERMINATIONS FOR UNIT PRICES:

9.8.1. CITY will determine the actual quantities and classifications of Unit Price WORK performed by CONTRACTOR. CITY will review with CONTRACTOR CITY'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CITY'S written decisions thereon will be final and binding upon the CITY or CONTRACTOR unless, within ten days after the date of any such decision, either the CITY or CONTRACTOR delivers to the other party

to the Contract and to CITY written notice of intention to appeal from such a decision.

#### 9.9. DECISIONS ON DISPUTES:

9.9.1. The CITY 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 or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the WORK and claims under Article 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to CITY in writing with a request for a formal decision in accordance with this paragraph, which CITY will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to CITY and the other party to the Contract promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to CITY and the other party within thirty (30) days after such occurrence unless CITY allows an additional period of time to ascertain more accurate data in support of such claim, dispute or other matter.

9.9.2. The opposing party shall submit any response to CITY and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless CITY allows additional time). CITY will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. CITY's written decision on such claim, dispute or other matter will be final and binding upon CITY and CONTRACTOR unless: (i) an appeal from CITY's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between CITY and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from

CITY's written decision is delivered by CITY or CONTRACTOR to the other and to CITY within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction 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 within sixty (60) days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.3 When functioning as interpreter and judge under paragraphs 9.8.1, 9.9.1 and 9.9.2, CITY will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by CITY pursuant to paragraphs 9.8.1, 9.9.1 and 9.9.2 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 14.11.) 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 pursuant to Article 16.

#### 9.10. LIMITATIONS ON CITY:

9.10.1. Neither CITY'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by CITY either to exercise or not exercise such authority shall give rise to any duty or responsibility of CITY to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, or any other person or organization performing any of the WORK, or to any surety for any of them.

9.10.2. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the WORK, it is intended that such requirement, direction, review or judgment will be solely to evaluate the WORK for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

9.10.3. CITY will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CITY will not be responsible to CONTRACTOR for CONTRACTOR'S failure to perform or furnish the WORK in accordance with the Contract Documents.

9.10.4. CITY will not be responsible for the acts or omissions of CONTRACTOR or of any SUB-CONTRACTOR, any Supplier, or of any other person or organization performing or furnishing any of the WORK.

#### ARTICLE 10 -- CHANGES IN THE WORK

##### 10.1. AUTHORIZED CHANGES IN THE WORK

10.1.1. Without invalidating the Contract and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the WORK; these will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the WORK involved that will be performed under the applicable conditions of the Contract Documents, except as otherwise specifically provided.

10.1.2. If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.

##### 10.2. UNAUTHORIZED CHANGES IN THE WORK

10.2.1. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Section 3.2, except in the case of an emergency as provided in

paragraph 6.13.1 and except in the case of uncovering WORK as provided in paragraph 13.4.2.

### 10.3. EXECUTION OF CHANGE ORDERS

10.3.1. The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.3.1.1. Changes in the WORK, which are ordered by the CITY pursuant to paragraph 10.1.1, are required because of acceptance of *defective* WORK under paragraph 13.7.4 or correcting *defective* WORK under paragraph 13.9.3, or are agreed to by the parties.

10.3.1.2. Changes in the Contract Price or Contract time which the parties agree to.

10.3.1.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CITY pursuant to paragraph 9.9.1; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the WORK and adhere to the progress schedule as provided in paragraph 6.15.1.

10.3.2. **Surety.** It is distinctly agreed and understood that any changes made in the Contract Documents for this WORK (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR shall in no way annul, release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the WORK or the provisions of the Contract Documents (including, but not limited to, Contract Price or contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.3.3. Notwithstanding, anything to the contrary contained within the contract documents, all change orders involving additional cost or extensions of time, shall be governed by the ordinances of the City of Lauderdale Lakes.

## ARTICLE 11 -- CHANGE OF CONTRACT PRICE

### 11.1. GENERAL

11.1.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the WORK. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.1.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting

data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by CITY in accordance with paragraph 9.9.1 if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.1.2.

11.1.3. The value of any WORK covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.1.3.1. Where the WORK involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Section 11.5, inclusive).

11.1.3.2. By mutual acceptance of a lump sum (which shall include an allowance for overhead and profit in accordance with paragraph 11.3.1.2.a).

11.1.3.3. On the basis of the Cost of the WORK (determined as provided in Section 11.2, inclusive) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Section 11.3, inclusive).

### 11.2. COST OF THE WORK:

11.2.1. **General.** The term Cost of the WORK means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.2.2:

11.2.1.1. **Labor.** Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the WORK under schedules of job classification agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the CITY.

11.2.1.2. **Materials and Equipment.** Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and

equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.

11.2.1.3. SUB-CONTRACTOR. Payments made by CONTRACTOR to the SUB-CONTRACTORS for WORK performed by SUB-CONTRACTORS. If required by the CITY, CONTRACTOR shall obtain competitive bids from SUB-CONTRACTORS acceptable to CONTRACTOR and shall deliver such bids to the CITY who will then determine, with the advice of the CITY, which bids will be accepted. If a subcontract provides that the SUB-CONTRACTOR is to be paid on the basis of Cost of the WORK Plus a Fee, the SUB-CONTRACTOR's Cost of the WORK shall be determined in the same manner as CONTRACTOR'S Cost of WORK. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.2.1.4. Costs of special CITY's (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the WORK.

11.2.1.5. Supplemental costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers, which are consumed in the performance of WORK, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

b. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front end loaders, backhoes, and tractors, or other equipment, required for the economical performance of the authorized WORK, the CONTRACTOR shall receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate blue book for Construction Equipment, published by Equipment Guide Book Co., reduced by 25 percent. Equipment cost shall be calculated based upon the actual time the equipment is used in the WORK. If said WORK required the use of machinery not on the WORK or not to be used on the WORK, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the WORK shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract.

c. Sales, consumer, use or similar taxes related to the WORK and for which CONTRACTOR is liable, imposed by laws and regulations.

d. Royalty payments and fees for permits and licenses.

e. The site costs of utilities, fuel and sanitary facility.

f. Cost of premiums for additional bonds and insurance required because of changes in the WORK.

11.2.2. The term Cost of the WORK shall not include any of the following:

11.2.2.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.2.1.1 or specifically covered by paragraph 11.2.1.4 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

11.2.2.2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

11.2.2.3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the WORK and charges against CONTRACTOR for delinquent payments.

11.2.2.4. Cost of premiums for all Bonds and for all Insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.2.1.5f above).

11.2.2.5. Costs due to the negligence or intentional acts of the CONTRACTOR, any SUB-CONTRACTOR, or anyone whose acts any of them may be liable, including but not limited to, the correction of *defective* WORK, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.2.2.6. Costs associated with fringe benefits that are greater than actual costs; i.e., where worker hours exceed a typical 8-hour day and 40-hour workweek.

11.2.2.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.2.

### 11.3. CONTRACTOR'S FEE:

11.3.1. The CONTRACTOR'S Fee for overhead and profits shall be determined as follows:

11.3.1.1. A mutually acceptable fixed fee; or if none can be agreed upon,

11.3.1.2. A fee based on the following percentages of the various portions of the Cost of the WORK:

a. For costs incurred under paragraphs 11.2.1.1 and 11.2.1.2, the CONTRACTOR'S Fee shall be five (5%) percent;

b. For costs incurred under paragraph 11.2.1.3, the CONTRACTOR'S Fee shall be five percent; and if a subcontract is on the basis of Cost of the WORK Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all SUB-CONTRACTORS shall be five (5%) percent;

c. No fee shall be payable on the basis of costs itemized under paragraphs 11.2.1.4, 11.2.1.5 and 11.2.2;

d. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in accordance with paragraphs 11.3.1.2a through 11.3.1.2d, inclusive.

11.3.2. Whenever the cost of any WORK is to be determined pursuant to paragraph 11.2.1 or 11.2.2, CONTRACTOR will submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

#### 11.4. CASH ALLOWANCES:

11.4.1. 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 done by such SUB-CONTRACTORS or Suppliers and for such sums within the limit of the allowances as may be acceptable to the CITY, CONTRACTOR agrees that:

11.4.1.1. 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

11.4.1.2. 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. No demand for additional payment on account of any thereof will be valid.

11.4.1.3. Prior to final payment, an appropriate Change order will be issued as recommended by CITY to reflect actual amounts due CONTRACTOR on account of WORK covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.5. UNIT PRICE WORK:

11.5.1. Where the Contract Documents provide that all or part of the WORK is to be Unit Price WORK, initially the Contract Price will be deemed to include for all Unit Price WORK an amount equal to the sum of the established unit prices for each separately identified item of Unit Price WORK times the estimated quantity of each item as indicated in the Contract. 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 CITY in accordance with Paragraph 9.8.

11.5.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

11.5.3. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

11.5.4. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CITY believes that CONTRACTOR has incurred reduced expense as a result thereof, CITY may make a claim for a decrease in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such decrease.

#### 11.6. OMITTED WORK:

11.6.1. The CITY may at any time, by written order, without Notice to the Sureties, require omission of such contract WORK as it may find necessary or desirable. An order for omission of WORK shall be valid only by an executable change order. All WORK so ordered must be omitted by the CONTRACTOR. The amount by which the contract price shall be reduced shall be determined as follows:

11.6.1.1. By such applicable unit prices, or rates for WORK of a similar nature or character as set forth in the contract; or,

11.6.1.2. By the appropriate lump sum price set forth in the Contract; or,

11.6.1.3. By the reasonable and fair estimated cost of such omitted WORK and profit percentage as determined by the CONTRACTOR and the CITY, and approved by the CITY.

### ARTICLE 12 -- CHANGE OF CONTRACT TIME

#### 12.1 GENERAL

12.1.1. The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an extension or shortening of the Contract time shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment of the Contract Time shall be determined by CITY in accordance with Section 9.9 if the CITY and CONTRACTOR cannot otherwise agree.

No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.1.

12.1.2. All time limits stated in the Contract Documents are of the essence of the Contract.

12.1.3. 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 therefore as provided in paragraph 12.1.1. 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. Delays attributable to and within the control of a SUB-CONTRACTOR or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.1.4. 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. In no event shall CITY be liable to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other CONTRACTORS performing other work as contemplated by Article 7.

12.1.5 Liquidated Damages. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph 2.3 of the General Conditions and the Notice To Proceed, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with a certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.3 of the General Conditions, and paragraph 3.1 of the Construction Contract for substantial completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 2.3 of the General Conditions and paragraph 3.1 of the construction contract for completion and readiness for final payment.

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

### 13.1. NOTICE OF DEFECTS:

13.1.1. Prompt notice of all defects for which CITY has actual knowledge will be given to CONTRACTOR. All *defective* WORK, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

13.1.2. Un-remedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment, which are remedied as a result of obligations of the guarantee, shall subject the remedied portion of the WORK to an extended guarantee period of one year after the defect has been remedied. The Surety shall be bound with and for the CONTRACTOR in the CONTRACTOR's faithful observance of the guarantee.

### 13.2. ACCESS TO WORK:

13.2.1 CITY and CITY'S representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the WORK at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### 13.3. TESTS AND INSPECTIONS:

13.3.1. CONTRACTOR shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals.

13.3.2. If Laws or Regulations of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the CITY'S requirements or CITY'S acceptance of a Supplier of materials or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the WORK.

13.3.3. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the CITY.

13.3.4. If any WORK (including the WORK of others) that is to be inspected, tested or approved is covered without written concurrence of CITY, it must, if requested by CITY, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CITY timely notice of CONTRACTOR'S intention to cover the same and CITY has not acted with reasonable promptness in response to such notice.



13.3.5. Neither observations by CITY nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligation's to perform the WORK in accordance with the Contract Documents.

#### 13.4. UNCOVERING WORK:

13.4.1. If any WORK is covered contrary to the request of CITY, it must, if requested by CITY, be uncovered for CITY'S observation and replaced, at CONTRACTOR'S expense.

13.4.2. If CITY considers it necessary or advisable that covered WORK be observed by CITY or inspected or tested by others, CONTRACTOR, at CITY'S request shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the WORK in question, furnishing all necessary labor, material and equipment. If it is found that such WORK is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such WORK is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 13.5. CITY MAY STOP THE WORK:

13.5.1. If the WORK is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the Contract Documents, the CITY may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the WORK shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

#### 13.6. CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.6.1. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective WORK, whether or not fabricated, installed or completed, or, if the WORK has been rejected by CITY, remove it from the site and replace it with non-*defective* WORK. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### 13.7. ONE-YEAR CORRECTION PERIOD:

13.7.1. If within one year after the date of Acceptance of WORK or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable

special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any WORK is found to be *defective*, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such *defective* WORK, or, if it has been rejected by the CITY, remove it from the site and replace it with non-*defective* WORK.

13.7.2. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the *defective* WORK corrected or the rejected WORK removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

13.7.3. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance 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.

13.7.4. Nothing herein shall be deemed a waiver of the statute of limitations as provided in Florida Law.

13.7.5. Where *defective* WORK (and damage to other WORK resulting therefrom) has been corrected, removed or replaced under this paragraph 13.7., 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.

#### 13.8. ACCEPTANCE OF DEFECTIVE WORK:

13.8.1. If, instead of requiring correction or removal and replacement of *defective* WORK, CITY (and, prior to CITY's recommendation of final payment, also CITY) prefers to accept it, CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY'S evaluation of and determination to accept such *defective* WORK (such costs to be approved by CITY as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

13.8.2. If any such acceptance occurs prior to CITY'S recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, CONTRACTOR will pay an appropriate amount to the CITY.

#### 13.9. CITY MAY CORRECT DEFECTIVE WORK:

13.9.1. If CONTRACTOR fails within thirty days (30) after written notice of CITY to proceed to correct and to correct *defective* WORK or to remove and replace rejected WORK as required by CITY in accordance with paragraph 13.7.1, or if CONTRACTOR fails to perform the WORK in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

13.9.2. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the WORK, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, the CITY'S representative, agents and employees such access to the site as may be necessary to enable the CITY to exercise the rights and remedies under this paragraph.

13.9.3. All direct, indirect and consequential costs of the CITY in exercising such rights and remedies will be charged against CONTRACTOR by CITY and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and/or replacement of WORK of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective WORK. CONTRACTOR shall also be responsible for restoring any other sites affected by such repairs or remedial work at no cost to CITY. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the WORK attributable to the exercise by the CITY of the CITY'S rights and remedies hereunder.

#### ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

##### 14.1. SCHEDULE OF VALUES

14.1.1. The schedule of values established as provided in paragraph 2.6.1 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY.

##### 14.2. UNIT PRICE BID SCHEDULE

14.2.1. Progress payments on account of Unit Price WORK will be based on the number of units completed.

##### 14.3. APPLICATION FOR PROGRESS PAYMENTS:

14.3.1. Unless otherwise prescribed by law, at the end of each month, the CONTRACTOR shall submit to the CITY for review, an Application for Progress Payment filled out and signed by the CONTRACTOR covering the WORK completed as of the date of the Application and accomplished by such supporting documentation as is required by the Contract Documents.

14.3.2. The Application for Progress Payment shall identify, as a subtotal, the amount of the CONTRACTOR'S Total Earnings to Date, plus the Value of Materials Stored which have not yet been incorporated in the WORK, less a deductive adjustment for materials stored which have been

installed which were not previously incorporated in the WORK, but for which payment was allowed.

14.3.3. The Net Payment Due to the CONTRACTOR shall be the above-mentioned subtotal from which shall be deducted the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by the CONTRACTOR. Retainage shall be calculated based upon the above-mentioned subtotal.

The above calculation in tabular form is as follows:

Total Earnings to Date . . . . .	\$
Value of Materials Stored . . . . .	\$
Less Value of Materials Stored for which payment was allowed and which have been installed . . . . .	(\$ )
Sub Total	\$
Less Retainage (based on sub total)	(\$ )
Less total of all previous approved Applications for Progress Payment	(\$ )
NET PAYMENT DUE	\$

14.3.4. The Value of Materials Stored shall be an amount equal to the specified percent of the value of same as set forth in the Contract or Schedule of Values. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the WORK but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the WORK and is planned for installation within the following thirty (30) days. The Application for Progress Payment shall also be accompanied by a Bill of Sale, paid invoice, or other documentation warranting that the CITY has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY'S interest therein, all of which shall be satisfactory to the CITY.

##### 14.4. CONTRACTOR'S WARRANTY OF TITLE:

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

##### 14.5. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

14.5.1. CITY will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CITY'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Thirty days after receipt of the Application for Payment by the CITY with CITY'S recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.5.4) become due and when due will be paid by the CITY to CONTRACTOR.

14.5.2. CITY'S recommendation of any

payment requested in the application for payment shall not prohibit the CITY from withholding payment or prohibit the CITY from paying additionally sums regarding other matters or issues between the parties.

14.5.3. CITY'S recommendation of final payment will constitute an additional representation by CITY's Project Manager that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.10 have been fulfilled.

14.5.4. CITY may refuse to recommend the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such representations to the CITY. The CITY may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CITY'S opinion to protect the CITY from loss, including but not limited to:

14.5.4.1. The WORK is *defective*, or completed WORK has been damaged requiring correction or replacement.

14.5.4.2. The Contract Price has been reduced by a Written Amendment or Change Order.

14.5.4.3. The CITY has been required to correct *defective* WORK or complete WORK in accordance with paragraph 13.9.1, or

14.5.4.4. Of CITY'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1.1 through 15.2.1.9 inclusive.

14.5.5. The CITY may refuse to make payment of the full amount recommended by the CITY because claims have been made against the CITY on account of CONTRACTOR'S performance or furnishing of the WORK, or there are other items entitling the CITY to credit against the amount recommended, but the CITY must give CONTRACTOR written notice (with a copy to CITY) stating the reasons for such action.

#### 14.6. SUBSTANTIAL COMPLETION:

(60) When the CONTRACTOR considers the entire WORK ready for its intended use, the CONTRACTOR shall notify the CITY in writing that the WORK is substantially complete and request that the CITY prepare a Certificate of Substantial Completion. For construction projects having an estimated cost of less than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK shall make an inspection of the WORK within thirty (30) calendar days after the notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. For construction projects having an estimated cost of more than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK within thirty (30) calendar days unless otherwise extended by contract not to exceed sixty calendar days after notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. If the CITY does not consider the WORK substantially complete, the CITY shall notify the CONTRACTOR in writing giving the reasons therefor. If the CITY considers the WORK to be

substantially complete, the CITY will prepare and deliver to the CITY for its execution and recordation the Certificate of Substantial Completion signed by the CITY and CONTRACTOR, which shall fix the Date of Substantial Completion.

14.6.1. The CITY shall have the right to exclude CONTRACTOR from the WORK after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the "punch list".

#### 14.7. PARTIAL UTILIZATION:

14.7.1. Use by the CITY of any finished part of the WORK, which has specifically been identified in the Contract Documents, or which the CITY and CONTRACTOR agree constitutes a separately functioning and useable part of the WORK that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the WORK, may be accomplished prior to Substantial Completion of all WORK subject to the following:

14.7.1.1. The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the WORK which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to the CITY that said part of the WORK is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. CONTRACTOR at any time may notify the CITY in writing that CONTRACTOR considers any such part of the WORK ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. Within a reasonable time after either such request, the CITY, CONTRACTOR and CITY shall make an inspection of that part of WORK to determine its status of completion. If CITY does not consider that part of the WORK to be substantially complete, CITY will notify the CITY and CONTRACTOR in writing giving the reasons therefor. If CITY considers that part of the WORK to be substantially complete, the provisions of paragraphs 14.6.1 and 14.6.2 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.

14.7.1.2. The CITY may at any time request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the WORK although it is not substantially complete. A copy of such request will be sent to CITY and within a reasonable time thereafter the CITY, CONTRACTOR and CITY shall make an inspection of that part of the WORK to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY that such part of the WORK is not ready for separate operation by the CITY will finalize the list of items to be completed or corrected and will deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the WORK which will become binding upon the CITY and CONTRACTOR at the time when

the CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed CITY). During such operation and prior to Substantial Completion of such part of the WORK, the CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related WORK.

#### 14.8. FINAL INSPECTION:

14.8.1. Upon written notice from CONTRACTOR that the entire WORK or an agreed portion thereof is complete, CITY will make a final inspection with the CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the WORK is incomplete, *defective*, or not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### 14.9. FINAL APPLICATION FOR PAYMENT:

14.9.1. After CONTRACTOR has completed in writing all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 14.6) and other documents--all as required by the Contract Documents, and after CITY has indicated in writing that the WORK is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the WORK.

#### 14.10. FINAL PAYMENT AND ACCEPTANCE:

14.10.1. Upon receipt of written notice from the CONTRACTOR that the WORK has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment, Final Receipt and Release of Lien and accompanying documentation, the CITY shall promptly examine the WORK and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed WORK by a properly qualified and experienced Professional CITY, shall satisfy himself that the CONTRACTOR'S statement appears to be correct and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled. He shall then inform the CITY in writing that he has examined the WORK and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the WORK for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY does not in any way relieve the CONTRACTOR from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CITY liable for any faulty WORK done

or defective materials or equipment used by the CONTRACTOR.

14.10.2. The CITY will then make a final estimate of the value of all WORK done and will deduct all previous payments which have been made. The CITY will report such estimate to the CITY together with the recommendation as to the acceptance of the WORK or his findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CITY'S estimate and recommendation, the CITY will make final payment to the CONTRACTOR of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including, but not limited to, Liquidated Damages, as applicable. Title passes and warranty begins at final acceptance.

14.10.3. All prior estimates are subject to correction in the final estimate. Thirty days after approval by the CITY of the application for final payment, the amount recommended by CITY shall become due and will be paid to CONTRACTOR.

#### 14.11. WAIVER OF CLAIMS:

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

14.11.1.1. 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 14.8, 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

14.11.1.2 a waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and still unsettled.

### ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

#### CITY MAY SUSPEND WORK:

15.1.1. The CITY may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CITY 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 increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

#### 15.2. CITY MAY TERMINATE

15.2.1. Upon the occurrence of any one or more of the following events:

15.2.1.1. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to the bankruptcy or

insolvency;

15.2.1.2. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.1.3. If CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.1.4. If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

15.2.1.5. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.1.6. If CONTRACTOR fails to perform the WORK in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.6 as revised from time to time);

15.2.1.7. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.1.8. If CONTRACTOR disregards the authority of CITY; or

15.2.1.9. If CONTRACTOR otherwise violates any provisions of the Contract Documents;

the CITY may, after giving CONTRACTOR and Surety seven days written notice of any default and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the WORK and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere, and finish the WORK as the CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the Contract Price exceeds the expense of completing the WORK including compensation for additional managerial and administrative services, plus the CITY'S direct, indirect and consequential losses, damages and costs because of the CONTRACTOR'S default (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) such excess will be paid to CONTRACTOR. If such expenses and costs plus the CITY'S losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly on demand. Such costs incurred by the CITY will be approved as to reasonableness by CITY and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the CITY shall not be required to obtain the lowest price for the WORK performed.

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

15.2.3. The CITY may terminate this Contract without cause by giving seven (7) days prior written notice to the CONTRACTOR, and in such event, the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination, plus reasonable termination expenses. The CITY also will reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of the WORK and paid directly by the CONTRACTOR, not including overhead, general expenses or profit. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to SUB-CONTRACTORS or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY shall reimburse the CONTRACTOR for major materials or equipment purchased before termination if the CONTRACTOR can show proof of said purchases prior to notice of termination) inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same.

#### 15.3. CONTRACTOR MAY STOP WORK OR TERMINATE:

15.3.1. If, through no act or fault of CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or CITY fails to act on any Application for Payment within thirty (30) days after it is submitted, or the CITY fails for sixty (60) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to the CITY, terminate the Contract and the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination plus reasonable termination expenses. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same. In addition and in lieu of terminating the Contract, if CITY has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven days written notice to the CITY stop the WORK until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.13 to

carry on the WORK in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

#### ARTICLE 16 – DISPUTE RESOLUTION

16.1. All claims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.11) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to CITY initially for the decision in accordance with paragraph 9.9 will be made until the earlier of (a) the date on which CITY has rendered a written decision or (b) the thirty-first (31<sup>st</sup>) day after the parties have presented their evidence to CITY if a written decision has not been rendered by CITY before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty (30) days after the date on which CITY has rendered a written decision in respect thereof in accordance with paragraph 9.9; and the failure to demand arbitration within said thirty (30) days' period will result in CITY's decision being final and binding upon CITY and CONTRACTOR. If CITY renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of CITY rendered in accordance with paragraph 9.8 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.8.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration, and a copy will be sent to CITY for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has risen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph, 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including CITY and the officers, directors, agents, employees or any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceeding, and

16.4.3. the written consent of the other person or entity sought to be included and of CITY and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between CITY and CONTRACTOR involves the Work of a SUB-CONTRACTOR, either CITY or CONTRACTOR may join such SUB-CONTRACTOR as a party to the arbitration between CITY and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.5.5 a specific provision whereby the SUB-CONTRACTOR consents to being joined in arbitration between CITY and CONTRACTOR involving the Work of such SUB-CONTRACTOR. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of SUB-CONTRACTOR and against CITY that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. CITY and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in questions between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

#### ARTICLE 17 -- MISCELLANEOUS

##### 17.1. GIVING NOTICE:

17.1.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### 17.2. COMPUTATION OF TIME:

17.2.1. 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.

### 17.3. NOTICE OF CLAIM:

17.3.1. Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### 17.4. CUMULATIVE REMEDIES:

17.4.1. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to the CITY thereunder, are in addition to , and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy to which they apply. All representations warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract.

### 17.4. ACCIDENT AND PREVENTION:

17.4.1. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of and in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

### 17.5. NATIONAL EMERGENCY

17.5.1. In the event the CITY is prevented from proceeding with any or all of this WORK as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, CITY, Town, or County regulations, orders, restrictions, or due to circumstances beyond the CITY'S control, then the CITY

herein reserves the right to either suspend the WORK to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the WORK herein has already been commenced, then the CITY herein shall be liable for only the cancellation or suspension without the addition of prospective profits or other changes whatsoever.

### 17.6. FLORIDA PRODUCTS AND LABOR:

17.6.1. The CONTRACTOR'S attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

### 17.7. EMPLOYEES:

17.7.1. All labor described in these specifications or indicated on the Drawings and the WORK specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.7.2. Any person employed on the WORK who fails, refuses or neglects to obey the instructions of the CONTRACTOR in anything relating to this WORK or who appears to the CITY to be disorderly, intoxicated, insubordinate, or incompetent, shall upon the order of the CITY, be at once discharged and not again employed in any part of the WORK. Any interference with, or abuse or threatening conduct toward the CITY or their inspectors by the CONTRACTOR or his employees or agents, shall be authority for the CITY to annul the Contract and re-let the WORK. No intoxicating substance shall be allowed on the WORK site.

### 17.8. NON-DISCRIMINATION:

17.8.1. The CONTRACTOR shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The CONTRACTOR will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all SUB-CONTRACTORS and it is the responsibility of the SUB-CONTRACTOR compliance.

### 17.9. DRUG-FREE WORKPLACE:

17.9.1. The CITY requires all prospective CONTRACTORS to maintain a drug free work place and have their Drug Free Workplace policy posted in their offices and available for inspection by the CITY.

### 17.10. PUBLIC ENTITY CRIMES:

17.10.1. Pursuant to F.S. 287.133, as amended: a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not

submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a CONTRACTOR, supplier, SUB-CONTRACTOR, or CITY under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO or higher for a period of 36 months from the date of being placed on the convicted vendor list.

17.11. ASSIGNMENT:

17.11.1. This Contract, nor any monies due hereunder, or any part thereof, shall not be assigned, or transferred, by CONTRACTOR, nor shall the CITY be liable to any assignee or transferee, without the written consent of the CITY, to the assignment, or transfer. The CITY shall not release or discharge CONTRACTOR from any obligation hereunder. The CITY shall not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

17.12. VENUE:

17.12.1. This Contract shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Contract is fixed in Broward County, Florida.

17.13. ASBESTOS:

17.13.1. If the CONTRACTOR during the course of the WORK observes the existence of asbestos in any structure, building or facility, the CONTRACTOR shall promptly notify the CITY. The CITY shall consult with the CITY regarding removal or encapsulation of the asbestos material and the CONTRACTOR shall not perform any WORK pertinent to the asbestos material prior to receipt of special instructions from the CITY.

17.14. RIGHT TO AUDIT:

17.14.1. If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR'S books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR'S plants, or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all SUB-CONTRACTORS. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR'S normal business hours at the office of the CONTRACTOR. The accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the CITY.

(END)



## LAUDERDALE LAKES CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT is made and entered into as of this 11th day of April, 2017, between the CITY OF LAUDERDALE LAKES FLORIDA, a Florida municipal corporation, (CITY), and E and F Enterprises, Inc. dba Creative Contracting Group (CONTRACTOR), (Parties).

WHEREAS, the CITY desires to retain a CONTRACTOR for the Project as expressed in its Request for Proposal No. **RFP#17 – 6365-06R** for NW 41<sup>st</sup> Street Entryway Improvement Project, which closed on February 22, 2017; and

WHEREAS, the CONTRACTOR has expressed its willingness and capability to perform the necessary work to accomplish the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the Parties agree as follows:

### **ARTICLE 1 - DEFINITIONS**

Wherever used in this Agreement or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural forms:

- 1.1 **Agreement** - The written agreement between CITY and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to or incorporated in the Agreement. Also referred to as "Contract".
- 1.2 **Change Order** - A document which is signed by the CITY and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Term or Compensation, issued on or after the Effective Date of the Agreement.
- 1.3 **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.4 **Contractor** – The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Agreement.
- 1.5 **Contract Documents** - The Contract Documents shall consist of the Drawings, Plans and Specifications, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the effective date of the Agreement.
- 1.6 **Drawings** - The drawings which show the character and scope of the Work to be performed and which are referred to in the Contract Documents.
- 1.7 **Engineer** - The CITY'S Engineer of the City of Lauderdale Lakes, Florida, or the authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.
- 1.8 **Notice to Proceed** - A written notice given by CITY to CONTRACTOR fixing the date on which the Work shall commence and the CONTRACTOR begins to perform its obligations under the Contract Documents.
- 1.9 **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship regarding the project.
- 1.10 **Worksite** – Location(s) inclusive of each site described in the plans and/or specifications.

**ARTICLE 2 - CONTRACT DOCUMENTS****2.1 Enumeration of Contract Documents:**

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR and consist of the following:

- (1) This Agreement.
- (2) Construction performance bond.
- (3) Construction payment bond.
- (4) Insurance certificate(s) per RFP requirements.
- (5) Notice of Award and Notice to Proceed.
- (6) Request for Proposal and the Specifications prepared by the CITY (Exhibit 1)
- (7) CONTRACTOR's Response to the CITY's Request for Proposal No. RFP#17-6365-06R dated February 22, 2017 (Exhibit 2).
- (8) Schedule of Completion.
- (9) Standard General Conditions of the Construction contract for the City of Lauderdale Lakes Florida (Exhibit 3).

Any amendments executed by the CITY and the CONTRACTOR shall become part of this Agreement. Documents not included in this Article do not, and shall not, form any part of this Agreement. In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Commission (or designee).
- b. This Agreement dated April 11, 2017.
- c. Exhibit 1. Request for Proposal 17-6365-06R
- d. Exhibit 2. Proposal submitted February 22, 2017.
- e. Exhibit 3. Standard General Conditions of the Construction Contract.

**2.2 Conflict, Error or Discrepancy:**

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to the CITY, in writing at once and, before proceeding with the Work affected, shall obtain a written interpretation or clarification from CITY.

**2.3 Representation of CONTRACTOR:**

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the Work site and is familiar with the local conditions under which the Work is to be performed.

**ARTICLE 3 - SCOPE OF WORK****3.1** The CONTRACTOR shall perform all of the work required, implied and reasonably inferable from this Agreement including, but not limited to, the following:

**3.1.1** Construction of the Project in accordance with the approved plans and specifications;

**3.1.2** The furnishing of any required surety bonds and insurance;

**3.1.3** The provision of furnishing, and prompt payment for, labor, supervision, services, materials, supplies, equipment, fixtures, facilities, communication and security systems, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities and all necessary tree permit, building permits and other permits required for the construction of the Project;

**3.1.4** The preparation and submission to the CITY of detailed and comprehensive as-built drawings signed and sealed by a registered surveyor licensed by the State of Florida depicting all as-built construction. All as-built drawings shall be submitted to the CITY upon final completion of the Project

and receipt by the CITY shall be a condition precedent to final payment to the CONTRACTOR.

- 3.2** In order to induce the CITY to execute this Contract, the CONTRACTOR makes the following express representations to the CITY:
- 3.2.1** The CONTRACTOR is fully qualified to act as the CONTRACTOR for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the CONTRACTOR for the Project;
- 3.2.2** The CONTRACTOR has become familiar with the Project site(s) and the local conditions under which the Project is to be constructed and operated; and
- 3.2.3** The CONTRACTOR has received, reviewed and carefully examined all of the documents which make up this Agreement, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction.
- 3.3** CONTRACTOR (or its agent or subcontractor) shall provide a minimum of inconvenience to the public and to local business activities.
- 3.4** CONTRACTOR shall ensure that the public roadway and any improvements or appurtenant to the Work site remain open to the public and is fully operational whenever and wherever possible, and that sufficient signage as requested by the CITY is provided to direct the public or other invitees during performance of Work.
- 3.5** CONTRACTOR shall maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient lighting for the prevention of accidents. The CONTRACTOR shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.
- 3.6** Any material or waste generated by CONTRACTOR or its employees, agents and subcontractors shall be removed and disposed of, as necessary, by the CONTRACTOR, at the CONTRACTOR's expense, to the satisfaction of the CITY.
- 3.7** The CONTRACTOR shall also restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the CONTRACTOR during the performance of Work, and shall leave the work site and vicinity unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.
- 3.8** The CONTRACTOR shall notify the CITY, in writing, of any pre-existing damage to surrounding roadways, swales and improvements prior to commencing any Work. Failure to notify the CITY of any damage shall result in the CONTRACTOR's duty to repair the damage at no additional expense.
- 3.9** Storage of the materials shall be at a location approved by the CITY. CONTRACTOR shall obtain a no fee permit from the CITY, and shall pay the required county surcharges and fees. The CONTRACTOR shall be responsible for the replacement of any existing materials or structures damaged by the CONTRACTOR during the construction process, and any damage shall be restored to the acceptance of the CITY.
- 3.10** The CONTRACTOR shall exercise due caution throughout this Work to minimize the possibility of damage to utilities resulting from its activities. The CONTRACTOR shall verify the location of all overhead and underground utilities prior to any excavation, including notifying the Underground Notification Center and the CITY's Public Works Department and Development Services Department of any proposed excavation locations.
- 3.11** Whenever it is necessary to temporarily interrupt any local or surrounding activities, the CONTRACTOR shall notify the Owner or tenant or their designee prior to the interruption and again immediately before the service is resumed. Before disconnecting any underground or overhead utilities, the CONTRACTOR shall

shall make similar arrangements for their disconnection with the Owner, tenant or a designee. The CONTRACTOR shall be responsible for any damage caused by CONTRACTOR to such utilities, and shall restore them to service promptly as soon as the Work interruption has ended.

- 3.12** The CITY may, periodically, inspect the real property for the purpose of assuring compliance with this Agreement.
- 3.13** In the event the Owner or CONTRACTOR prevents the CITY from inspecting the Project for purposes of assuring compliance with this Agreement or with the contract documents, the CITY shall be entitled to immediately terminate this Agreement, retain all funds, seek reimbursement for any funds distributed for the Project and obtain other relief as permitted by the Agreement. Further, action by the Owner or CONTRACTOR to prevent or deny the CITY's inspection of the project will constitute a default of this Agreement, and the CITY shall be entitled to exercise any and all remedies at law or equity.
- 3.14** The CONTRACTOR shall at all times during the performance of the Work keep the work site free and clear of all rubbish and debris to the CITY's satisfaction, and within the applicable time frames specified under the general conditions in Exhibit "1". All sand, grit, solids and other material, accumulated rubbish or surplus materials shall be removed at the end of each work day.
- 3.15** After the CITY gives not less than 24-hour notice to the CONTRACTOR to clear the site of rubbish, debris and other work site materials or not less than 72-hour notice to restore or replace distributed, displaced or damaged property, and the CONTRACTOR fails to comply, the CITY may employ labor or equipment as it deems necessary to clear the site, impose the cost of the work, together with the cost of supervision, against the CONTRACTOR and deduct the cost from the compensation due to the CONTRACTOR.

#### **ARTICLE 4 - TERM**

The Work to be performed under this Agreement shall commence upon the date specified in the Notice to Proceed and, subject to authorized adjustments, shall be completed no later than **One (1) year** after the execution of this Agreement. CONTRACTOR agrees that all Work under this Agreement shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed term. Failure to achieve timely, substantial and/or final completion shall be regarded as a material breach of this Agreement, and shall be subject to the appropriate remedies including but not limited to liability for liquidated damages in accordance with Article 10.

#### **ARTICLE 5 - COMPENSATION**

CITY shall pay CONTRACTOR for the performance of all work, in accordance with Article 13, subject to additions and deductions by Change Order as provided in this Agreement, up to Thirty-four Thousand Dollars (\$34,000) as full compensation for this Project only. Compensation for future performance and work must be approved by City Commission.

#### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

##### **6.1 Liability for Contracted Work:**

As an inducement for CITY to enter into this Agreement, CONTRACTOR has represented an expertise in professional construction of public construction projects by qualified and licensed general construction contractors. In reliance upon those representations, CITY hired CONTRACTOR to construct the Project. CONTRACTOR shall be liable for any defective or negligent work, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty.

##### **6.2 Shop Drawings and Samples:**

**6.2.1** CONTRACTOR shall submit to CITY for review and approval five (5) copies of all Shop Drawings

for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles seven (7) calendar days before the scheduled commencement of the construction work. The purpose of the Shop Drawing is to show the suitability, efficiency, technique of manufacture,

installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

**6.2.2** CONTRACTOR shall also submit to CITY, for review and approval, all samples required by the Contract Documents which shall clearly identify material, supplier, pertinent data such as catalog numbers and the intended use.

**6.2.3** Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

**6.2.4** At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall specifically note each variation on each Shop Drawing submitted for review and approval. Failure by the CITY to notice or identify CONTRACTOR's failure to make the notation shall not relieve CONTRACTOR from the responsibility to comply with the Contract Documents.

**6.2.5** Approval of the Shop Drawings by CITY shall be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the Work, nor for the furnishing of material or work required by the Agreement and not indicated on the drawings. No work called for by any Shop Drawing shall be done until the drawings have been approved by CITY.

### **6.3 Supervision:**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention and applying CONTRACTOR's best skill, attention and expertise. CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall ensure that the finished Work complies accurately with the Contract Documents.

### **6.4 On Site Management:**

CONTRACTOR shall keep on the Work site at all times during its progress a competent on-site manager and any necessary personnel who shall not be replaced without written notice to CITY unless the personnel proves to be unsatisfactory to CONTRACTOR or to the CITY. The on-site Manager shall be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the on-site Manager shall be as binding as if given to CONTRACTOR.

### **6.5 Labor:**

**6.5.1** Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida. Suppliers shall be selected and paid by the CONTRACTOR; the CITY reserves the right to approve all suppliers and materials.

**6.5.2** CONTRACTOR shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the Work site. Except in connection with the safety or protection of persons, the Work, or property adjacent to the site, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during the hours of 7:30 a.m. and 5:00 p.m. CONTRACTOR will

not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without CITY's written consent.

**6.6 Materials:**

**6.6.1** Unless otherwise specified in this Agreement, CONTRACTOR shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

**6.6.2** CONTRACTOR warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents.

**6.7 Subcontractors, Suppliers and Others:**

**6.7.1** Prior to the execution of this Agreement and in any event prior to the commencement of any work, CONTRACTOR shall furnish, in writing to the CITY, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. CITY shall advise CONTRACTOR, in writing, of any proposed person or entity to which CITY has an objection. CONTRACTOR shall not contract with a proposed person or entity to whom CITY has made an objection. If CITY objects to a person or entity proposed by CONTRACTOR, CONTRACTOR shall propose another to whom CITY has no objection. CONTRACTOR shall not change a subcontractor, person or entity previously selected if CITY makes objection to the change.

**6.7.2** CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the CONTRACTOR, its employees, subcontractors, suppliers, other persons directly or indirectly employed by its subcontractors or suppliers, persons for whose acts any of them may be liable and any other persons or organizations performing or furnishing supplies under a direct or indirect Contract with CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

**6.7.3** All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of the Contract Documents for the benefit of CITY.

**6.8 Patent Fees and Royalties:**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use of the license 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.

**6.9 Permits:**

CONTRACTOR shall obtain and pay for all permits and licenses and all related costs for inspection and administration. There will be no cost for permits issued by the CITY.

**6.10 Compliance with Laws and Regulations:**

CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. CITY shall not be responsible for monitoring CONTRACTOR's compliance with any laws and regulations. CONTRACTOR shall promptly notify CITY if the Contract Documents as observed by CONTRACTOR are at variance with applicable laws and regulations.

**6.11 Risk of Loss; Ownership:**

The risk of loss, injury or destruction shall be on CONTRACTOR until acceptance of the Work by CITY. Title to the Work shall pass to CITY upon acceptance of the Work by CITY.

**6.12 Taxes:**

CONTRACTOR shall pay all sales, consumer, use and other similar taxes. CONTRACTOR is responsible for reviewing the pertinent state laws and regulations involving such taxes and complying with all requirements.

**6.13 Use of Premises:**

**6.13.1** CONTRACTOR shall confine equipment, the storage of materials and equipment and the operations of workers to the work site and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials. CONTRACTOR shall assume full responsibility for any damage to any land or areas or to the owner or occupant of any contiguous land or areas, resulting from the performance of the Work. Should any owner or occupant because of the performance of the Work make any claim against CITY, CONTRACTOR shall promptly attempt to settle with the claimant by agreement or otherwise resolve the claim.

**6.13.2** During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents including fencing, parking lots and grounds.

**6.13.3** CONTRACTOR shall not permit any part of any structure or land to be treated in any manner that will endanger the structure or any land, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or processes that will endanger it.

**6.14 Access to Work:**

CONTRACTOR shall provide CITY, its consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for access and shall advise these authorized persons of CONTRACTOR's site safety procedures and programs.

**6.15 Safety and Protection:**

**6.15.1** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected. This paragraph applies to all the Work, materials and equipment, whether in storage on or off the site; and other property at the site or adjacent to the site.

**6.15.2** CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

## 6.16 Environmental

The CONTRACTOR has fully inspected the worksite and agrees to accept the worksite in an "as is" physical condition, without representation or warranty by the CITY of any kind, including, without limitation, any and all existing environmental claims or obligations that may arise from the presence of any "contamination" on, in or about the worksite. Further CONTRACTOR and all entities claiming by, through or under CONTRACTOR, releases and discharges the CITY from any claim, demand, or cause of action arising out of or relating to the CONTRACTOR's use, handling, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of any hazardous substances including asbestos on, under, from or about the worksite. The CONTRACTOR shall have no liability for any pre-existing claims or "contamination" on the worksite.

CONTRACTOR shall not use, handle, store, discharge, treat, remove, transport or dispose of Hazardous Substances including asbestos at, in, upon, under, to or from the worksite until receipt of instructions from the CITY. At such time, a CITY approved change order, which shall not include any profit, shall authorize the CONTRACTOR to perform such services.

CONTRACTOR shall immediately deliver to CITY complete copies of all notices, demands or other communications received by CONTRACTOR from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity on the worksite which is or could be dangerous to life, limb, property or the environment.

CONTRACTOR indemnifies and agrees to protect, defend, and hold harmless, the CITY and its respective employees, agents, successors, and assigns from and against any and all claims, demands, losses, damages, costs, expenses, including but not limited to mitigation, restoration, and natural restoration expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, in law or in equity, remedial action requirements and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part, the CONTRACTOR's (or any of its employees, agents, invitees, contractors or sub-contractors) use, handling, storage, release, threatened release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal and/or presence of a Hazardous Substance on, under, from, to or about the worksite or any other activity carried on or undertaken on or off the worksite by the CONTRACTOR or its employees, agents or subcontractors, in connection with the use, handling, storage, release, threatened release, discharge, treatment, mitigation, natural resource restoration, removal, transportation, decontamination, cleanup, disposal and/or presence or any Hazardous Substance located, transported, or present on, undue, from, to, or about the worksite. This indemnity is intended to be operable under 42 U.S.C. section 9607, as amended, and any successor section.

The scope of the indemnity obligations includes, but is not limited to: (a) all consequential damages; (b) the cost of any required or necessary repair, cleanup, or detoxification of the applicable real estate and the preparation and implementation of any closure, remedial or other required plan, including without limitation; (i) the costs of removal or remedial action incurred by the United States government or the State of Florida or response costs incurred by any other person, or damages from injury to, destruction of, or loss of, natural resources, including the cost of assessing such injury, destruction, or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the clean-up costs, fines, damages, or penalties incurred pursuant to any applicable provisions of Florida law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, response costs, or penalties which arise from the provisions of any other statute, law, regulation, code, ordinance, or legal requirement, state or federal; and (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including damages assessed for the maintenance of a public private nuisance, response costs, or for the carrying on of an abnormally dangerous activity.

The indemnification obligations contained herein are supported by separate consideration of \$10.00 which the proposer acknowledges as adequate.



**6.17 Indemnification:**

**6.17.1** In addition to, CONTRACTOR shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential including but not limited to fees and charges of engineers, architects, attorneys, consultants and other professionals and court costs arising out of or in consequence of the performance of this Agreement at all trial and appellate levels.

Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) the negligent or defective design of the project and Work of this Agreement; (b) any act, omission or default of the CONTRACTOR, its Subcontractors, agents, servants or employees; (c) any and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (f) the use of any improper materials; (g) any construction defect including both patent and latent defects; (h) failure to timely complete the work; (i) the violation of any federal, state, county or city laws, ordinances or regulations by CONTRACTOR, its subcontractors, agents, servants, independent contractors or employees; (j) the breach or alleged breach by CONTRACTOR of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

**6.17.2** CONTRACTOR agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

**6.17.3** CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs at trial and appellate levels.

**6.17.4** If any Subcontractor, supplier, laborer, or materialmen of CONTRACTOR or any other person directly or indirectly acting for or through CONTRACTOR files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the CITY to CONTRACTOR or from CONTRACTOR to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Work or any change order, CONTRACTOR agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within five (5) calendar days of the filing of or from receipt of written notice from the CITY.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by CONTRACTOR, all monies due to CONTRACTOR, or that become due to CONTRACTOR before the lien or claim is satisfied, removed or otherwise discharged, shall be held by CITY as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining the discharge. If CONTRACTOR shall fail to do so, CITY shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means CITY chooses at the entire and sole cost and expense of CONTRACTOR which costs and expenses shall, without limitation, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments, and which shall be deducted from any amount owing to CONTRACTOR. In the event the amount due CONTRACTOR is less than the amount required to satisfy CONTRACTOR'S obligation under this, or any other section of the Agreement, the CONTRACTOR shall be liable for the deficiency due the CITY.

**6.18 Survival of Obligations:**

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

**6.19 Correction or Removal of Defective Work:**

If required by CITY, CONTRACTOR shall promptly correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs for the correction or removal of defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals).

If the work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion, 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 or any other party.

**6.20 Force Majeure:**

No party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three (3) days or the acts or omissions of subcontractors, third-party contractors, materialmen, suppliers, or their subcontractors, shall not be considered acts of force majeure.

No party shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable by force majeure to carry out its obligation, but the obligation of the party or parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the unexpected or uncontrollable event.

The CONTRACTOR further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within two (2) hours after such an occurrence.

**ARTICLE 7 - CITY'S RESPONSIBILITIES**

**7.1** CITY shall furnish data required of CITY under the Contract Documents.

**7.2** CITY shall make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

**7.3 Technical Clarifications and Interpretations:**

**7.3.1** CITY shall issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should CONTRACTOR fail to request interpretation of questionable items in the Contract Documents, CITY shall not entertain any excuse for failure to execute the work in a satisfactory manner.

**7.3.2** CITY shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other party but in no event later than five (5) days after the occurrence of the event, and written supporting data will be submitted to the other party within five (5) calendar days after such occurrence. All written decisions of the CITY on any claim or dispute will be final and binding.

**ARTICLE 8 - BONDS AND INSURANCE****8.1 Payment and Performance Bonds:**

**8.1.1** Prior to commencing work, the CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond, in a form approved by the CITY and as provided by state law, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+.

**8.1.2** The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of this Agreement. The performance bond shall be conditioned that the CONTRACTOR performs the contract in the time and manner prescribed in the Agreement. The payment bond shall be conditioned that the CONTRACTOR promptly makes payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the performance of the Work provided for in this Agreement and any change orders and shall provide that the surety shall pay the amount not exceeding the sum provided in the bonds, together with interest at the maximum rate allowed by law and that the CONTRACTOR and surety shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the performance of this Agreement which the CITY may be required to make by law.

**8.1.3** Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, the CONTRACTOR shall record the payment and performance bonds in the public records of Broward County, at its own expense.

**8.2 Bonds, Reduction After Final Payment:**

The performance and payment bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of these bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Agreed Compensation, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Agreement, upon notification by the CITY.

**8.3 Duty to Substitute Surety:**

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within three (3) days substitute another bond and surety, both of which must be acceptable to CITY. The CITY shall have the right to disapprove any CONTRACTOR or subcontractor selected by any surety.

**8.4 Insurance:**

**8.4.1** At the time of execution of the Agreement, the CONTRACTOR shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the CITY is an additional, named, first party insured with respect to the required coverage and the operations of the CONTRACTOR under the Agreement. The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that the insurance is as required by Article 8 and its subparts of this Agreement. CONTRACTOR shall not commence work under this Agreement until after CONTRACTOR has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by CITY. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, CONTRACTOR shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. CONTRACTOR shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

**8.4.2** Insurance Companies selected by CONTRACTOR must be acceptable to the CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) Calendar days written notice has been given to CITY by certified mail.

**8.4.3** The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of this Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:

- (a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
- (b) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CONTRACTOR in the performance of the Work with the following minimum limits of liability:  
\$1,000,000.00 - Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability Policy without restrictive endorsements, as filed with the Florida Department of Insurance and shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- 1. Premises and Operations;
- 2. Independent Contractors;
- 3. Product and Completed Operations Liability;
- 4. Broad Form Property Damage;
- 5. Broad Form Contractual Coverage applicable to this Agreement and specifically confirming the indemnification and hold harmless provision in this Agreement; and
- 6. Personal Injury coverage with employment contractual exclusions removed and deleted.

- (c) Builder's Risk Insurance in an amount not less than the replacement cost for the construction of the Work. Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value with a deductible of not more than Five Thousand Dollars (\$5,000.00) per claim.

**8.4.4** CONTRACTOR shall maintain the Products and Completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish CITY with evidence of the continued insurance coverage at the time of final payment.

**8.4.5** The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

**8.4.6** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

**8.4.7** The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they have no recourse against CITY for payment or assessments in any form on any policy of insurance.

**8.4.8** The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence to the Insurer within fifteen (15) working days of CITY's actual notice of such an event.

**8.4.9** The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance described and the CITY's approved.

- 8.4.10** The CONTRACTOR agrees to perform the work under the Agreement as an independent CONTRACTOR, and not as a subcontractor, agent or employee of CITY.
- 8.4.11** CONTRACTOR shall require each of its subcontractors to maintain the insurance required for each category, and CONTRACTOR shall provide verification to CITY upon its request.
- 8.4.12** Violation of the terms of this paragraph and its subparts shall constitute a material breach of the Agreement, and CITY, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONTRACTOR shall cease and terminate.
- 8.4.13** CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others performing the Work. CITY specifically reserves all statutory and common law rights and immunities. Nothing contained in this Agreement is intended to limit or waive any rights or immunities including, but not limited to, the procedural and substantive provisions of Chapter 768, Florida Statutes.

## **ARTICLE 9 - WARRANTIES: TESTS AND INSPECTIONS: CORRECTION OF DEFECTIVE WORK**

### **9.1 Warranty of Title:**

The CONTRACTOR warrants to the CITY that it possesses good, clear and marketable title to all equipment and materials provided and that there are no pending liens, claims or encumbrances against the equipment and materials.

### **9.2 Warranty of Specifications:**

The CONTRACTOR warrants that all equipment, materials and workmanship furnished, whether furnished by the CONTRACTOR, its subcontractors or suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

### **9.3 Warranty of Merchantability:**

CONTRACTOR warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended.

### **9.4 Correction Period:**

CONTRACTOR warrants all material and workmanship for a minimum of two (2) year(s) from date of acceptance by the CITY. If, within two (2) year(s) after the date of final completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by CITY, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY's written instructions, either correct such defective work, or, if it has been rejected by CITY, remove it from the site and replace it with Work that is not defective and that is satisfactorily correct, and remove and replace any damage to other Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR.

**9.4.1** Where defective Work (and damage to other work) has been corrected, removed or replaced under this Article, the correction period with respect to such Work will be extended for an additional period of two (2) year(s) after such correction, removal or replacement has been satisfactorily completed.

**9.4.2** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of two (2) year(s) as described in above paragraph relates only to the specific obligation

of the CONTRACTOR to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to the CONTRACTOR's obligation other than specifically to correct the Work.

- 9.5** CONTRACTOR warrants to the CITY that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under this Agreement.
- 9.6** CONTRACTOR warrants to the CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.
- 9.7** CONTRACTOR warrants to the CITY that the performance of the work provided for in the Contract Documents will not result in the breach of any term or provision, or constitute a default under any indenture, mortgage, contract, or agreement to which the CONTRACTOR is a party.
- 9.8** CONTRACTOR warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the Work of the Agreement.
- 9.9** No warranty, either express or implied, may be modified, excluded or disclaimed in any way by CONTRACTOR. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by CITY.

**9.10 Tests and Inspections:**

- 9.10.1** CONTRACTOR shall give CITY timely notice of readiness of the work for all required inspections, tests or approvals. CONTRACTOR shall assume full responsibility, pay all costs and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part unless otherwise specified.
- 9.10.2** Neither CITY nor other inspectors shall have authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the Agreement by failure to inspect the materials and work with reasonable promptness.
- 9.10.3** The payment of any compensation, the giving of any gratuity or the granting of any favor by the CONTRACTOR to any inspectors, directly or indirectly, is strictly prohibited and punishable to the full extent of the law, and any such action on the part of the CONTRACTOR will constitute a termination of this Agreement.

**9.11 Warranty Information**

The CONTRACTOR shall deliver to the CITY and the CITY shall execute all applicable product and equipment registration, manuals, instructions, keys, accessories and warranty documents in accordance with manufacturers' policies and procedures. CONTRACTOR shall facilitate any necessary warranty claims free of charge.

**ARTICLE 10 - LIQUIDATED DAMAGES**

If the awarded Proposer fails to complete the project by the completion date stated on the Proposal Form, it is understood that five-hundred dollars (\$500.00) per calendar day will be deducted as liquidated damages, for each day beyond the substantial completion time and two-hundred fifty dollars (\$250.00) per calendar day will be deducted as liquidated damages, for each day beyond the final completion time unless time extension is approved by the City Manager, it being agreed that the damage suffered by the CITY for such delay(s) cannot be specifically ascertained.

**ARTICLE 11 - CHANGES IN THE WORK**

- 11.1** One or more changes to the work within the general scope of this Agreement may be ordered by Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict

accordance with the Contract Documents and the terms and conditions described in this Article.

- 11.2** A Change Order shall mean a written order to the CONTRACTOR executed by the parties after execution of this Agreement, directing a change in the work and may include a change in the agreed compensation in accordance with Article 12 or the time for the CONTRACTOR's performance.
- 11.3** The execution of a Change Order by the CONTRACTOR shall constitute conclusive evidence of the CONTRACTOR's agreement to the ordered changes in the work and the CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order.
- 11.4** The CONTRACTOR shall notify and obtain the consent and approval of the CONTRACTOR's surety with reference to all Change Orders if such notice, consent or approval is required by the CONTRACTOR's surety or by law. The CONTRACTOR's execution of the Change Order shall constitute the CONTRACTOR's warranty to the CITY that the surety has been notified of, and consents to, such Change Order and the respective increase in the Performance bond amount commensurate with the Change Order(s). Furthermore, upon the CONTRACTOR's execution of the Change Order(s), the surety shall be conclusively deemed to have been notified of such Change Order by the CONTRACTOR in the increase in the required Performance Bond amount, and to have expressly consented.

## **ARTICLE 12 - CHANGE IN COMPENSATION**

Change orders approved by CITY shall be computed as follows:

### **12.1 Cost of the Work:**

The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, these costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 12.2:

- 12.1.1** 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. 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 limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay.
- 12.1.2** Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and required suppliers and field services. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.
- 12.1.3** Supplemental costs including the following:
- 12.1.3.1** 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.
- 12.1.3.2** Rentals of all construction equipment and machinery and the parts whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY, and the costs of transporting, loading, unloading, installing, dismantling and removal. The rental of any such equipment, machinery or parts shall cease when the use is no longer necessary for the Work.

- 12.1.3.3 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by laws or regulations.
- 12.1.3.4 Royalty payments and fees for permits or licenses.
- 12.1.3.5 The cost of utilities, fuel and sanitary facilities at the Work site.
- 12.1.3.6 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.
- 12.1.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

## 12.2 Not Included in the Cost of the Work:

The term "cost of the Work" shall not include any of the following.

- 12.2.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.1.1, all of which are to be considered administrative costs covered by CONTRACTOR's fee.
- 12.2.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 12.2.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 12.2.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain them.
- 12.2.5 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.
- 12.2.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.1.

## 12.3 Cost Breakdown Required:

Whenever the cost of any Work is to be determined pursuant to this Article, CONTRACTOR will submit in form acceptable to the CITY an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is to be based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the CONTRACTOR shall submit an estimate substantiated by a complete itemized breakdown as follows:

- (a) The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of cost.
- (b) Whenever a change involves the CONTRACTOR and one (1) or more subcontractors and the change is an increase in the agreed compensation, the overhead and profit percentage for the CONTRACTOR and each subcontractor shall be itemized separately.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION OF WORK**

### 13.1 Progress Payments:

- 13.1.1 CONTRACTOR may request payments for work completed during the project at intervals of not more than once a month. The CONTRACTOR's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the CONTRACTOR that the CONTRACTOR has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the CONTRACTOR for all work completed and materials furnished in the previous period or



properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR's previous applications for payment, and any other supporting documentation as may be required by the CITY, the ENGINEER or Contract Documents. Each requisition shall be submitted in triplicate to the CITY for approval. The CITY shall make payment to the CONTRACTOR within thirty (30) calendar days after approval of the CONTRACTOR's requisition for payment. Any rejection by the CITY of any specific item (s) shall result in CONTRACTOR being notified of the rejection within five (5) Business days of the rejection.

**13.1.2** Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until the work is totally completed and accepted by the CITY.

### **13.2 Inspection:**

CITY shall make an inspections as necessary and notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take the necessary measures to remedy any deficiencies within five (5) calendar days of the inspection.

### **13.3 Final Application for Payment:**

After CONTRACTOR has completed all corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, warranties, guarantees, bonds, certificates of inspection, marked up record documents and other documents required by the Contract Documents or requested by the CITY, CONTRACTOR may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) CONTRACTOR's receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for CONTRACTOR under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lien or who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR shall furnish a bond satisfactory to CITY to indemnify CITY against any lien, or the CITY may directly pay any subcontractor or supplier and deduct that amount due to CONTRACTOR.

In addition, CONTRACTOR shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by a professional surveyor licensed by the State of Florida. Final payment to CONTRACTOR shall not be made until the shop drawings have been reviewed and approved by the CITY. Prior to approval, if necessary, the drawings may be returned to CONTRACTOR for changes or modifications if in the opinion of CITY they do not represent correct or accurate "As-Built" drawings.

### **13.4 Final Payment and Acceptance:**

**13.4.1** If, on the basis of observing the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation, the CITY is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, CITY will give written notice to CONTRACTOR that the Work is acceptable. Otherwise, the Application will be returned to CONTRACTOR indicating in writing the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, the amount will become due and will be paid by CITY to CONTRACTOR.

**13.4.2** If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and the occurrence is confirmed, CITY shall, upon receipt of CONTRACTOR's final Application for Payment, 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, 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 the CITY 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 held by the CITY.

**13.5** Final payment, constituting the entire unpaid balance of the agreed compensation, shall be paid by the CITY to CONTRACTOR when the work has been completed, the Contract fully performed, and a final certificate for payment has been issued by the CITY ENGINEER. The making of final payment shall constitute a waiver of claims by CITY except those arising from:

- (1) Faulty or defective work and latent defects discovered after acceptance.
- (2) Failure of the work to comply with the requirements of the contract documents.
- (3) Terms of special warranties required by those contract documents.
- (4) Any of CONTRACTOR's continuing obligations under this Agreement.

The acceptance of final payment by CONTRACTOR or the subcontractor for materials and supplies shall constitute a waiver of claims except those previously made in writing and identified as unsettled at the time of final application for payment.

**13.6 CITY's Right to Withhold Payment:**

The CITY may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

**13.6.1** Defective work not remedied.

**13.6.2** Claims filed or evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

**13.6.3** Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.

**13.6.4** Damage to another contractor, subcontractor or supplier not remedied.

**13.6.5** Liability for liquidated damages has been incurred by the CONTRACTOR.

**13.6.6** Evidence that the Work cannot be completed for the unpaid balance of the agreed compensation.

**13.6.7** Evidence that the work will not be completed within the Agreement's term.

**13.6.8** Failure to carry out the Work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

**ARTICLE 14 - TERMINATION OF THE CONTRACT**

The CITY retains the right to terminate this Agreement without cause, with thirty (30) days prior written notice. Additionally, the CITY may also terminate this Agreement upon fifteen (15) days notice upon the occurrence of any one or more of the following events:

**14.1** If CONTRACTOR commences a voluntary case or a petition is filed against CONTRACTOR, under any chapter of the Bankruptcy Code, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

**14.2** If CONTRACTOR makes a general assignment for the benefit of creditors.

**14.3** If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors.

**14.4** If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time.

**14.5** If CONTRACTOR disregards any local, state or federal laws or regulations.

**14.6** If CONTRACTOR otherwise violates any provisions of this Agreement.

Further, CONTRACTOR may be excluded from the Work site and the CITY take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use them 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 this instance, CONTRACTOR shall not be entitled to receive any further compensation until the Work is finished.

**14.7** If CONTRACTOR commits a default due to its insolvency or bankruptcy, the following shall apply:

**14.7.1** Should this Agreement be entered into and fully executed by the parties, funds released and the CONTRACTOR (Debtor) files for bankruptcy, the following shall occur:

- a. In the event the Debtor files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the CITY. The Debtor further agrees that in the event of this default, the CITY shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The CITY shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Debtor agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Debtor acknowledges that such waiver is done knowingly and voluntarily
- b. Alternatively, in the event the CITY does not seek stay relief, or if stay relief is denied, the CITY shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361. The monthly adequate protection payments shall each be in an amount determined in accordance with the Note and Mortgage executed by the Debtor in favor of the CITY.
- c. In the event the Debtor files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Debtor agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and Mortgage. Additionally, the Debtor shall agree that the CITY is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense. Further, in the event the CONTRACTOR has less than five (5) years of payments remaining on the Note, the CONTRACTOR agrees that the treatment afforded to the claim of the CITY under any confirmed plan of reorganization shall provide that the remaining payments shall be satisfied in accordance with the Note, and that the remaining payments or claim shall not be extended or amortized over a longer period than the time remaining under the Note.

**14.7.2** Should this Agreement be entered into and fully executed by the parties, and the compensation has not been forwarded to Debtor, the following shall occur:

In the event the Debtor files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Debtor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Debtor acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The CONTRACTOR acknowledges that the Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c) (2), unless the CITY expressly consents in writing to the assumption. In the event the CITY consents to the assumption, the Debtor agrees to file a motion to assume the Agreement within ten (10) days after receipt of written consent from the CITY, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Debtor further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

**ARTICLE 15 – OWNERSHIP OF DOCUMENTS**

All documents, as-built plans and specifications resulting from the Project under this Agreement shall be deemed the sole property of the CITY, and the CITY shall have all rights incident to the sole ownership.

The CONTRACTOR shall agree to indemnify and hold harmless the CITY, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR.

**ARTICLE 16 - NOTICE**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the CONTRACTOR:

To the CITY:

City Manager  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

With a copy to:

City Engineer  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

**ARTICLE 17 - LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement, so that its liability never exceed the agreed sum of \$1,000.00. CONTRACTOR expresses its willingness to enter into this Agreement with CONTRACTOR'S recovery from the City for any action or claim arising from this Agreement to be limited to \$1,000.00.

Accordingly, and notwithstanding any other term or condition of this Agreement, CONTRACTOR agrees that the City shall not be liable to CONTRACTOR for damages in an amount in excess of \$1,000.00, for any action or claim of the CONTRACTOR or any third party arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

**ARTICLE 18 – MISCELLANEOUS**

- 18.1** The duties and obligations imposed by this Agreement and the rights and remedies available to the parties and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY 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. This Article will be as effective as if repeated specifically in the Contract Documents will survive final payment and termination or completion of the Agreement.
- 18.2** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests. The obligations undertaken by CONTRACTOR pursuant to the Agreement shall not be delegated or assigned to any other person or firm. Violation of the terms of this Article shall constitute a material breach of Agreement by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR which shall immediately cease and terminate.
- 18.3** CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties.
- 18.4** CITY reserves the right to audit the records of CONTRACTOR relating in anyway to the work to be performed pursuant to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract.
- 18.5** The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or later existing at law or in equity.
- 18.6** This Agreement shall be governed by the laws of the State of Florida, and venue for any action shall be in Broward County, Florida.
- 18.7** Should any part, term or provision of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portion or provision shall not be affected.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

As to the CONTRACTOR on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CONTRACTOR**

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

By: \_\_\_\_\_  
Company/Contractor

Name/Title: \_\_\_\_\_

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

**CITY OF LAUDERDALE LAKES**

ATTEST:

City Clerk

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

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

APPROVED AS TO FORM:

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

Dated: \_\_\_\_\_

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT  
FOR  
THE CITY OF LAUDERDALE LAKES, FLORIDA**



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## GENERAL CONDITIONS

### ARTICLE I - DEFINITIONS

Wherever used in the Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

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

1.2. **Application for Payment** - The form accepted by the CITY which is to be used by CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.3. **Bid** - The offer of the BIDDER submitted on the prescribed form setting forth the prices for the WORK.

1.4. **BIDDER/PROPOSER** - One who submits a Bid or Proposal directly to the CITY.

1.5. **Bid Documents** - Includes the Invitation to Bid/Request for Proposal, Instructions to Bidders, Bid Form, and proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.6. **Bonds** - Bid, Performance and Payment bonds and other instruments of security, per Florida Statutes.

1.7. **Change Order** - A document recommended by CITY, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion, or revision in the WORK or an adjustment in the Contract Price or Contract Time, issued on or after the Effective Date of the Contract.

1.8. **CITY** - The City of Lauderdale Lakes or its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the CITY.

1.9. **Contract** - The written agreement between CITY and CONTRACTOR covering the WORK to be performed.

1.10. **Contract Documents** - The Contract Documents establish the rights and obligations of the parties and include the Contract, 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 Tentative Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Technical Specifications, and the Drawings as the same are more specifically identified in the Contract, together with all Written Amendments, Change Orders, Field Orders, and CITY'S written interpretations and clarifications issued on or after the Effective Date of the Contract. 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.

1.11. **Contract Price** - The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Document.

1.12. **Contract Time** - The number or numbers of successive days or dates stated in the Contract Documents for the completion of the WORK.

1.13. **CONTRACTOR** - The individual, partnership, corporation, joint-venture, or other legal entity with whom the CITY has entered into the Contract.

1.14. **Day** - A calendar day of 24 hours measured from midnight to the next midnight.

1.15. **Defective WORK** - WORK that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or WORK that has been damaged prior to the CITY'S recommendation of final payment.

1.16. **Drawings** - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the WORK, which have been prepared or approved by CITY are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

1.17. **Effective Date of the Contract** - The date indicated in the Contract, but if no such date is indicated it means the date on which the Contract is signed by the last of the two parties to sign the Contract.

1.18. **Field Order** - A written order issued by CITY which orders minor changes in the WORK but which does not involve a change in the Contract Price or the Contract Times.

1.19. **General Requirements** - See Technical Specifications attached to the plan.

1.20. **Laws and Regulations; Laws or Regulations** - Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

1.21. **Notice to Proceed** - The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing the date of commencement of the Contract Time and the date the Contract WORK is to be completed.

1.22. **Notice of Tentative Award** - The official written notice by the CITY to the apparent successful BIDDER stating that upon compliance by the apparent successful BIDDER with the conditions precedent enumerated therein within the time specified, the CITY may enter into a Contract.

1.23. **Partial Utilization** - Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the WORK.

1.24. **Project** - The total construction of which the WORK to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.25. **Resident Project Representative (RPR)** - The authorized representative of the CITY who is assigned to the Site or any part thereof.

1.26. **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the WORK, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the CONTRACTOR to illustrate material or equipment for some portion of the WORK.

1.27. **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the WORK and certain administrative details applicable thereto.

1.28. **Sub-BIDDER** - One who submits a Bid to a BIDDER.

1.29. **SUB-CONTRACTOR** - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUB-CONTRACTOR for the performance of a part of the WORK at the Site.

1.30. **Substantial Completion** - The WORK (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY'S definitive certificate of Substantial Completion, all conditions and requirements accordance with the Contract Documents, so that the WORK (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any WORK refer to Substantial Completion thereof. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.

1.31. **SUCCESSFUL BIDDER** - The lowest, qualified, responsible and responsive BIDDER to whom CITY (on basis of CITY'S evaluation as hereinafter provided) makes an award.

1.32. **Supplementary General Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

1.33. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.34. **Surety** - Any person, firm or corporation which is bound by bid or contract bond with and for the CONTRACTOR.

of permits and regulatory agencies have been satisfied and the WORK is sufficiently complete, in Unit Price WORK - WORK to be paid for on the basis of unit prices.

1.35. **Utilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above ground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

1.36. **WORK** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. WORK includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Document.

1.37. **Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract and signed by the CITY, ordering an addition, deletion or revision in the WORK, or which references an emergency or unforeseen physical conditions under which the WORK is to be performed. A Work Change Directive may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work 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 Time.

1.38. **Written Amendment** - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non- technical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2 - PRELIMINARY MATTERS

### 2.1. DELIVERY OF BONDS AND INSURANCE CERTIFICATES:

2.1.1. When the CONTRACTOR delivers the signed Contracts to the CITY, the CONTRACTOR shall also deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents. The aforementioned documents must be submitted to the CITY prior to any WORK being performed.

### 2.2. COPIES OF DOCUMENTS:

2.2.1. The CITY shall furnish to CONTRACTOR ONE (1) copy (unless additional copies exist) of the Contract Documents for the execution of the WORK. CONTRACTOR shall be responsible for procuring additional copies.

### 2.3. NOTICE TO PROCEED:

2.3.1. The Contract Times will commence to run on the date stated in the Notice to Proceed.

**2.4. STARTING THE WORK:**

2.4.1. CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, NO WORK shall be done at the Site prior to said commencement date.

2.4.2. 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 pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CITY any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CITY before proceeding with any WORK affected thereby; however, CONTRACTOR shall not be liable to CITY for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

**2.5. PRECONSTRUCTION CONFERENCE:**

2.5.1. The CONTRACTOR is required to attend a preconstruction conference within twenty (20) days after the Contract Times start to run, but before any WORK at the site is started. This conference will be attended by the CITY, and others as appropriate in order to discuss the WORK.

2.5.2. The CONTRACTOR'S initial schedule for shop drawings submittals, obtaining permits and Plan of Operation and CPM Schedule will be reviewed and finalized. As a minimum, the CONTRACTOR'S representatives should include its project manager and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings will be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment will be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

**2.6. FINALIZING SCHEDULES:**

2.6.1. Within ten (10) days of receiving the Notice to Proceed the CONTRACTOR will submit the final schedule approved by the CITY. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the WORK to completion within the Contract Time, but such acceptance will neither impose on the CITY responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the CITY as to form and substance.

**ARTICLE 3 – USE OF CONTRACT DOCUMENTS****3.1. INTENT:**

3.1.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the WORK. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed

in accordance with the laws of the State of Florida with venue in Broward County, Florida.

3.1.2. It is the intent of the Contract Documents to describe the WORK, functionally complete, 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.

**3.2. REFERENCE TO STANDARDS:**

3.2.1. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids/Proposals, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties or responsibilities of the CITY, CONTRACTOR or any of their agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

**3.3. REVIEW OF CONTRACT DOCUMENTS**

3.3.1. If, during the performance of the WORK, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so notify the CITY, in writing, at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification, except in an emergency as authorized by paragraph 6.13.

**3.4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS**

3.4.1. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Change Order
2. Construction Contract
3. Addenda, with later date having greater priority
4. Bid/Proposal Form
5. Supplemental General Conditions
6. Invitation to Bid/Request for Proposal
7. Instructions to Bidders/Proposers
8. General Conditions
9. Technical Specifications
10. Contract Drawings

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to assist in locating and reading the provisions hereof.

3.4.2. With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/Change Order drawings govern over any other drawings
4. Drawings govern over standard drawings

3.4.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5, 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:

1. The provisions of any such standard, specification, manual, code or instruction (whether or note specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such 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).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or any of their SUB-CONTRACTORS, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or any of CITY's agents or employees any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.10. or any other provision of the Contract Documents.

### 3.5. AMENDING CONTRACT DOCUMENTS:

3.5.1. The Contract Documents may be amended to provide for additions, deletions and revisions in the WORK or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10).

3.5.2. Additionally, the requirements of the Contract Documents may be supplemented and variations and deviations in the WORK may be authorized, in one or more of the following ways:

- 3.5.2.1. a Field Order (pursuant to paragraph 9.5)

- 3.5.2.2. CITY'S approval of a Shop Drawing or sample (pursuant to paragraphs 6.14), or

- 3.5.2.3. CITY'S written interpretation or clarification (pursuant to paragraph 9.4).

### 3.6. REUSE OF DOCUMENTS:

3.6.1. Neither CONTRACTOR nor any Sub-CONTRACTOR or Supplier or other person or organization performing or furnishing any of the WORK under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents, drawings, technical specifications or other documents used on the WORK; and, they shall not reuse any of them on extensions of the Project or any other project without prior written consent of the CITY.

## ARTICLE 4 – SITE OF THE WORK

### 4.1. AVAILABILITY OF LANDS:

4.1.1. The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.1.2. Occupying Private Land: The CONTRACTOR shall not enter upon nor use any property not under the control of the CITY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner(s), and a copy of said easement furnished to the CITY prior to said use; and, the CITY will not be liable for any claims or damages resulting from the CONTRACTOR'S trespass on or use of any such properties. The CONTRACTOR shall provide the CITY with a signed release from the property owner(s) confirming that the lands have been satisfactorily restored upon completion of the WORK.

4.1.3. WORK in State, County and CITY Rights-of-Way and Easements: When the WORK involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the CONTRACTOR shall (as the WORK progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance as part of the contract.

4.1.4. WORK Adjacent to Telephone, Power, Cable TV and Gas Company Structures: In all cases where WORK is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the CONTRACTOR shall provide written notification to the respective companies of the areas of which WORK is to be performed, prior to the actual performance of any WORK in these areas.

4.1.5. Use of Public Streets: The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. The CONTRACTOR shall remove any earth or excavated materials spilled from trucks and clean the streets to the satisfaction of the CITY, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

### 4.2. REPORTS OF PHYSICAL CONDITIONS:

4.2.1. **Subsurface Explorations:** Where applicable, reference is made in the technical specifications, for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.2. **Existing Structures:** Where applicable, reference is made to the technical specifications, for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 herein) which are at or contiguous to the site that have been utilized by CITY in preparation of the Contract Documents.

4.2.3 The CITY does not make any representation as to the completeness of the reports or drawings referred to in Paragraph 4.2.1. or 4.2.2. above or the accuracy of any data or information contained therein. CONTRACTOR may rely upon the general accuracy of the technical data contained in such reports and drawings but not for the completeness thereof for CONTRACTOR'S purposes including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. However, the CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.2.4 Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new WORK, the CONTRACTOR shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There shall be no additional cost to the CITY for CONTRACTOR'S failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR.

#### 4.3. PHYSICAL CONDITIONS -- UNDERGROUND FACILITIES:

4.3.1. **Indicated:** The information and data indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site is based on information and data furnished to the CITY by the owners of such Underground Utilities or by others.

4.3.1.1. The CITY shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 The CONTRACTOR shall notify the Underground Service Alert (USA) System, Phone No. 1-800-227-2600, and Sunshine State One Call Services (1-800-432-4770) at least 48 hours in advance of the commencement of WORK at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities.

4.3.1.3. The CONTRACTOR acknowledges that some (or all) of the utility companies with facilities shown on the drawings may not be members of the USA System or Sunshine State One Call Services; and, therefore, not automatically contacted by the above referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the USA System or Sunshine State One Call Services, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall be responsible for notifying all of the utilities at least 48 hours in advance of the commencement of

WORK at any site to allow the utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also be responsible for verifying that each utility has responsibly responded to such notification.

4.3.1.4. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. Further, the CONTRACTOR shall be responsible for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordination of the WORK with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.10, and repairing any damage thereto resulting from the WORK, the cost of all of which will be considered as having been included in the Contract Price.

4.3.1.5. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, shall be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR shall notify the CITY or occupant of such facilities both 48 hours before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR shall obtain permission from the CITY and shall make suitable arrangements for the disconnection. The CONTRACTOR shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly, as part of the work, as soon as the WORK has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new WORK are shown, but are to be verified in the field by the CONTRACTOR prior to performing the WORK. The CONTRACTOR shall uncover these pipes, ducts, cables, etc., carefully, prior to installing his WORK. Any discrepancies or differences found shall be immediately brought to the attention of the CITY in order that necessary changes may be made to permit installation of the WORK.

4.3.2. **Not Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown on the plan, nor located by the CITY and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK affected thereby (except in an emergency as permitted by paragraph 6.13), identify the CITY of such Underground Facility and give written notice thereof to that CITY. The CITY will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.12.

#### 4.4. DIFFERING SITE CONDITIONS

4.4.1. The CONTRACTOR shall notify the CITY, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than 7 days after their discovery) and

before they are disturbed:

4.4.1.1. Subsurface or latent physical conditions at the Site of the WORK differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Paragraph 4.2 and 4.3; and

4.2.3.2. Any unknown physical conditions and the Site of the WORK of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, including those reports and documents discussed in Paragraph 4.2 and 4.3.

4.4.2. CITY will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the CITY in writing (with a copy to the CONTRACTOR) of CITY'S findings and conclusions.

4.4.3. If CITY concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.

4.4.4. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Article 11 and 12.

4.4.5. The CONTRACTOR'S failure to give notice of differing Site conditions within 7 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

#### 4.5. REFERENCE POINTS:

4.5.1. The CITY shall provide, if available, engineering surveys to establish reference points for construction, which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the WORK.

4.5.2. CONTRACTOR shall be responsible for laying out the WORK (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR shall report to the CITY whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

#### ARTICLE 5 -- BONDS AND INSURANCE

##### 5.1. BONDS:

5.1.1. CONTRACTOR shall upon delivery of the executed Contract or receipt of a Notice of Tentative Award to the CITY furnish Performance and Payment Bonds, each in an amount at least ONE HUNDRED PERCENT (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. Said bonds must be provided to the CITY within ten (10) business days of the Notice of Tentative

Award or delivery of a contract to CONTRACTOR to execute, or the CITY, at its sole discretion and option may terminate the contract. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. Each Bond shall be furnished in an amount equal to ONE HUNDRED PERCENT 100% of the amount of the Contract award. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.2 The CONTRACTOR shall provide a Maintenance and Guaranty Bond in the amount of 50% of the Performance and Payment Bonds to provide a guarantee against defects in the WORK occurring during the year following the one-year correction period. The Bond shall be payable to the CITY, and be at the sole cost of the CONTRACTOR. The form and conditions of the Bonds and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

5.1.3. The Surety shall be a nationally recognized Surety Company acceptable to the CITY, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, for projects not exceeding (\$500,000) five hundred thousand dollars and meet the other requirements of Florida Statutes Section 287.0935 (1989). For projects exceeding five hundred thousand dollars, all bonds shall be placed with sureties with a Best Rating of no less than A-IX. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties.

5.1.4. If the CONTRACTOR is a partnership, the Bond should be signed by each of the individuals who are partners; if a corporation, the Bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond should be accompanied by (a) appropriate acknowledgment of the respective parties; (b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where bond is executed by agent, officer or other representative of CONTRACTOR or Surety; (c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

5.1.5. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 5.1.2., CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 5.1.2. Under no circumstances shall the successful CONTRACTOR begin WORK until he/she has supplied to the CITY Performance and Payment Bonds and Affidavit for Bond using the CITY form, and the CITY has approved the bond.

## 5.2. INSURANCE:

5.2.1. CONTRACTOR shall purchase and maintain the insurance required under this Paragraph. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided herein. All insurance shall be maintained continuously during the life of the Contract up to the date of Substantial Completion and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing Defective Work in accordance with Paragraph 13.6. the CONTRACTOR'S liabilities under this Contract shall not be deemed limited in any way to the insurance coverage required.

5.2.2. All insurance required by the Contract Documents to be purchased and maintained by the CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized to issue insurance policies for the limits and coverages so required in the State of Florida. Such insurance companies shall have a current Best's Rating of at least an "A" (Excellent) general policy holder's rating and a Class VII financial size category and shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2.3. Before starting the WORK, the CONTRACTOR shall furnish the CITY, with copies to each additional insured who is indicated in the Supplementary General Conditions, with certificates and original endorsements showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, reduced in coverage, or renewal refused until at least 30 days' prior written notice has been given the CITY and additional insureds by certified mail. All such insurance required herein (except for worker's compensation and employer's liability) shall name the CITY, and CITY'S officers, directors, agents, and employees as "additional insureds" under the policies. The CONTRACTOR shall purchase and maintain the following insurance:

5.2.3.1. **Workers' Compensation and Employer's Liability:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. CONTRACTOR shall require each SUB-CONTRACTOR similarly to maintain workers compensation during the term of the Contract and up to the date of final acceptance. CONTRACTOR shall defend, indemnify and save the CITY harmless from any damage resulting to them for failure of either CONTRACTOR or any SUB-CONTRACTOR to take out or maintain such insurance.

- a. Employers' Liability with Statutory Limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate.
- b. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and/or Jones Act if applicable.

5.2.3.2. **Comprehensive or Commercial General Liability:** Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy or Commercial General Liability filed by the Insurance Services Office, and must include:

- a. Minimum Limits of total coverage shall be \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability, the basic policy to be in said form with any excess coverage (and the carrier) to meet \$2,000,000 minimum to be acceptable to the CITY.

5.2.3.3. **Business Auto Policy.** Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Service Office and must include:

- a. Minimum limit of \$2,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

- b. Owned Vehicles

- c. Hired and Non-Owned Vehicles

- d. Employee Non-Ownership

5.2.3.4. **SUB-CONTRACTOR's Public Liability and Property Damage Insurance and vehicle Liability Insurance:** The CONTRACTOR shall either require each of the Sub-CONTRACTORS to procure and to maintain SUB-CONTRACTOR's public liability and property damage insurance and vehicle liability insurance of the type and in the amount indicated above in Paragraph 5.2.3.1., 5.2.3.2. and 5.2.3.3.

5.2.3.5. **Products and/or Completed Operations:** CONTRACTOR shall maintain in force until at least three (3) years after completion of all services required under the Contract, coverage for products and completed operations, including Broad Form Property Damage.

5.2.3.6. **All Risk Property Insurance:** When Applicable, coverage must include real and personal property and in an amount equal to the replacement cost of all real and personal property of the CITY'S for which the CONTRACTOR is responsible and over which he exercises control. Builders Risk insurance must be provided to cover Property under construction and an Installation Floater must cover all machinery, vessels, air conditioners or electric generators to be installed. This insurance shall include a waiver of subrogation as to the CITY, the CONTRACTOR, and their respective officers, agents, employees, and SUB-CONTRACTORS.

- a. Coverage to be provided on a full replacement cost basis.
- b. Losses in excess of ten thousand dollars (\$10,000) shall be jointly payable to the CONTRACTOR and the CITY.
- c. Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the CITY will not occupy the building(s), addition(s) or structure(s).
- d. Maximum Deductible - \$5,000 each claim.
- e. Flood Insurance. When the buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the CONTRACTOR and the CITY must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance



coverage available under the National Flood Program.

5.2.4. All policies shall also specify that the insurance provided by the CONTRACTOR will be considered primary and not contributory to any other insurance available to the CITY.

## ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

### 6.1. SUPERVISION AND SUPERINTENDENCE:

6.1.1. The CONTRACTOR has the obligation to deliver to the CITY the completed job in a good and workmanlike condition. CONTRACTOR shall supervise and direct the WORK completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents. The CONTRACTOR shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Final Acceptance. The supervision of the execution of this contract is vested wholly in the CONTRACTOR.

6.1.2. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.

### 6.2. LABOR, MATERIALS AND EQUIPMENT:

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey, prepare the WORK and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all WORK at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime WORK or the performance of WORK on Saturday, Sunday or any legal holiday without the CITY'S written consent (which shall not be unreasonably withheld) given after prior written notice to CITY. The CONTRACTOR is hereby informed, and understands that unless otherwise approved by the CITY, the CITY restricts the WORK between the hours of 5:00 p.m. and 7:00 a.m., unless emergency conditions exist that are endangering life or property as may be determined by the CITY. If the CONTRACTOR is authorized to operate equipment twenty-four (24) hours per day, the engines shall be provided with residential type silencers approved by the CITY. The CONTRACTOR shall receive no additional compensation for overtime WORK. However, additional compensation will be paid to the CONTRACTOR for overtime WORK only in the event extra WORK is ordered by the CITY and the change order specifically authorizes the use of overtime WORK and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime WORK of a similar nature in the same locality. All costs of inspection and testing performed by the CITY during overtime WORK by the CONTRACTOR which is allowed solely for the

convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The CITY shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.

6.2.2. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and final completion of the WORK.

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CITY, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY, or any of the CITY'S agents or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

### 6.3. SCHEDULE:

6.3.1. CONTRACTOR shall submit to CITY for review and comment (to the extent indicated in paragraph 2.6.) proposed adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. All approved changes shall be memorialized as change orders.

### 6.4. SUBSTITUTES OR "OR-EQUAL" ITEMS:

6.4.1. The technical specifications shall govern the use of substitute or "or-equal" items. The procedure for review by CITY will include the following as supplemented in the technical specifications. Requests for review of substitute items of material and equipment will not be accepted by CITY from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY for acceptance thereof, certifying that the proposed substitute will perform equally or better the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the WORK will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for WORK on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with

the WORK is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs and cost savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by CITY in evaluating the proposed substitute. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

6.4.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to CITY, if CONTRACTOR submits sufficient information to allow CITY to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by CITY will be similar to that provided in paragraph 6.4.1 as applied by CITY and as may be supplemented in the Technical Specifications.

6.4.3. CITY will be allowed a reasonable time within which to evaluate each proposed substitute. CITY will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CITY'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

#### 6.5. CONCERNING SUB-CONTRACTORS, SUPPLIERS AND OTHERS:

6.5.1. CONTRACTOR shall not employ any SUB-CONTRACTOR, Supplier or other person or organization (including those acceptable to the CITY as indicated in paragraph 6.5.2), whether initially or as a substitute, against whom the CITY may have reasonable objection. CONTRACTOR shall not be required to employ any SUB-CONTRACTOR, Supplier or other person or organization to furnish or perform any of the WORK against whom CONTRACTOR has reasonable objection.

6.5.2. If the Technical Specifications or Contract Documents require the identity of certain SUB-CONTRACTORS, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) shall be submitted to the CITY for acceptance by the CITY, and if CONTRACTOR has submitted a list thereof, the CITY'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid documents or the Contract Documents) of any such SUB-CONTRACTOR, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. If after bid opening and prior to the award of the contract, the CITY objects to certain suppliers or SUB- CONTRACTORS, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the contract price or contract time. If the contract price or contract time is increased, the CITY may return the bid bond and award the contract to the next qualified, competent BIDDER. If after the award of the contract, the CITY objects to certain suppliers or SUB-CONTRACTORS, the CITY shall permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the

CITY. No acceptance by the CITY of any such SUB-CONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of the CITY to reject defective WORK.

6.5.3. CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the SUB-CONTRACTORS, Suppliers and other persons and organizations performing or furnishing any of the WORK under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such SUB-CONTRACTOR, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such SUB-CONTRACTOR, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.5.4. The divisions and sections of the Technical Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the WORK among SUB-CONTRACTORS or Suppliers or delineating the WORK to be performed by any specific trade.

6.5.5. All WORK performed for CONTRACTOR by a SUB-CONTRACTOR will be pursuant to an appropriate agreement between CONTRACTOR and the SUB-CONTRACTOR which specifically binds the SUB-CONTRACTOR to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

#### 6.6. PATENT FEES AND ROYALTIES:

6.6.1. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of WORK or the incorporation in the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the WORK and if to the actual knowledge of the CITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to other, the existence of such rights shall be disclosed by the CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless the CITY and anyone directly or indirectly employed by the CITY from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### 6.7. PERMITS:

6.7.1. CONTRACTOR shall obtain and pay for all construction permits and licenses without limitation as required by Laws or Regulations. The CITY shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for prosecution of the WORK, which are applicable at the time of opening of Bids. There will be no cost for permits issued by the CITY. CONTRACTOR shall pay all charges for utility connections to the WORK.

**6.8. LAWS AND REGULATIONS:**

6.8.1. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to furnishing and performance of the WORK. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, the CITY shall not be responsible for monitoring CONTRACTOR'S compliance with any Laws, ordinances, rules or regulations.

6.8.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws, ordinances, rules or regulations, CONTRACTOR shall give CITY prompt, written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.5. If CONTRACTOR performs any WORK knowing or having reason to know that it is contrary to such laws, ordinances, rules or regulations, and without such notice to the CITY, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations unless they are at variance with construction practices recognized as industry standards.

**6.9. TAXES:**

6.9.1. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws, ordinances and regulations of the place of the Project which are applicable during the performance of the WORK.

**6.10. USE OF PREMISES:**

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits and easements, and shall not reasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the CITY or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against the CITY by any such CITY or occupant because of the performance of the WORK, CONTRACTOR shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. CONTRACTOR shall, to the fullest extent permitted by laws and regulations, indemnify and hold the CITY harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK.

6.10.2. During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other and other debris resulting from the WORK. At the completion of the WORK CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.10.3. 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.

**6.11. RECORD DOCUMENTS:**

6.11.1. CONTRACTOR shall maintain in accordance with the Technical Specifications in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. The record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the CITY for reference. Upon completion of the WORK, these record documents, samples, and Shop Drawings will be delivered to the CITY.

**6.12. SAFETY AND PROTECTION:**

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

6.12.1.1. all employees on the WORK and other persons and organizations who may be affected thereby;

6.12.1.2. all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.12.1.3. 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.

6.12.2. CONTRACTOR shall comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the WORK and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.12.1.2. or 6.12.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUB-CONTRACTOR,

Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK for anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and CITY has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 14.6. that the WORK is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.12.3. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

6.12.4. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of an accident in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

6.12.5. Safety Representative: CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

6.12.6. Hazard Communication Programs: 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 employees at the Site in accordance with Laws and Regulations.

#### 6.13. EMERGENCIES AND PRECAUTIONS DURING ADVERSE WEATHER:

6.13.1. In emergencies affecting the safety or protection of persons or the WORK or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the WORK or variations from the Contract Documents have been caused thereby. If CITY determines that a change in the Contract Documents is required because of the action taken in response to an emergency, or Change Order will be issued to document the consequences of the changes or variations.

6.13.2. During adverse weather, and against the possibility thereof, the CONTRACTOR shall take all

necessary precautions to ensure that the WORK shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The CONTRACTOR shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he shall take such precautions and procure such additional insurance as he deems prudent. The CITY may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

#### 6.14. SUBMITTALS: SHOP DRAWINGS AND SAMPLES:

6.14.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to CITY for review in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.5.2.), ordinances, rules and all Shop Drawings which will bear the stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CITY may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CITY to review the information as required.

6.14.2. CONTRACTOR shall also submit to CITY for review and approval with such promptness as to cause no delay in WORK, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended. Please note – samples may not be returned by CITY. Samples are to be supplied at no expense to the CITY and CONTRACTOR is hereby put on notice that said samples may not be returned.

6.14.3. Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the WORK and the Contract Documents.

6.14.4. At the time of each submission, CONTRACTOR shall give CITY specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition shall cause a specific notation to be made on each Shop Drawing submitted to CITY for review and approval of each such variation.

6.14.5. CITY will review within ten days of receipt thereof, Shop Drawings and samples but CITY'S review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or

procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by CITY, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CITY on previous submittals. CITY will review one (1) re-submittal for each shop drawing or product data. All costs of reviewing additional submittals shall be at the CONTRACTOR'S expense.

6.14.6. CITY'S review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CITY'S attention to each such variation at the time of submission as required by paragraph 6.14.4 and CITY has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any review by CITY relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.14.3.

6.14.7. Where a Shop Drawing or sample is required by the Specifications, any related WORK performed prior to CITY'S review and acceptance of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

#### 6.15. CONTINUING THE WORK:

6.15.1. CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the CITY. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 15 or as CONTRACTOR and the CITY may otherwise agree in writing.

#### 6.16. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

6.16.1. CONTRACTOR warrants and guarantees to CITY that all work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.16.1.1. Abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, SUB-CONTRACTORS or Suppliers; or

6.16.1.2. Normal wear and tear under normal usage.

6.16.2. 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:

6.16.2.1. observations by CITY;

6.16.2.2. recommendation of any progress or final payment by CITY;

6.16.2.3. the issuance of a certificate of Substantial Completion or any payment by CITY to CONTRACTOR under the Contract Documents;

6.16.2.4. use or occupancy of the WORK or any part thereof by CITY;

6.16.2.5. any acceptance by CITY or any failure to do so;

6.16.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by CITY pursuant to paragraph 14.10;

6.16.2.7. Any inspection, test or approval by others; or

6.16.2.8. Any correction of *defective* WORK by CITY.

#### 6.17. INDEMNIFICATION:

6.17.1. In consideration of ten dollars (\$10.00) and other valuable consideration, the CONTRACTOR shall defend, indemnify and save harmless the CITY, its officers, agents and employees, from or on account of any claims, losses, injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding the sole negligence of the CITY), in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the said CONTRACTOR or his SUB-CONTRACTORS, agents, servants or employees. CONTRACTOR agrees to defend, indemnify and save harmless the CITY, its officers, agents and employees, against any liability arising from or based upon the violation of any Federal, State, County or CITY laws, by-laws, ordinances or regulations by the CONTRACTOR, his SUB-CONTRACTORS, agents, servants or employees.

6.17.2. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

6.17.3. The indemnification provided above shall obligate the CONTRACTOR to defend at his own expense or to pay for such defense, at the CITY'S option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY which may result from the operations and activities under this Contract whether the construction operations be performed by the CONTRACTOR, his SUB-CONTRACTOR or by anyone directly or indirectly employed by either.

6.17.4. This indemnification includes all costs and fees including attorney's fees and costs at trial and appellate levels. The CITY will pay to the CONTRACTOR the specific

consideration of ten dollars and other good and valuable consideration as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06 of the Florida Statutes. Furthermore, the CONTRACTOR acknowledges that the bid price includes said consideration for the indemnification provision.

#### ARTICLE 7 -- OTHER WORK

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##### 7.1. RELATED WORK AT SITE:

7.1.1. The CITY may perform other WORK related to the Project at the site by the CITY'S own forces, let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other WORK is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other WORK; and, if CONTRACTOR believes that such performance will involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. If the performance of additional WORK by other CONTRACTOR or the CITY is noted in the Contract Documents, no additional adjustment of time or compensation shall be considered.

7.1.2. CONTRACTOR shall afford the CITY and other CONTRACTORS who are a party to such a direct contract (or the CITY, if the CITY is performing the additional WORK with the CITY'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such WORK, and shall properly connect and coordinate the WORK with theirs. CONTRACTOR shall do all cutting, fitting and patching of the WORK that may be required to make its several parts come together properly and integrate with such other WORK. CONTRACTOR shall not endanger any WORK of others by cutting, excavating or otherwise altering their WORK and will only cut or alter their WORK with the written consent of the CITY and the others whose WORK will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and other CONTRACTORS to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and other CONTRACTORS.

7.1.3. If any part of CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other CONTRACTOR other than CONTRACTOR'S OWN SUB-CONTRACTOR, (or the CITY), CONTRACTOR shall inspect and promptly report to CITY in writing any delays, defects or deficiencies in such other WORK that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR'S WORK. CONTRACTOR'S failure to report will constitute an acceptance of the other WORK as fit and proper for integration with CONTRACTOR'S WORK except for latent defects and deficiencies in the other WORK.

##### 7.2. COORDINATION:

7.2.1. If the CITY contracts with others for the performance of other WORK on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime CONTRACTORS will be identified in the Technical Specifications and the specific matters to be covered by such authority and responsibility will be itemized, and the

extent of such authority and responsibilities will be provided in the Technical Specifications. Unless otherwise provided in the Technical Specifications, the CITY shall not have any authority or responsibility in respect of such coordination.

#### ARTICLE 8 -- THE CITY'S RESPONSIBILITIES

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##### COMMUNICATIONS TO CONTRACTOR:

8.1.1. CITY shall issue all communications to CONTRACTOR through CITY'S Project Manager.

##### 8.2. FURNISH DATA:

8.2.1. CITY shall promptly furnish the data required of the CITY under the Contract Documents.

##### 8.3. PAYMENTS:

8.3.1. CITY shall make payments to CONTRACTOR promptly when they are due as provided in Sections 14.5 and 14.10.

##### 8.4. LANDS, EASEMENTS: REPORTS AND TESTS:

8.4.1. The CITY'S duties in respect of providing lands and easements and providing engineering surveys, if available, to establish reference points are set forth in paragraphs 4.1.1 and 4.5.1.

8.4.2. The CITY will identify and make available to CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures that have been utilized in preparing the Contract Documents as set forth in Paragraph 4.22 and 4.2.3.

##### 8.5. CHANGE ORDERS

8.5.1. The CITY is obligated to execute Change Orders as indicated in Article 10.

##### 8.6. SUSPENSION OF WORK

8.6.1. In connection with the CITY'S right to stop WORK or suspend WORK see paragraph 13.5 and 15.1. Paragraph 15.2 deals with the CITY'S right to terminate services of CONTRACTOR.

#### ARTICLE 9 -- CITY'S STATUS DURING CONSTRUCTION:

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##### 9.1. CITY'S REPRESENTATIVE:

9.1.1. The City's Project Manager will be the CITY'S representative during the construction period. The duties and responsibilities and the limitations of authority of CITY'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the CITY.

##### 9.2. VISITS TO SITE:

9.2.1. After written notice to proceed with the WORK, the CITY shall make visits to the site at intervals

appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the Contract Documents; he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction and he will not be responsible for the CONTRACTOR'S failure to perform the construction WORK in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the WORK; and during such visits and on the basis of his on-site observations, as an experienced and qualified engineering professional, he will keep the CITY informed of the progress of the WORK, will endeavor to guard the CITY against defects and deficiencies in the WORK of the CONTRACTOR and may reject WORK as failing to conform to the Contract Documents.

### 9.3. PROJECT REPRESENTATION:

9.3.1. A Resident Project Representative may be assigned to assist CITY in carrying out his responsibilities to CITY at the site. Resident Project Representative is CITY'S agent at site, will act as directed by and under the supervision of CITY, and will confer with CITY regarding Resident Representative's actions. Resident Project Representative's dealing in matters pertaining to the on-site WORK shall in general be with CITY and CONTRACTOR keeping the CITY advised as necessary. Resident Project Representative's dealings with SUB-CONTRACTORS shall only be through or with the full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with the CITY.

9.3.2. Resident Project Representative shall where applicable:

9.3.2.1. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with CITY concerning its general acceptability.

9.3.2.2. Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

9.3.2.3. Working principally through CONTRACTOR'S superintendent, assist CITY in serving as the CITY's liaison with CONTRACTOR, when CONTRACTOR'S operations affect the CITY's on-site operations.

9.3.2.4. Assist in obtaining from the CITY additional details or information, when required for proper execution of the WORK.

9.3.2.5. Record date of receipt of Shop Drawings and samples.

9.3.2.6. Receive samples which are furnished at the site by CONTRACTOR, and notify the CITY of availability of samples for examination.

9.3.2.7. Advise the CITY and CONTRACTOR of the commencement of any WORK requiring a Shop Drawing if the submittal has not been approved by the CITY.

9.3.2.8. Conduct on-site observations of the WORK in progress to assist the CITY in determining if the WORK is, in general, proceeding in accordance with the Contract Documents.

9.3.2.9. Report to the CITY whenever Residential Project Representative believes that any WORK is unsatisfactory, faulty or *defective* or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the CITY of WORK that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein shall relieve the CONTRACTOR or the CITY from the duties imposed by contract.

9.3.2.10. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to the CITY appropriate details relative to the test procedures and startups.

9.3.2.11. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the CITY.

9.3.2.12. Report to CITY when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by the CITY.

9.3.2.13. Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the CITY. Transmit to CONTRACTOR decisions as issued by the CITY.

9.3.2.14. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, CITY'S clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

9.3.2.15. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the CITY.

9.3.2.16. Record all names, addresses and telephone numbers of the CONTRACTOR, all SUB-CONTRACTORS and major suppliers of material and equipment.

9.3.2.17. Furnish the CITY periodic reports as required of progress of the WORK of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

9.3.2.18. Consult with the CITY in advance of schedule major tests, inspections or start of important phases of the WORK.

9.3.2.19. Draft proposed Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to the CITY, Change Orders, Work Change Directives, and Field Orders.

9.3.2.20. Report immediately to the CITY upon the occurrence of any accident.

9.3.2.21. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the CITY, noting particularly the relationship of the payment requested to the schedule of values, WORK completed and materials and equipment delivered at the site but not incorporated in the WORK.

9.3.2.22. During the course of the WORK, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the CITY for review and forwarding to CITY prior to final payment for the WORK.

9.3.2.23. Before the CITY issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

9.3.2.24. Conduct final inspection in the company of the CITY and the CONTRACTOR and prepare a final list of items to be completed or corrected.

9.3.2.25. Observe that all items on final list have been completed or corrected and make recommendations to the CITY concerning acceptance.

9.3.3. The Resident Project Representative shall not:

9.3.3.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment.

9.3.3.2. Exceed limitations of the CITY'S authority as set forth in the Contract Documents.

9.3.3.3. Undertake any of the responsibilities of CONTRACTOR, SUB-CONTRACTORS, or CONTRACTOR'S superintendent.

9.3.3.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

9.3.3.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the WORK.

9.3.3.6. Accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.

9.3.3.7. Authorize the CITY to occupy the Project in whole or in part.

9.3.3.8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the CITY.

#### 9.4. CLARIFICATIONS AND INTERPRETATIONS:

9.4.1. The CITY will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CITY may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification of interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

#### 9.5. AUTHORIZED VARIATIONS OF WORK:

9.5.1. CITY may authorize variations in the WORK from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field Order and will be binding on the CITY, and also on CONTRACTOR who shall perform the WORK involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 9.6. REJECTING DEFECTIVE WORK

9.6.1. The CITY will have authority to disapprove or reject WORK which CITY believes to be *defective* or believes to be in nonconformance with the intent of the contract documents, and will also have authority to require special inspection or testing of the WORK as provided in Section 13.3, whether or not the WORK is fabricated, installed or completed.

#### 9.7. SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

9.7.1. In connection with CITY'S responsibility for Shop Drawings and samples, see Sections 6.11 and 6.14.

9.7.2. In connection with CITY'S responsibilities as to Change Orders see Article 10, 11, and 12.

9.7.3. In connection with CITY'S responsibilities in respect of Applications for Payment, etc., see Article 14.

#### 9.8. DETERMINATIONS FOR UNIT PRICES:

9.8.1. CITY will verify the actual quantities and classifications of Unit Price WORK performed by CONTRACTOR. CITY will review with CONTRACTOR CITY'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). CITY'S written decisions thereon will be final and binding upon the CITY or CONTRACTOR unless, within ten days after the date of any such decision, either the CITY or CONTRACTOR delivers to the other party



to the Contract and to CITY written notice of intention to appeal from such a decision.

#### 9.9. DECISIONS ON DISPUTES:

9.9.1. The CITY 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 or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the WORK and claims under Article 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to CITY in writing with a request for a formal decision in accordance with this paragraph, which CITY will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to CITY and the other party to the Contract promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to CITY and the other party within thirty (30) days after such occurrence unless CITY allows an additional period of time to ascertain more accurate data in support of such claim, dispute or other matter.

9.9.2. The opposing party shall submit any response to CITY and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless CITY allows additional time). CITY will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. CITY's written decision on such claim, dispute or other matter will be final and binding upon CITY and CONTRACTOR unless: (i) an appeal from CITY's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between CITY and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from

CITY's written decision is delivered by CITY or CONTRACTOR to the other and to CITY within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction 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 within sixty (60) days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.3 When functioning as interpreter and judge under paragraphs 9.8.1, 9.9.1 and 9.9.2, CITY will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by CITY pursuant to paragraphs 9.8.1, 9.9.1 and 9.9.2 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 14.11.) 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 pursuant to Article 16.

#### 9.10. LIMITATIONS ON CITY:

9.10.1. Neither CITY'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by CITY either to exercise or not exercise such authority shall give rise to any duty or responsibility of CITY to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, or any other person or organization performing any of the WORK, or to any surety for any of them.

9.10.2. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the WORK, it is intended that such requirement, direction, review or judgment will be solely to evaluate the WORK for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.3 or 9.10.4.

9.10.3. CITY will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CITY will not be responsible to CONTRACTOR for CONTRACTOR'S failure to perform or furnish the WORK in accordance with the Contract Documents.

9.10.4. CITY will not be responsible for the acts or omissions of CONTRACTOR or of any SUB-CONTRACTOR, any Supplier, or of any other person or organization performing or furnishing any of the WORK.

#### ARTICLE 10 -- CHANGES IN THE WORK

##### 10.1. AUTHORIZED CHANGES IN THE WORK

10.1.1. Without invalidating the Contract and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the WORK; these will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the WORK involved that will be performed under the applicable conditions of the Contract Documents, except as otherwise specifically provided.

10.1.2. If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.

##### 10.2. UNAUTHORIZED CHANGES IN THE WORK

10.2.1. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any WORK performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Section 3.2, except in the case of an emergency as provided in

paragraph 6.13.1 and except in the case of uncovering WORK as provided in paragraph 13.4.2.

### 10.3. EXECUTION OF CHANGE ORDERS

10.3.1. The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.3.1.1. Changes in the WORK, which are ordered by the CITY pursuant to paragraph 10.1.1, are required because of acceptance of *defective* WORK under paragraph 13.7.4 or correcting *defective* WORK under paragraph 13.9.3, or are agreed to by the parties.

10.3.1.2. Changes in the Contract Price or Contract time which the parties agree to.

10.3.1.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CITY pursuant to paragraph 9.9.1; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the WORK and adhere to the progress schedule as provided in paragraph 6.15.1.

10.3.2. **Surety.** It is distinctly agreed and understood that any changes made in the Contract Documents for this WORK (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR shall in no way annul, release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the WORK or the provisions of the Contract Documents (including, but not limited to, Contract Price or contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.3.3. Notwithstanding, anything to the contrary contained within the contract documents, all change orders involving additional cost or extensions of time, shall be governed by the ordinances of the City of Lauderdale Lakes.

## ARTICLE 11 -- CHANGE OF CONTRACT PRICE

### 11.1. GENERAL

11.1.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the WORK. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.1.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting

data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by CITY in accordance with paragraph 9.9.1 if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.1.2.

11.1.3. The value of any WORK covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.1.3.1. Where the WORK involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Section 11.5, inclusive).

11.1.3.2. By mutual acceptance of a lump sum (which shall include an allowance for overhead and profit in accordance with paragraph 11.3.1.2.a).

11.1.3.3. On the basis of the Cost of the WORK (determined as provided in Section 11.2, inclusive) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Section 11.3, inclusive).

### 11.2. COST OF THE WORK:

11.2.1. **General.** The term Cost of the WORK means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.2.2:

11.2.1.1. **Labor.** Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the WORK under schedules of job classification agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the WORK shall be apportioned on the basis of their time spent on the WORK. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the CITY.

11.2.1.2. **Materials and Equipment.** Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and

equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.

11.2.1.3. SUB-CONTRACTOR. Payments made by CONTRACTOR to the SUB-CONTRACTORS for WORK performed by SUB-CONTRACTORS. If required by the CITY, CONTRACTOR shall obtain competitive bids from SUB-CONTRACTORS acceptable to CONTRACTOR and shall deliver such bids to the CITY who will then determine, with the advice of the CITY, which bids will be accepted. If a subcontract provides that the SUB-CONTRACTOR is to be paid on the basis of Cost of the WORK Plus a Fee, the SUB-CONTRACTOR's Cost of the WORK shall be determined in the same manner as CONTRACTOR'S Cost of WORK. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.2.1.4. Costs of special CITY's (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the WORK.

11.2.1.5. Supplemental costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers, which are consumed in the performance of WORK, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

b. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front end loaders, backhoes, and tractors, or other equipment, required for the economical performance of the authorized WORK, the CONTRACTOR shall receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate blue book for Construction Equipment, published by Equipment Guide Book Co., reduced by 25 percent. Equipment cost shall be calculated based upon the actual time the equipment is used in the WORK. If said WORK required the use of machinery not on the WORK or not to be used on the WORK, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the WORK shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract.

c. Sales, consumer, use or similar taxes related to the WORK and for which CONTRACTOR is liable, imposed by laws and regulations.

d. Royalty payments and fees for permits and licenses.

e. The site costs of utilities, fuel and sanitary facility.

f. Cost of premiums for additional bonds and insurance required because of changes in the WORK.

11.2.2. The term Cost of the WORK shall not include any of the following:

11.2.2.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.2.1.1 or specifically covered by paragraph 11.2.1.4 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

11.2.2.2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

11.2.2.3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the WORK and charges against CONTRACTOR for delinquent payments.

11.2.2.4. Cost of premiums for all Bonds and for all Insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.2.1.5f above).

11.2.2.5. Costs due to the negligence or intentional acts of the CONTRACTOR, any SUB-CONTRACTOR, or anyone whose acts any of them may be liable, including but not limited to, the correction of *defective* WORK, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.2.2.6. Costs associated with fringe benefits that are greater than actual costs; i.e., where worker hours exceed a typical 8-hour day and 40-hour workweek.

11.2.2.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.2.

### 11.3. CONTRACTOR'S FEE:

11.3.1. The CONTRACTOR'S Fee for overhead and profits shall be determined as follows:

11.3.1.1. A mutually acceptable fixed fee; or if none can be agreed upon,

11.3.1.2. A fee based on the following percentages of the various portions of the Cost of the WORK:

a. For costs incurred under paragraphs 11.2.1.1 and 11.2.1.2, the CONTRACTOR'S Fee shall be five (5%) percent;

b. For costs incurred under paragraph 11.2.1.3, the CONTRACTOR'S Fee shall be five percent; and if a subcontract is on the basis of Cost of the WORK Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all SUB-CONTRACTORS shall be five (5%) percent;

c. No fee shall be payable on the basis of costs itemized under paragraphs 11.2.1.4, 11.2.1.5 and 11.2.2;

d. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in accordance with paragraphs 11.3.1.2a through 11.3.1.2d, inclusive.

11.3.2. Whenever the cost of any WORK is to be determined pursuant to paragraph 11.2.1 or 11.2.2, CONTRACTOR will submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

#### 11.4. CASH ALLOWANCES:

11.4.1. 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 done by such SUB-CONTRACTORS or Suppliers and for such sums within the limit of the allowances as may be acceptable to the CITY, CONTRACTOR agrees that:

11.4.1.1. 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

11.4.1.2. 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. No demand for additional payment on account of any thereof will be valid.

11.4.1.3. Prior to final payment, an appropriate Change order will be issued as recommended by CITY to reflect actual amounts due CONTRACTOR on account of WORK covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.5. UNIT PRICE WORK:

11.5.1. Where the Contract Documents provide that all or part of the WORK is to be Unit Price WORK, initially the Contract Price will be deemed to include for all Unit Price WORK an amount equal to the sum of the established unit prices for each separately identified item of Unit Price WORK times the estimated quantity of each item as indicated in the Contract. 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 CITY in accordance with Paragraph 9.8.

11.5.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

11.5.3. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

11.5.4. Where 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 Contract and there is no corresponding adjustment with respect to any other item of WORK and if CITY believes that CONTRACTOR has incurred reduced expense as a result thereof, CITY may make a claim for a decrease in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such decrease.

#### 11.6. OMITTED WORK:

11.6.1. The CITY may at any time, by written order, without Notice to the Sureties, require omission of such contract WORK as it may find necessary or desirable. An order for omission of WORK shall be valid only by an executable change order. All WORK so ordered must be omitted by the CONTRACTOR. The amount by which the contract price shall be reduced shall be determined as follows:

11.6.1.1. By such applicable unit prices, or rates for WORK of a similar nature or character as set forth in the contract; or,

11.6.1.2. By the appropriate lump sum price set forth in the Contract; or,

11.6.1.3. By the reasonable and fair estimated cost of such omitted WORK and profit percentage as determined by the CONTRACTOR and the CITY, and approved by the CITY.

#### ARTICLE 12 -- CHANGE OF CONTRACT TIME

##### 12.1 GENERAL

12.1.1. The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an extension or shortening of the Contract time shall be based on written notice delivered by the party making the claim to the other party and to CITY promptly (but in no event later than ten days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment of the Contract Time shall be determined by CITY in accordance with Section 9.9 if the CITY and CONTRACTOR cannot otherwise agree.

No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.1.

12.1.2. All time limits stated in the Contract Documents are of the essence of the Contract.

12.1.3. 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 therefore as provided in paragraph 12.1.1. 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. Delays attributable to and within the control of a SUB-CONTRACTOR or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.1.4. 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. In no event shall CITY be liable to CONTRACTOR, any SUB-CONTRACTOR, any Supplier, any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other CONTRACTORS performing other work as contemplated by Article 7.

12.1.5 Liquidated Damages. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph 2.3 of the General Conditions and the Notice To Proceed, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with a certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraphs 2.3 of the General Conditions, and paragraph 3.1 of the Construction Contract for substantial completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 2.3 of the General Conditions and paragraph 3.1 of the construction contract for completion and readiness for final payment.

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

### 13.1. NOTICE OF DEFECTS:

13.1.1. Prompt notice of all defects for which CITY has actual knowledge will be given to CONTRACTOR. All defective WORK, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

13.1.2. Un-remedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment, which are remedied as a result of obligations of the guarantee, shall subject the remedied portion of the WORK to an extended guarantee period of one year after the defect has been remedied. The Surety shall be bound with and for the CONTRACTOR in the CONTRACTOR's faithful observance of the guarantee.

### 13.2. ACCESS TO WORK:

13.2.1 CITY and CITY'S representatives, testing agencies and governmental agencies with jurisdictional interests will have access to the WORK at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### 13.3. TESTS AND INSPECTIONS:

13.3.1. CONTRACTOR shall give CITY timely notice of readiness of the WORK for all required inspections, tests or approvals.

13.3.2. If Laws or Regulations of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the CITY'S requirements or CITY'S acceptance of a Supplier of materials or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the WORK.

13.3.3. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the CITY.

13.3.4. If any WORK (including the WORK of others) that is to be inspected, tested or approved is covered without written concurrence of CITY, it must, if requested by CITY, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CITY timely notice of CONTRACTOR'S intention to cover the same and CITY has not acted with reasonable promptness in response to such notice.

13.3.5. Neither observations by CITY nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligation's to perform the WORK in accordance with the Contract Documents.

#### 13.4. UNCOVERING WORK:

13.4.1. If any WORK is covered contrary to the request of CITY, it must, if requested by CITY, be uncovered for CITY'S observation and replaced, at CONTRACTOR'S expense.

13.4.2. If CITY considers it necessary or advisable that covered WORK be observed by CITY or inspected or tested by others, CONTRACTOR, at CITY'S request shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the WORK in question, furnishing all necessary labor, material and equipment. If it is found that such WORK is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such WORK is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

#### 13.5. CITY MAY STOP THE WORK:

13.5.1. If the WORK is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the Contract Documents, the CITY may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the WORK shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

#### 13.6. CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.6.1. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective WORK, whether or not fabricated, installed or completed, or, if the WORK has been rejected by CITY, remove it from the site and replace it with non-*defective* WORK. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### 13.7. ONE-YEAR CORRECTION PERIOD:

13.7.1. If within one year after the date of Acceptance of WORK or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable

special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any WORK is found to be *defective*, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the CITY'S written instructions, either correct such *defective* WORK, or, if it has been rejected by the CITY, remove it from the site and replace it with non-*defective* WORK.

13.7.2. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the *defective* WORK corrected or the rejected WORK removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

13.7.3. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance 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.

13.7.4. Nothing herein shall be deemed a waiver of the statute of limitations as provided in Florida Law.

13.7.5. Where *defective* WORK (and damage to other WORK resulting therefrom) has been corrected, removed or replaced under this paragraph 13.7., 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.

#### 13.8. ACCEPTANCE OF DEFECTIVE WORK:

13.8.1. If, instead of requiring correction or removal and replacement of *defective* WORK, CITY (and, prior to CITY's recommendation of final payment, also CITY) prefers to accept it, CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY'S evaluation of and determination to accept such *defective* WORK (such costs to be approved by CITY as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

13.8.2. If any such acceptance occurs prior to CITY'S recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, CONTRACTOR will pay an appropriate amount to the CITY.

#### 13.9. CITY MAY CORRECT DEFECTIVE WORK:

13.9.1. If CONTRACTOR fails within thirty days (30) after written notice of CITY to proceed to correct and to correct *defective* WORK or to remove and replace rejected WORK as required by CITY in accordance with paragraph 13.7.1, or if CONTRACTOR fails to perform the WORK in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

13.9.2. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the WORK, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, the CITY'S representative, agents and employees such access to the site as may be necessary to enable the CITY to exercise the rights and remedies under this paragraph.

13.9.3. All direct, indirect and consequential costs of the CITY in exercising such rights and remedies will be charged against CONTRACTOR by CITY and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and/or replacement of WORK of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective WORK. CONTRACTOR shall also be responsible for restoring any other sites affected by such repairs or remedial work at no cost to CITY. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the WORK attributable to the exercise by the CITY of the CITY'S rights and remedies hereunder.

#### ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

##### 14.1. SCHEDULE OF VALUES

14.1.1. The schedule of values established as provided in paragraph 2.6.1 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY.

##### 14.2. UNIT PRICE BID SCHEDULE

14.2.1. Progress payments on account of Unit Price WORK will be based on the number of units completed.

##### 14.3. APPLICATION FOR PROGRESS PAYMENTS:

14.3.1. Unless otherwise prescribed by law, at the end of each month, the CONTRACTOR shall submit to the CITY for review, an Application for Progress Payment filled out and signed by the CONTRACTOR covering the WORK completed as of the date of the Application and accomplished by such supporting documentation as is required by the Contract Documents.

14.3.2. The Application for Progress Payment shall identify, as a subtotal, the amount of the CONTRACTOR'S Total Earnings to Date, plus the Value of Materials Stored which have not yet been incorporated in the WORK, less a deductive adjustment for materials stored which have been

installed which were not previously incorporated in the WORK, but for which payment was allowed.

14.3.3. The Net Payment Due to the CONTRACTOR shall be the above- mentioned subtotal from which shall be deducted the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by the CONTRACTOR. Retainage shall be calculated based upon the above- mentioned subtotal.

The above calculation in tabular form is as follows:

Total Earnings to Date . . . . .	\$
Value of Materials Stored . . . . .	\$
Less Value of Materials Stored for which payment was allowed and which have been installed . . . . .	(\$ )
Sub Total	\$
Less Retainage (based on sub total)	(\$ )
Less total of all previous approved Applications for Progress Payment	(\$ )
NET PAYMENT DUE	\$

14.3.4. The Value of Materials Stored shall be an amount equal to the specified percent of the value of same as set forth in the Contract or Schedule of Values. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the WORK but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the WORK and is planned for installation within the following thirty (30) days. The Application for Progress Payment shall also be accompanied by a Bill of Sale, paid invoice, or other documentation warranting that the CITY has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY'S interest therein, all of which shall be satisfactory to the CITY.

##### 14.4. CONTRACTOR'S WARRANTY OF TITLE:

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

##### 14.5. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

14.5.1. CITY will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CITY'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Thirty days after receipt of the Application for Payment by the CITY with CITY'S recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.5.4) become due and when due will be paid by the CITY to CONTRACTOR.

14.5.2. CITY'S recommendation of any

payment requested in the application for payment shall not prohibit the CITY from withholding payment or prohibit the CITY from paying additionally sums regarding other matters or issues between the parties.

14.5.3. CITY'S recommendation of final payment will constitute an additional representation by CITY's Project Manager that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.10 have been fulfilled.

14.5.4. CITY may refuse to recommend the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such representations to the CITY. The CITY may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CITY'S opinion to protect the CITY from loss, including but not limited to:

14.5.4.1. The WORK is *defective*, or completed WORK has been damaged requiring correction or replacement.

14.5.4.2. The Contract Price has been reduced by a Written Amendment or Change Order.

14.5.4.3. The CITY has been required to correct *defective* WORK or complete WORK in accordance with paragraph 13.9.1, or

14.5.4.4. Of CITY'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1.1 through 15.2.1.9 inclusive.

14.5.5. The CITY may refuse to make payment of the full amount recommended by the CITY because claims have been made against the CITY on account of CONTRACTOR'S performance or furnishing of the WORK, or there are other items entitling the CITY to credit against the amount recommended, but the CITY must give CONTRACTOR written notice (with a copy to CITY) stating the reasons for such action.

#### 14.6. SUBSTANTIAL COMPLETION:

(60) When the CONTRACTOR considers the entire WORK ready for its intended use, the CONTRACTOR shall notify the CITY in writing that the WORK is substantially complete and request that the CITY prepare a Certificate of Substantial Completion. For construction projects having an estimated cost of less than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK shall make an inspection of the WORK within thirty (30) calendar days after the notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. For construction projects having an estimated cost of more than \$10 million, the CITY, and the CONTRACTOR shall make an inspection of the WORK within thirty (30) calendar days unless otherwise extended by contract not to exceed sixty calendar days after notice from the CONTRACTOR that the work is substantially complete to determine the status of completion. If the CITY does not consider the WORK substantially complete, the CITY shall notify the CONTRACTOR in writing giving the reasons therefor. If the CITY considers the WORK to be

substantially complete, the CITY will prepare and deliver to the CITY for its execution and recordation the Certificate of Substantial Completion signed by the CITY and CONTRACTOR, which shall fix the Date of Substantial Completion.

14.6.1. The CITY shall have the right to exclude CONTRACTOR from the WORK after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the "punch list".

#### 14.7. PARTIAL UTILIZATION:

14.7.1. Use by the CITY of any finished part of the WORK, which has specifically been identified in the Contract Documents, or which the CITY and CONTRACTOR agree constitutes a separately functioning and useable part of the WORK that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the WORK, may be accomplished prior to Substantial Completion of all WORK subject to the following:

14.7.1.1. The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the WORK which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to the CITY that said part of the WORK is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. CONTRACTOR at any time may notify the CITY in writing that CONTRACTOR considers any such part of the WORK ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the WORK. Within a reasonable time after either such request, the CITY, CONTRACTOR and CITY shall make an inspection of that part of WORK to determine its status of completion. If CITY does not consider that part of the WORK to be substantially complete, CITY will notify the CITY and CONTRACTOR in writing giving the reasons therefor. If CITY considers that part of the WORK to be substantially complete, the provisions of paragraphs 14.6.1 and 14.6.2 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.

14.7.1.2. The CITY may at any time request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the WORK although it is not substantially complete. A copy of such request will be sent to CITY and within a reasonable time thereafter the CITY, CONTRACTOR and CITY shall make an inspection of that part of the WORK to determine its status of completion and will prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY that such part of the WORK is not ready for separate operation by the CITY will finalize the list of items to be completed or corrected and will deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the WORK which will become binding upon the CITY and CONTRACTOR at the time when



the CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed CITY). During such operation and prior to Substantial Completion of such part of the WORK, the CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related WORK.

#### 14.8. FINAL INSPECTION:

14.8.1. Upon written notice from CONTRACTOR that the entire WORK or an agreed portion thereof is complete, CITY will make a final inspection with the CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the WORK is incomplete, defective, or not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### 14.9. FINAL APPLICATION FOR PAYMENT:

14.9.1. After CONTRACTOR has completed in writing all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 14.6) and other documents--all as required by the Contract Documents, and after CITY has indicated in writing that the WORK is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the WORK.

#### 14.10. FINAL PAYMENT AND ACCEPTANCE:

14.10.1. Upon receipt of written notice from the CONTRACTOR that the WORK has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment, Final Receipt and Release of Lien and accompanying documentation, the CITY shall promptly examine the WORK and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed WORK by a properly qualified and experienced Professional CITY, shall satisfy himself that the CONTRACTOR'S statement appears to be correct and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled. He shall then inform the CITY in writing that he has examined the WORK and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the CONTRACTORS other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the WORK for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY does not in any way relieve the CONTRACTOR from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CITY liable for any faulty WORK done

or defective materials or equipment used by the CONTRACTOR.

14.10.2. The CITY will then make a final estimate of the value of all WORK done and will deduct all previous payments which have been made. The CITY will report such estimate to the CITY together with the recommendation as to the acceptance of the WORK or his findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CITY'S estimate and recommendation, the CITY will make final payment to the CONTRACTOR of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including, but not limited to, Liquidated Damages, as applicable. Title passes and warranty begins at final acceptance.

14.10.3. All prior estimates are subject to correction in the final estimate. Thirty days after approval by the CITY of the application for final payment, the amount recommended by CITY shall become due and will be paid to CONTRACTOR.

#### 14.11. WAIVER OF CLAIMS:

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

14.11.1.1. 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 14.8, 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

14.11.1.2 a waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and still unsettled.

### ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

#### CITY MAY SUSPEND WORK:

15.1.1. The CITY may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CITY 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 increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

#### 15.2. CITY MAY TERMINATE

15.2.1. Upon the occurrence of any one or more of the following events:

15.2.1.1. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to the bankruptcy or

insolvency;

15.2.1.2. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.1.3. If CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.1.4. If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

15.2.1.5. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.1.6. If CONTRACTOR fails to perform the WORK in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.6 as revised from time to time);

15.2.1.7. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.1.8. If CONTRACTOR disregards the authority of CITY; or

15.2.1.9. If CONTRACTOR otherwise violates any provisions of the Contract Documents;

the CITY may, after giving CONTRACTOR and Surety seven days written notice of any default and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the WORK and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the WORK all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere, and finish the WORK as the CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the Contract Price exceeds the expense of completing the WORK including compensation for additional managerial and administrative services, plus the CITY'S direct, indirect and consequential losses, damages and costs because of the CONTRACTOR'S default (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) such excess will be paid to CONTRACTOR. If such expenses and costs plus the CITY'S losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly on demand. Such costs incurred by the CITY will be approved as to reasonableness by CITY and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the CITY shall not be required to obtain the lowest price for the WORK performed.

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

15.2.3. The CITY may terminate this Contract without cause by giving seven (7) days prior written notice to the CONTRACTOR, and in such event, the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination, plus reasonable termination expenses. The CITY also will reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of the WORK and paid directly by the CONTRACTOR, not including overhead, general expenses or profit. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to SUB-CONTRACTORS or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY shall reimburse the CONTRACTOR for major materials or equipment purchased before termination if the CONTRACTOR can show proof of said purchases prior to notice of termination) inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same.

#### 15.3. CONTRACTOR MAY STOP WORK OR TERMINATE:

15.3.1. If, through no act or fault of CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or CITY fails to act on any Application for Payment within thirty (30) days after it is submitted, or the CITY fails for sixty (60) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to the CITY, terminate the Contract and the CITY will pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the WORK completed as of the Date of Termination plus reasonable termination expenses. The CITY will not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same. In addition and in lieu of terminating the Contract, if CITY has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven days written notice to the CITY stop the WORK until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.13 to

carry on the WORK in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

#### ARTICLE 16 – DISPUTE RESOLUTION

16.1. All claims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.11) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to CITY initially for the decision in accordance with paragraph 9.9 will be made until the earlier of (a) the date on which CITY has rendered a written decision or (b) the thirty-first (31<sup>st</sup>) day after the parties have presented their evidence to CITY if a written decision has not been rendered by CITY before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty (30) days after the date on which CITY has rendered a written decision in respect thereof in accordance with paragraph 9.9; and the failure to demand arbitration within said thirty (30) days' period will result in CITY's decision being final and binding upon CITY and CONTRACTOR. If CITY renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of CITY rendered in accordance with paragraph 9.8 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.8.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration, and a copy will be sent to CITY for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph, 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including CITY and the officers, directors, agents, employees or any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceeding, and

16.4.3. the written consent of the other person or entity sought to be included and of CITY and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between CITY and CONTRACTOR involves the Work of a SUB-CONTRACTOR, either CITY or CONTRACTOR may join such SUB-CONTRACTOR as a party to the arbitration between CITY and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.5.5 a specific provision whereby the SUB-CONTRACTOR consents to being joined in arbitration between CITY and CONTRACTOR involving the Work of such SUB-CONTRACTOR. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of SUB-CONTRACTOR and against CITY that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. CITY and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in questions between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

#### ARTICLE 17 -- MISCELLANEOUS

##### 17.1. GIVING NOTICE:

17.1.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### 17.2. COMPUTATION OF TIME:

17.2.1. 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.

### 17.3. NOTICE OF CLAIM:

17.3.1. Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### 17.4. CUMULATIVE REMEDIES:

17.4.1. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to the CITY thereunder, are in addition to , and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy to which they apply. All representations warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract.

### 17.4. ACCIDENT AND PREVENTION:

17.4.1. The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General CONTRACTORS of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from WORK, arising out of and in the course of employment on WORK under the Contract. The CONTRACTOR shall promptly furnish the Local Public Agency with reports concerning these matters.

### 17.5. NATIONAL EMERGENCY

17.5.1. In the event the CITY is prevented from proceeding with any or all of this WORK as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, CITY, Town, or County regulations, orders, restrictions, or due to circumstances beyond the CITY'S control, then the CITY

herein reserves the right to either suspend the WORK to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the WORK herein has already been commenced, then the CITY herein shall be liable for only the cancellation or suspension without the addition of prospective profits or other changes whatsoever.

### 17.6. FLORIDA PRODUCTS AND LABOR:

17.6.1. The CONTRACTOR'S attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

### 17.7. EMPLOYEES:

17.7.1. All labor described in these specifications or indicated on the Drawings and the WORK specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.7.2. Any person employed on the WORK who fails, refuses or neglects to obey the instructions of the CONTRACTOR in anything relating to this WORK or who appears to the CITY to be disorderly, intoxicated, insubordinate, or incompetent, shall upon the order of the CITY, be at once discharged and not again employed in any part of the WORK. Any interference with, or abuse or threatening conduct toward the CITY or their inspectors by the CONTRACTOR or his employees or agents, shall be authority for the CITY to annul the Contract and re-let the WORK. No intoxicating substance shall be allowed on the WORK site.

### 17.8. NON-DISCRIMINATION:

17.8.1. The CONTRACTOR shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The CONTRACTOR will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all SUB-CONTRACTORS and it is the responsibility of the SUB-CONTRACTOR compliance.

### 17.9. DRUG-FREE WORKPLACE:

17.9.1. The CITY requires all prospective CONTRACTORS to maintain a drug free work place and have their Drug Free Workplace policy posted in their offices and available for inspection by the CITY.

### 17.10. PUBLIC ENTITY CRIMES:

17.10.1. Pursuant to F.S. 287.133, as amended: a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not

submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded or perform work as a CONTRACTOR, supplier, SUB-CONTRACTOR, or CITY under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO or higher for a period of 36 months from the date of being placed on the convicted vendor list.

17.11. ASSIGNMENT:

17.11.1. This Contract, nor any monies due hereunder, or any part thereof, shall not be assigned, or transferred, by CONTRACTOR, nor shall the CITY be liable to any assignee or transferee, without the written consent of the CITY, to the assignment, or transfer. The CITY shall not release or discharge CONTRACTOR from any obligation hereunder. The CITY shall not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

17.12. VENUE:

17.12.1. This Contract shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Contract is fixed in Broward County, Florida.

17.13. ASBESTOS:

17.13.1. If the CONTRACTOR during the course of the WORK observes the existence of asbestos in any structure, building or facility, the CONTRACTOR shall promptly notify the CITY. The CITY shall consult with the CITY regarding removal or encapsulation of the asbestos material and the CONTRACTOR shall not perform any WORK pertinent to the asbestos material prior to receipt of special instructions from the CITY.

17.14. RIGHT TO AUDIT:

17.14.1. If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR'S books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR'S plants, or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all SUB-CONTRACTORS. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR'S normal business hours at the office of the CONTRACTOR. The accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the CITY.

(END)



**CITY OF LAUDERDALE LAKES  
INTEROFFICE MEMORANDUM  
FINANCIAL SERVICES DEPARTMENT**

**TO: Phil Alleyne, City Manager**

**DATE: March 31, 2017**

**FROM: Susan Gooding-Liburd, MBA, CPA,  
CGFO, Financial Services Director**

**SUBJECT: RFP No.: 17-6365-06R**

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The City of Lauderdale Lakes solicited qualified firms and competent Contractor to renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41st Street and State Road 441. The objective of the NW 41st Street Entryway Improvements Project (Oakland Estates Entry Wall) is to make the entryway more decorative and aesthetically pleasant.

The solicitation for the Lauderdale Lakes NW 41<sup>st</sup> Street Entryway Improvement Project was advertised in the City's electronic bid system, [Demandstar.com](http://Demandstar.com) from February 11, 2017 until February 22, 2017. The solicitation was provided to 1,681 firms, of which 16 downloaded the solicitation packet.

The solicitation was closed February 22, 2017 at 3:30 pm. At that time, the City received two (2) proposals, Victory Engineers and General Contractors and E and F Florida Enterprises, Inc. dba Creative Contracting Group.

An evaluation committee of three (3) members was assembled on March 7, 2017 to evaluate the RFP documents from the two (2) firms and to hear formal presentations. The firm Victory Engineers and General Contractors did not attend the mandatory presentation; therefore, was not evaluated by the committee.

The results of each committee member is provided as supporting documents and the summary of the results are shown below:

<b>Firm</b>	<b>Location</b>	<b>Score</b>
Victory Engineers and General Contractors	Hialeah, FL	0
E and F Florida Enterprises, Inc, dba Creative Contracting Group	Boca Raton, FL	240

The top scoring firm was rated an overall score of 240 out of a possible 300 points mostly due to its experience and abilities.

Staff recommends awarding the contract to E and F Florida Enterprises, Inc. dba Creative Contracting Group in an amount up to \$34,000 for this project.

The term of contract is requested for a term of one (1) year to complete the project with an option to renew for one (1) additional year for additional work.

If approved, City staff will commence mobilization activities upon acceptance and approval of all required documents.

Encl. (s)

1. Committee Results
2. Pricing

# RFP NO.: 17-6365-06R NW 41st Street Entryway Improvement Project (Re-bid)

TABULATION SHEET					Panel Members			Calculations		
Solicitation Number: 17-6365-06R			Max Score		Kurt Brown	Robin Sooden	Celeste Dunmore	Max Total/ Category	Actual Total / Category	Avg Score / Category
Summary Description: NW 41st Street Entryway Improvements Project										
Closing date: February 22, 2017 @ 3:30pm										
	Category									
	<u>E &amp; F Florida Enterprises, Inc.</u>									
1	Experience and Ability		50		40	30	40	150	110	37
2	Overall Formal Presentation		30		30	20	25	90	75	25
3	Price Proposal		20		20	15	20	60	55	18
Total Score			100		90	65	85	300	240	80
	<u>Vicory Engineers and General Contractors, LLC</u>									
1	Experience and Ability		50		0	0	0	0	0	0
2	Overall Formal Presentation		30		0	0	0	0	0	0
3	Price Proposal		20		0	0	0	0	0	0
Total Score			100		0	0	0	0	0	0



RFP#: 17-6365-06R RFQ Name: NW 41<sup>st</sup> Street Entryway Improvement Project

Contractor: E & F Florida Enterprises Inc  
D/B/A Creative Contracting

Score: \_\_\_\_\_

	Category	Points	Score	Comments
1	Experience and Ability	50	40	
2	Formal Oral Presentation	30	25	
3	Price Proposal	20	20	
	Total Score	100	85	

Rater: Celeste Dunmore  
Print Name

Rater: Celeste Dunmore  
Signature

RFP#: 17-6365-06R RFQ Name: NW 41<sup>st</sup> Street Entryway Improvement Project

Contractor: STF Florida Entry dba County.

Score: 90

	Category	Points	Score	Comments
1	Experience and Ability	50	100	They don't have certificates Still need proof
2	Formal Oral Presentation	30	80	was acceptable.
3	Price Proposal	20	20	
	Total Score	100	90	

Rater: Karl Bm  
Print Name

Rater: [Signature]  
Signature

RFP#: 17-6365-06R RFQ Name: NW 41<sup>st</sup> Street Entryway Improvement Project

Contractor: ETF FLORIDA ENT

Score: 65

	Category	Points	Score	Comments
1	Experience and Ability	50	30	STANDARD
2	Formal Oral Presentation	30	20	ACCEPTABLE
3	Price Proposal	20	15	WORKABLE
	Total Score	100	65	

Rater: Robin Soodeen  
Print Name

Rater: Robin Soodeen  
Signature

**Request for Proposal Submittal Signature**

I, the undersigned Proposal, do hereby certify that the items Proposal meet or exceed the City of Lauderdale Lake's Specifications.

Date of Bid

2-22-17

Company

E+H Florida Enterprises Inc  
O/B/A CREATIVE Contracting Group

Name/Title

LISA Addis Vice President

Signature



Address

3141 Fortune Way S-16

Fed. ID# or SSN

20-0261053

City/State/Zip Code

Wellington FL 33449

Contact Person

LISA Addis

Telephone Number

561-333-1445

Fax Number

561-333-7894

**PRICE PROPOSAL SHEET:**

Please see attached renderings. Price proposal must include labor, equipment, supplies, materials, removal, installation, etc.

Items	Price	Items	Price
Renovation of existing fountains	2000. <sup>00</sup>		
Renovation of existing wall	21,999. <sup>00</sup>		
Landscape	3000. <sup>00</sup>		
Removal of stone finish	4000. <sup>00</sup>		
Debris removal	2000. <sup>00</sup>		
Delivery Costs	1000. <sup>00</sup>		
<b>TOTAL</b>	<b>33,999.<sup>00</sup></b>		

Days to Complete: 60

**TOTAL 33,999.<sup>00</sup>**

Upon execution of contract, a timeline will be established.

Liquidated damages. Contractor shall pay in the amount of \$500 per day to the City for each day the project is not completed per the established timeline without proper approved extension.

**CONTRACT PERIOD:** Contract/agreement period is through completion of the project. It is anticipated that this project will take no more than three-four months to complete.

**TERMS OF PAYMENT:**

**CASH DISCOUNTS:** Although cash discounts may be offered for prompt payment; such discounts shall not be considered in determining the lowest net cost for proposal evaluation. However, cash discounts may be considered when assessing overall value of a proposal to the City.

**TERMS:** 50 % for payment within 3 DAYS. Partial payments are authorized. Invoices must indicate the % complete and % remaining. Invoices must be detailed in order to determine the level of work completed. Final invoice will be not paid until final review and acceptance of project by designated Project/Contract Administrator. Invoices must be addressed City of Lauderdale Lakes, 4300 N.W. 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319.

**DELIVERY/COMPLETION:**

**DELIVERY:** Your quotation shall indicate the number of days required for delivery after receipt of a Contract or Purchase Order in the space provided below. All delivery costs and handling charges must be included in your proposal price. Any and all exceptions must be noted. Failure to do so may be cause for rejection of the quotation. The City reserves the right to cancel orders or any part thereof, without obligation if delivery is not made in the time specified in the quotation accepted by the City. ~~30 days~~

**REFERENCE LIST**

ENTITY/CONTACT PERSON	ADDRESS	PROJECT VALUE \$	TELEPHONE NUMBER
1. Bellagio Community John Kline of Castle group	6525 Bellagio LAKES Blvd LAKE WORTH FL 33467	187,246. <sup>00</sup>	561-439-8211
2. Muirfield townhomes Bruce GARC. S.D.M.P.M.	11198 Polo Club Road Wellington FL 33414	173,264. <sup>00</sup>	561-294-6466
3. Villagio Community, Fy Lacy Carr property manager	6935 Via Bernardi Ln LAKE WORTH FL 33467	172,256. <sup>00</sup>	561-967-7814

I understand that all information listed above may be checked by the city of Lauderdale Lakes and I authorize all entities or persons listed above to answer any and all questions. I hereby indemnify the City of Lauderdale Lakes and the persons and entities listed above and hold them harmless from any claim arising from such authorization or the exercise thereof, including the dissemination.

Original

# **CITY OF LAUDERDALE LAKES**

## **REQUEST FOR PROPOSAL**

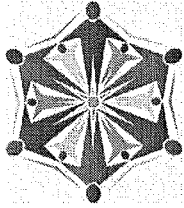
### **NW 41st STREET ENTRWAY IMPROVEMENTS PROJECT**

**RFP NO. 17-6365-06R**



**Department of Financial Services  
Purchasing Division**

**4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319  
(954) 535-2700  
[purchasing@lauderdalelakes.org](mailto:purchasing@lauderdalelakes.org)**



CITY OF LAUDERDALE LAKES  
PURCHASING DIVISION  
4300 NW 36<sup>TH</sup> STREET  
LAUDERDALE LAKES, FL 33319-5599

## REQUEST FOR PROPOSAL

**Request For Proposal #RFP17-6365-06R**

**Request For Proposal: NW 41<sup>st</sup> Street Entryway Improvements Project (Oakland Estates Entry Wall) – RE-BID**

**Pre-Proposal Conference:** There is no pre-bid conference scheduled for this solicitation. Questions must be submitted no later than February 16, 2017. For site inspection, please contact Bobbi Williams @ [bobbwiw@lauderdalelakes.org](mailto:bobbwiw@lauderdalelakes.org) or Geeta Ramharry @ [geetar@lauderdalelakes.org](mailto:geetar@lauderdalelakes.org).

**Request For Proposal Opening Day, Date, and Time: Wednesday, February 22, 2017 at 3:30 P.M.**  
**Note this meeting is open to the public. Location: City Commission Chambers, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319.**

**CONTACT FOR THIS RFP: Please direct all inquiries to:**

From: Bobbi Williams
Tel: 954-535-2700
Fax: 954-535-1892
Email: <a href="mailto:bobbwiw@lauderdalelakes.org">bobbwiw@lauderdalelakes.org</a>
Date Issued: February 11, 2017

### **Scope of Work:**

The City of Lauderdale Lakes is requesting quotations from qualified contractors to renovate the existing entryway walls, fountains, and landscape at the west intersection of NW 41<sup>st</sup> Street and State Road 441. The objective of the NW 41<sup>st</sup> Street Entryway **Improvements Project (Oakland Estates Entry Wall)** is to make the entryway more decorative and aesthetically pleasant per the attached renderings. The renderings were prepared based on the scope assumptions of removing existing stone finish, hauling away demolished debris, columns to receive stucco finish, stucco bands & cap, providing new smooth stucco finish, stucco band & control joints at the front side of the wall, priming and painting wall both sides. The scope also includes renovations of the existing fountains. The intent is to improve/renovate the existing wall, landscape and fountains, for outstanding architectural beauty.

This project does not require permits nor bid or performance bond.

Renderings: Plants & Shrubs are: Loropetalum 7gl.; Loropetalum 3gl.; Ilex Schillings 7gl.; Ilex Schillings 3gl.; Lantana 1gl. : color options: Yellow, Purple, White, Confetti, Red; Pentas 1gl. : color options: Red, Pink, Purple, White

Project Budget: \$34,999. Project budget is estimated.

This project requires that you have a minimum experience of three (3) similar projects within the last five (5) years.

An original proposals must be sealed and submitted along with four (4) copies to the following:

Attn: Department of Financial Services  
City of Lauderdale Lakes  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, FL 33319

**GENERAL INFORMATION**

THE TERMS BIDDER AND CONTRACTOR WILL BE USED INTERCHANGEABLY, AND WHEN SO USED, DEEMED TO MEAN BIDDER. THE TERMS BID AND QUOTE WILL BE USED INTERCHANGEABLY, AND WHEN SO USED, DEEMED TO MEAN BID.

Submission of a bid in response to this Request For Informal Quotation constitutes an offer by the Bidder. Bids which do not comply with these requirements may be rejected at the option of the City.

1. **TERM:** The Contract and/or Purchase Order will be in force as stated on the Purchase Order.
2. **EXECUTION OF BID:** Bid must contain a manual signature, in ink, of an authorized representative, who has the legal ability to bind the Bidder in Contractual obligations. Bid must be typed or legibly printed in ink. Use of erasable ink is not permitted. All corrections made by Bidder to any part of the bid document must be initialed in ink.
3. **INVOICING AND PAYMENT:** Payment for any and all invoice(s) shall meet the following conditions to be considered as a valid payment request.

3.1 Submission of a properly certified invoice(s) in accordance with the Contract or Purchase Order document, and submitted to:

City of Lauderdale Lakes  
Attn: Accounts Payable  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, Florida 33319

3.2 All invoices submitted shall consist of an original and one (1) copy; clearly reference the subject Contract or Purchase Order number; provide a sufficient salient description to identify goods or service for which payment is requested; contain date of delivery; original or legible copy of a signed delivery receipt including both manual signature and printed name of a designated City employee or authorized agent; be clearly marked as "partial", "complete" or "final" invoice. The City will accept partial deliveries of several units, not component parts.

3.3 The invoice shall contain the Bidder's Federal Employer Identification number.

3.4 The City's terms are "Net 30 Days" after acceptance of goods or services and receipt of an acceptable invoice as described herein. Any other items of payment must have been previously approved by the City, and appear on

the Contract or Purchase Order document to be binding on the City.

4. **ADDITIONAL TERMS AND CONDITIONS:** No additional terms and conditions included with the bid response shall be evaluated or considered, have no force or effect, and are inapplicable to this bid. It is understood and agreed that the conditions in these Bid Documents are the only conditions applicable to this bid and the Bidder's authorized signature on the Bid Form attests to this.
5. **CONFLICT OF INTEREST:** All Bidders must disclose with their bid the name of each of its employees, agents, or relatives who are also employees of the City. Further, all Bidders must disclose the name of any City employee known to it, who owns, directly or indirectly, an interest of five (5%) percent or more in the Bidder's firms or any of its branches.
6. **BID EXEMPT:** Prices shall not exceed Bidder's current Contract pricing or pricing given by Bidder to other public entity or State of Florida Contract. The City reserves the right to exempt any item or service if deemed to be in the best interest of the City.
7. **AWARDS:** As the best interest of the City may require, at its sole discretion, the right is reserved to reject the bid of any vendor who has previously failed in the proper performance of an Award or to deliver on time Contracts of a similar nature or who is not in a position to perform properly under this Award and to make Award(s) by individual item, group of items, "All or None", or a combination thereof; with one or more suppliers; to reject any or all bids, or waive any minor irregularity or technicality in bids received and may, at its sole discretion, request a re-bid. Bidders are cautioned to make no assumption until the City has entered into a Contract or Purchase Order.
8. **PROMOTIONAL PRICING:** Bidder shall offer to the City during the Contract period any item(s) offered on a "promotional" basis from the manufacturer. It will be the successful Bidder's responsibility to monitor said item(s) and report any that are or will be offered at lower price.



9. **REPRESENTATION:** A Bidder must have, at the time of the bid submission, an operational facility, or be a fully authorized agent or representative of the product bid, and capable of producing or providing the items bid, and so certify upon request.

10. **ALTERNATES:** Unless otherwise specified, the mention of the particular manufacturer's brand name or number in the Specifications does not imply that this particular product is the only one that will be considered for purchase. This reference is intended solely to designate the type or quality of merchandise that will be acceptable. Alternate offers will be considered and must include descriptive literature and Specifications. Failure to provide descriptive literature and Specifications with alternate offers may be cause for disqualification of the Alternate.

The determination of whether or not any alternate product or service is or is not equal shall be made by the Purchasing and Contracts Manager or his designee and such determination shall be final and binding upon all Bidders.

11. **EXCEPTIONS TO SPECIFICATIONS:** Any exceptions to Specifications must be listed and explained. Failure to list any exceptions means Bidder is complying 100% with the Specifications. All materials may be inspected by the City upon delivery for compliance with the Specifications. Deviations will not be tolerated and will be cause for rejection unless they were originally listed in Bidder's proposal or approved (in writing) by the City.

12. **BIDS TO REMAIN OPEN:** All bids shall remain open for sixty (60) days after the date of bid opening prior to award.

13. **ANNUAL APPROPRIATION:** This Bid is conditional upon the City having funding to implement the Contract.

14. **COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH:** Bidder certifies that all material, equipment, etc., contained in his/her bid meets all applicable O.S.H.A. requirements. Bidder further certifies that, if he/she is the successful Bidder, and the material, equipment, etc., delivered is subsequently found to be defective in any applicable O.S.H.A. requirement effect on the date of delivery, all costs necessary

to comply with the requirements shall be borne by the Bidder.

15. **SAMPLES:** Samples of items, when required, must be furnished free of expense and, if not destroyed, will, upon request, be returned at the Bidder's expense. Request for the return of samples must be made within 30 days following opening of bids. Each individual sample must be labeled with Bidder's name, bid number and item number. Failure of Bidder to either deliver required samples or to clearly identify samples as indicated may be reason for rejection of the bid. Unless otherwise indicated, samples should be delivered to the Purchasing and Contracts Manager, City of Lauderdale Lakes, 4300 NW 36<sup>th</sup> Street, Lauderdale Lakes, FL 33319

16. **DISPUTES:** In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of the Purchasing and Contracts Manager or designee shall be final and binding on both parties.

17. **LOCAL PREFERENCE** Pursuant to City Ordinance # 99-21, Section 23-64 ½ of the Code of Ordinances, the City of Lauderdale Lakes is required to give preference to vendors who meet the definition of a "qualified local business" as that term is defined in Section 23-64 ½ as follows:

If a qualified local business submits a response to either an inquiry made pursuant to informal competitive conditions or a formal Request For Quotation as required in Section 23-65 of the code, and the original bid of the qualified local business is within five percent (5%) of the low bid, then the City shall give the qualified local business the opportunity to meet the price of the low bid. The order of preference by which the qualified local business shall be given the opportunity to match the low bid shall be from the lowest to the highest bid, as long as the initial bid was within five percent (5%) of the low bid.

18. **REJECTION:** Failure to comply with the following may result in rejection of the bid.

- c. Bid responses **MUST** be listed on, and according to our form of Request For Proposal. (Bids not complying with the foregoing will be rejected!)

b. Listing clients on the Client List.

c. Executing the bid

19. **ESTIMATED QUANTITIES:** Whenever a bid is sought, seeking a source of supply for a specified time for materials or services, the quantities or usage shown are estimated only. No guarantee or warranty is given or implied by the City as to the total amount that may or may not be purchased from any resulting Contracts. These quantities are for Bidders information only and will be used for tabulation and presentation of bid. Usages listed are estimates only and the City reserves the right to increase or decrease usages as required.
20. **WARRANTIES:** Bidder warrants that the products and installation of same (if applicable) supplied under the contract/purchase order are free from defects in materials and workmanship for one (1) year under normal use and service and that any such materials found to be defective shall be replaced by the Bidder and installed (if applicable) at no additional charge to the City. Said warranty expressly includes warranty of fitness for a particular use and warranty of merchantability.
21. **INSURANCE REQUIRED, GENERAL, SERVICE, DELIVERY, ETC.**

The Bidder shall not commence work on any City Property until all insurance required as stated herein has been obtained and such insurance has been approved by the City.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Bidder shall include current certificates of insurance with the bid package. The certificates shall clearly indicate that the Bidder has obtained insurance of the type, amount, and classification as required for strict compliance with insurance requirements as stated herein, and that no change or

cancellation of the insurance shall be effective without 30 days prior written notice to the City. Non-compliance with the foregoing requirements shall not relieve the vendor of their liability and obligations under this Contract.

The Bidder shall maintain commercial liability insurance in the amount of \$1,000,000 per occurrence including products/completed operations.

The Bidder shall maintain comprehensive automobile liability insurance in the following amounts:

Bodily Injury and/or Property Damage  
\$300,000 each occurrence  
\$500,000 aggregate or

Combined Single Limit  
\$500,000 each occurrence/aggregate

These limits are to protect the Bidder and the City from claims for damage, which may arise from general operations or from the ownership, use or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations are by the vendor or by anyone directly or indirectly employed by the vendor.

The Bidder shall maintain Worker's Compensation Insurance as per statutory requirements and Employer's Liability limits no less than \$500,000 per occurrence each accident; \$500,000 disease policy limit; \$100,000 disease each employee.

**UPON AWARD, WITH THE EXCEPTION OF WORKER'S COMPENSATION, THE BIDDER WILL FURNISH CERTIFICATES OF INSURANCE TO THE CITY WITH THE CITY NAMED AS ADDITIONAL INSURED.**

**Request for Proposal Submittal Signature**

I, the undersigned Proposal, do hereby certify that the items Proposal meet or exceed the City of Lauderdale Lake's Specifications.

Date of Bid

2-22-17

Company

E+H Florida Enterprises Inc  
O/B/A CREATIVE Contracting Group

Name/Title

LISA Addis Vice President

Signature



Address

3141 Fortune Way S-16

Fed. ID# or SSN

20-0261053

City/State/Zip Code

Wellington FL 33449

Contact Person

LISA Addis

Telephone Number

561-333-1445

Fax Number

561-333-7894

**PRICE PROPOSAL SHEET:**

Please see attached renderings. Price proposal must include labor, equipment, supplies, materials, removal, installation, etc.

Items	Price	Items	Price
Renovation of existing fountains	2000. <sup>00</sup>		
Renovation of existing wall	21,999. <sup>00</sup>		
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Debris removal	2000. <sup>00</sup>		
Delivery Costs	1000. <sup>00</sup>		
<b>TOTAL</b>	<b>33,999.<sup>00</sup></b>		

Days to Complete: 60

**TOTAL 33,999.<sup>00</sup>**

Upon execution of contract, a timeline will be established.

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**REFERENCE LIST**

ENTITY/CONTACT PERSON	ADDRESS	PROJECT VALUE \$	TELEPHONE NUMBER
1. Bellagio Community John Kline of Castle group	6525 Bellagio LAKES Blvd LAKE WORTH FL 33467	187,246. <sup>00</sup>	561-439-8211
2. Muirfield townhomes Bruce GARC. S.D.M.P.M.	11198 Polo Club Road Wellington FL 33414	173,264. <sup>00</sup>	561-294-6466
3. Villagio Community, Fy Lacy Carr property manager	6935 Via Bernardi Ln LAKE WORTH FL 33467	172,256. <sup>00</sup>	561-967-7814

I understand that all information listed above may be checked by the city of Lauderdale Lakes and I authorize all entities or persons listed above to answer any and all questions. I hereby indemnify the City of Lauderdale Lakes and the persons and entities listed above and hold them harmless from any claim arising from such authorization or the exercise thereof, including the dissemination.

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: No

Contract Requirement: No

#### Title

RESOLUTION 2017-050 AUTHORIZING THE CITY MANAGER TO UTILIZE THE PORT CONSOLIDATED, INC. CONTRACT FOR UNLEADED GASOLINE AND DIESEL FUEL THROUGH THE SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE GROUP CONTRACT NO. E-13-17 FOR A THREE YEAR PERIOD, IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000) PER FISCAL YEAR, FROM MARCH 15, 2017 THROUGH MARCH 14, 2020.

#### Summary

This Resolution authorizes the use of the Port Consolidated, Inc. contract for Unleaded Gasoline and Diesel Fuel as a 'piggy back' agreement for purchase of unleaded gasoline and diesel fuel.

#### Staff Recommendation

#### Background:

The purpose of this agenda is to authorize the City Manager to utilize the Port Consolidated, Inc. contract for Unleaded Gasoline and Diesel Fuel through the Southeast Florida Governmental Purchasing Cooperative Group as a “piggy back” agreement in an amount not to exceed \$50,000 per year, from March 15, 2017 through March 14, 2020.

The most current contract with MacMillan Oils expired March 31, 2017.

The contract and terms and conditions are included as Exhibit A. The initial contract period is March 15, 2017 through March 14, 2020 and includes an additional two (2) year option to renew through March 14, 2022.

#### Funding Source:

For fiscal year 2017, there is adequate funding budgeted in the Public Works Department operating budget.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO, Director of Financial Services

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution 2017-050 - Port Consolidated Inc. - Unleaded Gasoline and Diesel Fuel	Resolution
<input type="checkbox"/> Exhibit A - 2017-050; Port Consolidated Inc.	Exhibit

## RESOLUTION 2017-050

A RESOLUTION AUTHORIZING THE CITY MANAGER TO UTILIZE THE PORT CONSOLIDATED, INC. CONTRACT FOR UNLEADED GASOLINE AND DIESEL FUEL THROUGH THE SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE GROUP CONTRACT NO. E-13-17 FOR A THREE-YEAR PERIOD, IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00) PER FISCAL YEAR, FROM MARCH 15, 2017 THROUGH MARCH 14, 2020, A SUMMARY OF WHICH IS ATTACHED AS EXHIBIT A, AND A COPY OF WHICH CAN BE INSPECTED IN THE OFFICE OF THE CITY CLERK; PROVIDING FOR THE ADOPTIONS TO THE CITY CLERK; PROVIDED FOR THE ADOPTION REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has historically uses the unleaded gasoline and diesel fuel agreement under the Southeast Florida Governmental Purchasing Cooperative Group which contributes to overall savings and discounts due to the purchase volume,

WHEREAS, thirty-nine (39) other governmental agencies within the Southeast Florida Governmental Purchasing Cooperative are participants,

WHEREAS, the lead agency (City of Pompano Beach, FL) formally advertised and issued the Request for Proposal in order to obtain pricing and service capability information for vendors in the unleaded gasoline and diesel fuel marketplace and successfully awarded the contract to Port Consolidated, Inc. on March 14, 2017 (Ordinance 2017-32),

WHEREAS, continued use of the Port Consolidated, Inc. contract will provide substantial savings and discounted bulk fuel prices to the City of Lauderdale Lakes.

WHEREAS, adequate funds are budgeted annually in the Public Works Department's operating budget,

WHEREAS, pursuant to Section 82-196.8 (d), it is in the best interest of the City to participate in the cooperative agreement as it is more advantageous to the City due to the substantial savings and discounted pricing, and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. RATIFICATION: The City Commission hereby ratifies the terms and conditions of the Port Consolidated, Inc. contract and authorizes the three (3) year agreement with Port Consolidated, Inc., Inc.

Section 3. AUTHORIZATION: The City Manager is hereby authorized and directed to utilize the Port Consolidated, Inc. contract for unleaded gasoline and diesel fuel through the Southern Florida Governmental Purchasing Cooperative Group Contract No. E-13-17, in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) per fiscal year, for a three-year period from March 15, 2017 through March 14, 2020 a summary of which is attached as Exhibit A, and a copy of which can be inspected in the office of the City Clerk.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

---

HAZELLE ROGERS, MAYOR

ATTEST:

---

SHARON HOUSLIN, CITY CLERK

JCB:jla

Sponsored by: SUSAN GOODING-LIBURD, MBA, CPA, CGFO, Financial Services  
Director

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)





**Southeast Florida Governmental Purchasing  
Cooperative Group**

**CONTRACT AWARD**

Please complete each of the applicable boxes and submit with bid documents, award notices and tabulations to [lpiper@myboca.us](mailto:lpiper@myboca.us) for placement on the NIGP SEFL website Cooperative contract page.

BID/RFP No. \_\_\_\_\_

Description/Title: \_\_\_\_\_

Initial Contract Term:      Start Date: \_\_\_\_\_      End Date: \_\_\_\_\_

Renewal Terms of the Contract: \_\_\_\_\_      Renewal Options for \_\_\_\_\_  
(No. of Renewals)      (Period of Time)

Renewal No. \_\_\_\_ Start Date: \_\_\_\_\_      End Date: \_\_\_\_\_

Renewal No. \_\_\_\_ Start Date: \_\_\_\_\_      End Date: \_\_\_\_\_

Renewal No. \_\_\_\_ Start Date: \_\_\_\_\_      End Date: \_\_\_\_\_

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**SECTION #1                      VENDOR AWARD**

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

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

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

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

Cell/Pager: \_\_\_\_\_      Email Address: \_\_\_\_\_

Website: \_\_\_\_\_      FEIN: \_\_\_\_\_

---

**SECTION #2                      AWARD/BACKGROUND INFORMATION**

Award Date: \_\_\_\_\_      Resolution/Agenda Item No.: \_\_\_\_\_

Insurance Required:      Yes \_\_\_\_\_      No \_\_\_\_\_

Performance Bond Required:      Yes \_\_\_\_\_      No \_\_\_\_\_

---

**SECTION #3                      LEAD AGENCY**

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

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

Agency Contact: \_\_\_\_\_      Email \_\_\_\_\_

Telephone: \_\_\_\_\_      Fax: \_\_\_\_\_

ORDINANCE NO. 2017- 32

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PORT CONSOLIDATED, INC. FOR THE PURCHASE OF UNLEADED GASOLINE AND DIESEL FUEL, WITH THE CITY OF POMPANO ACTING AS THE LEAD AGENCY FOR THE SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE GROUP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Pompano Beach, acting as lead agency for the Southeast Florida Governmental Purchasing Cooperative Group, enters into a contract with Port Consolidated, Inc. for the purchase of unleaded gasoline and diesel fuel, in accordance with the pricing, terms and conditions of RFP E-13-17; and

**WHEREAS**, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

**WHEREAS**, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

**BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** The above referenced "Whereas" clauses are true and correct and made a part hereof.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement with Port Consolidated, Inc. pursuant to RFP E-13-17.

**SECTION 3.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 4.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this 28th day of February, 2017.

**PASSED SECOND READING** this 14th day of March, 2017.

  
\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

  
\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

/jrm  
2/16/17  
L:ord/2017-132



## CONTRACT

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**THIS AGREEMENT** is made and entered into this 15<sup>th</sup> day of March, 2017, by the CITY OF POMPANO BEACH, hereinafter referred to as "City" and PORT CONSOLIDATED, INC., a Florida corporation, hereinafter referred to as "Contractor."

**WHEREAS**, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

**WHEREAS**, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth; and

**WHEREAS**, the City of Pompano Beach is acting as lead agency for the Southeast Florida Governmental Purchasing Cooperative Group, and the City enters into a contract with Port Consolidated, Inc. for the purchase of unleaded gasoline and diesel fuel, in accordance with the pricing, terms and conditions of RFP E-13-17; and

**WHEREAS**, Contractor agrees to provide all members of the Southeast Florida Governmental Purchasing Cooperative Group with the same pricing as the City of Pompano Beach.

**NOW, THEREFORE**, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit "A" – RFP E-13-17; Exhibit "B" – Proposal of Port Consolidated, Inc.; Exhibit "C" – Rate Schedule; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

2. Purpose. City hereby contracts with Contractor to provide for the purchase of unleaded gasoline and diesel fuel upon the terms and conditions herein set forth and the Contract Documents.

3. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit "A" (RFP E-13-17), attached hereto and by reference incorporated herein and made a part hereof. Contractor agrees to provide all members of the Southeast Florida Governmental Purchasing Cooperative Group, as listed in Attachment "B" of RFP E-13-17, ("Participating Agencies"), and as may be added during the period of this Agreement, with the same pricing as the City of Pompano Beach.

4. Term of Contract. This Contract shall be for a term of three (3) years or less beginning with the date this Contract is fully executed by both parties.

5. Renewal. In the event City determines the Contractor to be in full compliance with this contract and Contractor's performance to be satisfactory, then City, with City Commission approval, shall have the option to renew this contract for an additional period of two (2) years upon the written consent of both the City and the Contractor, and provided that City will provide notification within sixty (60) days of termination date of its intention.

6. Maximum Obligation. City agrees to pay Contractor in consideration for its products and services described herein. It is the intention of the parties hereby to insure that unless otherwise directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract. City shall be responsible only for payment for products and services provided to City and not for purchases from Contractor by Participating Agencies.

7. Price Formula. City agrees to pay Contractor for performance of the services set forth in this Agreement as set forth in the Rate Schedule attached hereto as Exhibit "C" and incorporated herein.

8. Invoices. Contractor shall submit the invoices to City and Participating Agencies for their agency's purchases only, and payments made in the manner provided in Paragraph U.11 of RFP E-13-17. All payments by the City and Participating Agencies, shall be made after the service has been provided.

9. Disputes.

A. Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

10. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

**If to Contractor:** Port Consolidated, Inc.  
Donald R. Carlton, Jr., President  
P. O. Box 350430  
Fort Lauderdale, Florida 33335

**If to City:** City of Pompano Beach  
City Manager  
P. O. Box 1300  
Pompano Beach, Florida 33060

11. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

12. Termination. This Agreement may be terminated pursuant to Paragraph Q of RFP E-13-17.

13. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

14. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in RFP E-13-17 attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days' notice to City.

15. Indemnity. The Contractor shall defend, indemnify and hold the City, all Participating Agencies in the Purchasing Cooperative Group, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract. Nothing in this Agreement shall be construed to affect in any way the rights, privileges and immunities of the City and agencies, as set forth in Section 768.28, Florida Statutes.

16. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

17. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

18. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

19. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies

concerning worker's compensation, unemployment compensation and minimum wage requirements.

20. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

21. Ordering and Payment. It is understood and agreed that the City of Pompano Beach is not a legally bound party to any contractual agreement made between any other agency and the Contractor as a result of this Agreement or purchases made between other agencies. After award of contract to Contractor, the City reserves the right to issue purchase orders in accordance with the terms of this contract.

22. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

23. Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps

and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

24. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

25. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

26. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

27. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.



28. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

**CITY OF POMPANO BEACH**

Christine Kendel

By:

LAMAR FISHER, MAYOR

Shirley R. Bartholomew

By:

GREGORY P. HARRISON, CITY MANAGER

Attest:

Asceleta Hammond

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March, 2017, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:



Kervin Alfred  
NOTARY PUBLIC, STATE OF FLORIDA  
(Name of Acknowledger Typed, Printed or Stamped)

**"CONTRACTOR"**

PORT CONSOLIDATED, INC.  
a Florida corporation

Witnesses:

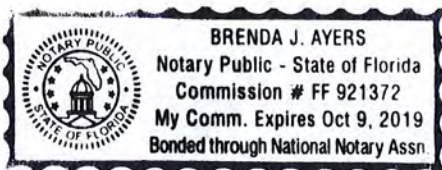
Joseph R. Jiska  
(Print or Type Name)  
Karen Alvarez  
(Print or Type Name)

By: Donald R. Carlton Jr.  
Print Name: Donald R. Carlton Jr.  
Title: President  
Business License No. 795 718

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22 day of FEBRUARY, 2017, by DONALD R. CARLTON JR as PRESIDENT of PORT CONSOLIDATED, INC., a Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



Brenda J. Ayers  
NOTARY PUBLIC, STATE OF FLORIDA  
BRENDA J. AYERS  
(Name of Acknowledger Typed, Printed or Stamped)  
FF 921372  
Commission Number

/jrm  
2/21/17  
l:agr/genl srvs/2017-382

Service Contract



Florida's Warmest Welcome

**CITY OF POMPANO BEACH  
REQUEST FOR PROPOSALS  
E-13-17**

**UNLEADED GASOLINE & DIESEL FUEL  
FOR SOUTHEAST FLORIDA GOVERNMENTAL  
PURCHASING COOPERATIVE GROUP**

**RFP OPENING: January 20, 2017 2:00 P.M.  
PURCHASING OFFICE  
1190 N.E. 3RD AVENUE, BUILDING C (Front)  
POMPANO BEACH, FLORIDA 33060**



## SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE

### TO OUR PROSPECTIVE CONTRACTORS:

The attached Invitation for Bid or Request for Proposal represents a cooperative procurement for the Southeast Florida Governmental Purchasing Cooperative.

For the past several years, approximately forty-five (45) government entities have participated in Cooperative Purchasing in Southeast Florida. The Southeast Florida Governmental Purchasing Cooperative was formed in an effort to provide cost savings and cost avoidances to all entities by utilizing the buying power of combined requirements for common, basic items.

The Government Agencies participating in this particular procurement and their respective delivery locations are listed in the attached document.

### Southeast Florida Governmental Purchasing Cooperative Procurement Operational Procedures:

- All questions concerning this procurement should be addressed to the issuing agency, hereinafter referred to as the "lead agency". All responses are to be returned in accordance with the instructions contained in the attached document. Any difficulty with participating agencies referenced in this award must be brought to the attention of the lead agency.
- Each participating governmental entity will be responsible for awarding the contract, issuing its own purchase orders, and for order placement. Each entity will require separate billings, be responsible for payment to the Contractor(s) awarded this contract, and issue its own tax exemption certificates as required by the Contractor.
- The Contract/purchase order terms of each entity will prevail for the individual participating entity. Invoicing instructions, delivery locations and insurance requirements will be in accordance with the respective agency requirements.
- Any reference in the documents to a single entity or location will, in fact, be understood as referring to all participating entities referenced in the documents and cover letter unless specifically noted otherwise.
- The awarded Contractor(s) shall be responsible for advising the lead agency of those participants who fail to place orders as a result of this award during the contract period.
- The Contractor(s) shall furnish the Lead Agency a detailed Summary of Sales semi-annually during the contract period. Sales Summary shall include contract number(s), contractor's name, the total of each commodity sold during the reporting period and the total dollar amount of purchases by commodity.
- Municipalities and other governmental entities, which are not members of the Southeast Florida Governmental Purchasing Cooperative, are strictly prohibited from utilizing any contract or purchase order resulting from this bid award. However, other Southeast Florida Governmental Purchasing Cooperative members may participate in their contract for new usage, during the contract term, or in any contract extension term, if approved by the lead

agency. New Southeast Florida Governmental Purchasing Cooperative members may participate in any contract on acceptance and approval by the lead agency.

- None of the participating governmental entities shall be deemed or construed to be a party to any contract executed by and between any other governmental entity and the Contractor(s) as a result of this procurement action.

**I. "WORKING TOGETHER TO REDUCE COSTS"**



December 20, 2016

CITY OF POMPANO BEACH, FLORIDA  
REQUEST FOR PROPOSALS  
E-13-17  
UNLEADED GASOLINE & DIESEL FUEL  
FOR SOUTHEAST FLORIDA GOVERNMENTAL  
PURCHASING COOPERATIVE GROUP

The City of Pompano Beach, hereinafter referred to as CITY, is seeking proposals from qualified firms to provide unleaded gasoline and diesel fuel to participating members of the Southeast Florida Governmental Purchasing Cooperative Group.

The City will receive sealed proposals until **2:00 p.m. (local), January 20, 2017**. Proposals must be submitted electronically through the eBid System on or before the due date/time stated above. Any proposal received after the due date and time specified, will not be considered. Any uncertainty regarding the time a proposal is received will be resolved against the Proposer.

Proposer must be registered on the City's eBid System in order to view the solicitation documents and respond to this solicitation. The complete solicitation document can be downloaded for free from the eBid System as a pdf at: <https://pompanobeachfl.ionwave.net/CurrentSourcingEvents.aspx>. The City is not responsible for the accuracy or completeness of any documentation the Proposer receives from any source other than from the eBid System. Proposer is solely responsible for downloading all required documents. Responses will be electronically unsealed in a public forum and read aloud.

### **Introduction**

The intent of this solicitation is to establish an annual, open-end contract for the purchase of unleaded gasoline and diesel fuel, as and when needed. The City is acting as the lead agency for the Southeast Florida Governmental Purchasing Cooperative, and this solicitation includes the requirements of both the City and the participating agencies named herein. Any reference to a single agency or location will in fact, be understood as referring to all participating agencies referenced in the documents unless specifically noted otherwise.

### **A. Objectives**

1. Contract for diesel and unleaded gasoline products with suppliers that have access to volumes of substantial petroleum products at Port Everglades either via contractual allocations or direct ownership, and have proven stable business operations, including provisions for delivery capabilities, business continuity and supply to the participating agencies in emergency situations.
2. Obtain the fuels at competitive market rates.

### **B. Scope Of Services**

Attachment "A" – Specifications and Requirements

Attachment "B" – Locations of Participating Agencies fuel locations and contact personnel.

**C. Participating Agencies**

	Agency Name	Address	Contact Person	Phone #
1	Broward County	1 University Drive Plantation, FL 33301	Alfred Clauson	954 357-6477
2	Boca Raton, City of	201 W. Palmetto Park Rd. Boca Raton, FL 33432	Lynne Piper	561 393-7878
3	Coconut Creek, City of	4900 W Copans Rd Coconut Creek, FL 33063	Lorie Messer	954 956-1584
4	Cooper City, City of	9090 SW 50 Place Cooper City, FL 33328	Kerri-Anne Fisher	954 434-4300 x268
5	Coral Springs, City of	4181 NW 121 Ave Coral Springs, FL 33065	Alan DiStefano	954 345-2235
6	Dania Beach, City of	100 W Dania Beach Blvd Dania Beach, FL 33004	Ronnie Navarro	954 924-6808
7	Davie, Town of	6591 Orange Dr Davie, FL 33314	Brian O'Connor	954 797-1016
8	Deerfield Beach, City of	401 SW 4 <sup>th</sup> St. Deerfield Beach, FL 33441	Ivelsa Guzman	954 480-4486
9	Ft. Lauderdale, City of	100 N Andrews Ave. Ft. Lauderdale, FL 33301	Sandy Leonard	954 828-5781
10	Green Acres, FL	5800 Melaleuca Lane Green Acres, FL 33463	Monica Powery	561 642-2089
11	Hallandale Beach, City of	400 S Federal Highway Hallandale Beach, FL 33009	Andrea Lues	954 457-1332
12	Hillsborough Beach, Town of	1210 Hillsboro Mile Hillsborough Beach, FL 33062	Jim Pugliese	954-427-6600
13	Hollywood, City of	2600 Hollywood Blvd. Hollywood, FL 33020	Paul Bassar	954 921-3552
14	Lauderdale Lakes, City of	3463 NW 43 Ave. Lauderdale Lakes, FL 33319	Robin Soodeen	954 535-2758
15	Lauderhill, City of	1919 NW 55 <sup>th</sup> Ave. Lauderhill, FL 33319	Manny Cerezo	954 790-2966
16	Lighthouse Point, City of	4730 NE 21st Terrace Lighthouse Point, FL 33064	Charles Schramm	954 946-7386
17	Margate, City of	5790 Margate Blvd Margate, FL 33063	Spencer Shambray	954 935-5341
18	Miami, City of	444 SW 2 <sup>nd</sup> Ave, 6 <sup>th</sup> Flr. Miami, FL 33130	Eduardo Falcon	305 416-1901
19	Miami Gardens, City of	18605 NW 27 Ave. Miami Gardens, FL 33055	Tom Ruiz	305 622-8000

20	Miramar, City of	13900 Pembroke Rd. Miramar, FL 33027	Alicia Ayum	954 602-3121
21	N Miami, City of	776 NE 125 St. N Miami, FL 33161	Alberto Destrade	305 895-9886
22	N Miami Beach, City of	2101 NE 159th Street, N Miami Beach, FL 33162	Joel Wasserman	305 948-2946
23	North Palm Beach, Village of	645 Prosperity Farms Road N. Palm Beach, FL 33408	Susanne Hachigian	561 841-3375
24	Palm Beach, Town of	951 Old Okeechobee Rd. West Palm Beach, FL 33401	Adis Pedraza	561 227-7000
25	Palm Springs, Village of	226 Cypress Lane Palm Springs, FL 33461	Ken Dye	561 965-5770
26	Pembroke Park, Town of	3150 SW 52 <sup>nd</sup> Ave. Pembroke Park, FL 33023	Todd Larson	954 966-4600 Ext. 238
27	Pembroke Pines, City of	13975 Pembroke Rd Pembroke Pines, FL 33027	Mark Gomes	954 518-9020
28	Plantation, City of	400 NW 73rd Avenue Plantation, FL 33317	Charles Spencer	954 797-2647
29	Pompano Beach, City of	1190 NE 3 <sup>rd</sup> Ave, Bldg C Pompano Beach, FL 33060	Jeff English	954 786-4098
30	Riviera Beach, City of	2051 MLK Blvd. Ste. 310 Riviera Beach, FL 33404	Rebecca Reed	561 882-1809
31	School Board, Broward Cty	7720 W Oakland Park Blvd. #323, Sunrise, FL 33351	Al Shelton	754 321-0520
32	School District, Palm Beach County	3300 Forest Hills Blvd. West Palm Beach, FL 33406	Morris Simpson	561 434-8172
33	Sheriffs Office, Broward County	2601 West Broward Blvd Ft Lauderdale, FL 33312	Rick Torres	954 831-8170
34	Southwest Ranches, Town of	13400 Griffin Road Southwest Ranches, FL 33330	Sandy Luongo	954 343-7476
35	Sunrise, City of	10770 Oakland Pk Blvd, 3rd Flr Sunrise, FL 33351	Wendy Lorenzo	954 572-2485
36	Tamarac, City of	7525 N.W. 88 <sup>th</sup> Ave. Tamarac, FL 33321	Keith Glatz	954 597-3567
37	West Palm Beach, City of	401 Clematis Street W Palm Beach, FL 33401	Nate Rubel	561 822-2109
38	Weston, City of	2599 S Post Road Weston, FL 33327	Karl Thompson	954 385-2600
39	Wilton Manors, City of	524 NE 21 Ct. Wilton Manors, FL	David Archacki	954 390-2190



**D. Term of Contract**

The initial contract period shall be one year, commencing upon award by the appropriate City officials.

The City reserves the right to renew this agreement for four (4) additional one-year periods subject to vendor acceptance, satisfactory performance, and determination that renewal will be in the best interest of the City. All terms, prices and conditions shall remain firm for the initial period of the contract, and any renewal period. Renewals may be approved and executed by the City Manager or their designee.

The City may require additions or deletions of participating agencies. This may entail additional agencies and locations, and/or deletion of previous participating agencies. The Contractor shall serve all required additions or deletions, as requested by the City, according to the terms and conditions of the solicitation.

In the event delivery/service is scheduled to end because of the expiration of this contract, the Contractor shall continue to deliver/service upon the request of the General Services Director. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the product/service at the rate in effect when this extension clause is invoked by the City.

**E. Required Proposal Submittal****Submission/Format Requirements**

Sealed proposals shall be submitted electronically through the eBid System on or before the due date/time stated above. Proposer shall upload response as one (1) file to the eBid System. The file size for uploads is limited to 100 MB. If the file size exceeds 100 MB the response must be split and uploaded as two (2) separate files.

**Information to be included in the proposal:** In order to maintain comparability and expedite the review process, it is required that proposals be organized in the manner specified below, with the sections clearly labeled:

1. Cover letter: A cover letter signed by an authorized representative of the firm. The letter should present an overview of the Proposer's organization and will include the firm name, address, principal contact person for this proposal, e-mail address, phone number, and fax number. A brief description of the firm's history and corporate affiliations.
2. Qualifications, capabilities, and experience: Qualifications and specialized experience of proposer for providing the type of products described in the Specifications and Requirements (Attachment "A") of this RFP.
  - a. State proposer's capability to provide these types of products on a local (Port Everglades) and regional/national level.

- b. List of representative current customers comparable in size and scope to this RFP for which the Proposer is providing petroleum products. The list should include the name and address of each client's contact person, telephone and fax numbers, e-mail address and a general description of the existing business relationship.
3. Personnel: Identify the proposed contact persons and telephone numbers for ordering services, for invoicing questions, and other key (customer service) personnel that will be assigned to this account.
4. Address how Proposer will ensure its contractual obligation to the Co-Op. Include any contractual obligations to supply fuel to other entities that could affect the Co-Op's supply of fuel. If Proposer is a fuel distributor (not a fuel terminal operator) also provide proof of monthly fuel sale volumes, including copies of any Letter of Intent or contractual agreements with terminal operators.
5. Obligations of the participating agencies: Describe the requirements (operational, legal, agreements, insurance, etc.) for the sale and delivery of petroleum products. Copies of any and all required terms and conditions, agreements, notices, or procedural descriptions should be attached to the proposal response. Proposers should describe in detail any product volume purchase requirements which would be required of **each participating agency** on a monthly basis.
6. ***Contingency plan of action. Firms should describe a plan of action to assure product availability (including requirements for additional products before and after an emergency situation), and avoid disruption of supply during any emergency situation (e.g. hurricanes). Describe your storage and distribution logistics plan to include but not be limited to: ownership or control of storage facilities in the Tri-County area, agreements or partnerships with fuel transportation providers to supplement existing delivery capabilities, redundant communication capabilities, and emergency power generation. Availability of fuels at other terminals on a regional basis should also be described in this plan of action submittal.***
7. Price Proposal: Submit your firm, fixed price proposal for providing all services, materials, etc. required for sale of petroleum products as outlined on Attachment A-item 2 "pricing methodology" with the proposal response.
8. Alternate Proposals:
  - a. An option is afforded to all proposers to submit, in addition to their original proposal, an alternate proposal, which excludes the provision of transportation services for the petroleum products, included in this RFP. Transportation services would be the responsibility of that participating agency, typically with vehicles owned and operated by the agency. Proposers wishing to submit on this basis should clearly indicate in the alternative proposal response the discount from the differential provided in the pricing pages and any requirements to be met by the participating agency, such as insurance provisions to be supplied and certifications for vehicles and operators.

- b. For the potential use of some participating agencies, the opportunity is afforded to all proposers to provide the option to pre-arrange purchase of fixed volume(s) of product(s) at a fixed price from time to time thereby assuring:
  - i. Product availability of fixed volume(s) on a ratable basis over a defined period of time, presumable in monthly increments.
  - ii. Established pre-agreed fixed pricing point(s) for product(s) during that established period of time, regardless of market conditions.

Proposers wishing to provide an alternate proposal on a fixed volume/fixed price basis should provide minimum and, if applicable, maximum monthly volumes applicable or percentage of agency estimated ratable demand that could be contracted for on this basis. If available, provide a copy of standard terms and conditions that would generally apply to such a transaction.

9. Addenda, Additional Information:

Any addenda or answers to written questions supplied by the City to potential proposers become part of this Request for Proposal and any resulting contract. The proposal form should be signed by an authorized company representative, dated and returned with the proposal.

10. Contract with Participating Agencies:

No negotiations, decisions or action shall be initiated or executed by the Offeror as a result of any discussions with any participating agency or representative of those agencies. Only those communications, which are in writing from the Purchasing Agent, or other designee, of the City of Pompano Beach may be considered as a duly authorized expression. Also, only communications from Offerors that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of the Offeror.

**Litigation:**

Disclose any litigation within the past five (5) years arising out your firm's performance.

**City Forms:**

The RFP Proposer Information Page Form and any other required forms must be completed and submitted electronically through the City's eBid System.

**F. Insurance**

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

If you are responding to a solicitation and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

CONTRACTOR is responsible to deliver to the CITY for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

1. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
2. Liability Insurance
  - a. Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.
  - b. Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance		Limits of Liability	
<b>GENERAL LIABILITY:</b>		Minimum \$2,000,000 Per Occurrence and \$2,000,000 Per Aggregate	
* Policy to be written on a claims incurred basis			
XX	comprehensive form	bodily injury and property damage	
XX	premises - operations	bodily injury and property damage	
—	explosion & collapse hazard		
—	underground hazard		
XX	products/completed operations hazard	bodily injury and property damage combined	
XX	contractual insurance	bodily injury and property damage combined	
XX	broad form property damage	bodily injury and property damage combined	
XX	independent contractors	personal injury	
XX	personal injury		
—	sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate	
<hr/>			
<b>AUTOMOBILE LIABILITY:</b>		Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.	
XX	comprehensive form		
—	owned		
—	hired		
—	non-owned		
<hr/>			
<b>REAL &amp; PERSONAL PROPERTY</b>			
—	comprehensive form	Agent must show proof they have this coverage.	
<hr/>			
<b>EXCESS LIABILITY</b>		Per Occurrence	Aggregate
—	other than umbrella	bodily injury and property damage combined	\$1,000,000 \$1,000,000
<hr/>			
<b>PROFESSIONAL LIABILITY</b>		Per Occurrence	Aggregate
XX	* Policy to be written on a claims made basis	\$2,000,000	\$2,000,000
<hr/>			

- c. If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions of the Agreement shall

survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

3. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.
4. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:
  - a. Certificates of Insurance evidencing the required coverage;
  - b. Names and addresses of companies providing coverage;
  - c. Effective and expiration dates of policies; and
  - d. A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.
5. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.
6. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

The successful proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract. Certificate(s) to be issued to City of Pompano Beach, Attention Risk Manager, 100 West Atlantic Boulevard, Pompano Beach, Florida, 33060.

**G. Selection/Evaluation Process**

A Selection/Evaluation Committee will be appointed to select the most qualified firm(s). The Selection/Evaluation Committee will present their findings to the City Commission.

Proposals will be evaluated using the following criteria.

<u>Criteria</u>	<u>Point Range</u>
<b>1. Firm Qualifications and Capabilities</b> (Factors including but not limited to the following) <ul style="list-style-type: none"> <li>Fuel supply delivery capability from Port Everglades</li> <li>Contracting Terms and Conditions proposed</li> </ul>	0-40
<b>2. Emergency Supply Capabilities</b> (Factors including but not limited to the following) <ul style="list-style-type: none"> <li>Control of storage facilities in Tri-County area</li> <li>Contingency plan of action</li> <li>Availability of regional emergency storage</li> </ul>	0-20
<b>3. References</b> (Factors including but not limited to the following) <ul style="list-style-type: none"> <li>Years experience</li> <li>Number of Locations</li> </ul>	0-10
<b>4. Cost</b>	0-30
<b>Total</b>	<b>0-100</b>

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the

solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

**H. Hold Harmless and Indemnification**

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

**I. Retention of Records and Right to Access**

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. The selected firm must comply with the Internal Auditor's recommendation for changes, additions, or deletions. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

**J. Communications**

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

**K. No Discrimination**

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

**L. Independent Contractor**

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

**M. Staff Assignment**



The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

**N. Contract Terms**

The contract resulting from this RFP shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFP document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

**O. Waiver**

It is agreed that no waiver or modification of the contract resulting from this RFP, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

**P. Survivorship Rights**

This contract resulting from this RFP shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

**Q. Termination**

The contract resulting from this RFP may be terminated by the City of Pompano Beach without cause upon providing contractor with at least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFP for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

**R. Manner of Performance**

Proposer agrees to perform its duties and obligations under the contract resulting from this RFP in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

**S. Acceptance Period**

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

**T. RFP Conditions and Provisions**

The completed proposal (together with all required attachments) must be submitted electronically to City on or before the time and date stated herein. All Proposers, by electronic submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Proposer's response shall not contain any alteration to the document posted other than entering data in spaces provided or including attachments as necessary. By submission of a response, Proposer affirms that a complete set of solicitation documents was obtained from the eBid System or from the Purchasing Division only and no alteration of any kind has been made to the solicitation. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

**U. Standard Provisions**

**1. Governing Law**

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

2. Licenses

In order to perform public work, the successful Proposer shall:  
Be licensed to do business in Florida, if an entity, and hold or obtain such Contractor' and Business Licenses if required by State Statutes or local ordinances.

3. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any Elected Official, Appointed Official, or City Employee is also an owner, corporate officer, or an employee of the firm. If any Elected Official, Appointed Official, or City Employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to §112.313, Florida Statutes.

4. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

5. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to 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 Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

6. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

7. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

8. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

9. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3<sup>rd</sup> Avenue, Building C, Pompano Beach, Florida 33060.

10. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

11. Invoicing/Payment

Payment will be **made by each Participating Agency** within fifteen (15) calendar days from delivery of product at Participating Agencies location via wire transfer to seller's account and bank, as indicated on the invoice.

12. Public Records

- a. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:
  - i. Keep and maintain public records required by the City in order to perform the service;
  - ii. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City; and
  - iv. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.
- b. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

**V. Questions and Communication**

All questions regarding the RFP are to be submitted in writing. All questions are to be submitted using the Questions feature in the eBid System. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Addenda will be posted to the RFP solicitation in the eBid System, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

**W. Addenda**

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this RFP solicitation the addendum will be issued via the eBid System. It shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their proposal. Addenda will be posted to the RFP solicitation in the eBid System.

**COMPLETE THE PROPOSER INFORMATION FORM ON THE ATTACHMENTS TAB IN THE EBID SYSTEM. PROPOSERS ARE TO COMPLETE THE FORM IN ITS ENTIRITY AND INCLUDE THE COMPLETED FORM IN YOUR PROPOSAL THAT MUST BE UPLOADED TO THE RESPONSE ATTACHMENTS TAB FOR THE RFP IN THE EBID SYSTEM.**

**PROPOSER INFORMATION PAGE**

**RFP** \_\_\_\_\_, \_\_\_\_\_  
(number) (RFP name)

To: The City of Pompano Beach, Florida

The below named company hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) \_\_\_\_\_ Title \_\_\_\_\_

Company (Legal Registered) \_\_\_\_\_

Federal Tax Identification Number \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Email Address \_\_\_\_\_

**REQUESTED INFORMATION BELOW IS ON THE ATTRIBUTES TAB FOR THE RFP IN THE EBID SYSTEM. PROVIDE THIS INFORMATION ELECTRONICALLY.**

**VENDOR CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS**

Respondent Vendor Name: \_\_\_\_\_

Vendor FEIN: \_\_\_\_\_

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

Certified By (include Name and Title):

\_\_\_\_\_





3141 SE 14th Ave. • P.O. Box 350430  
Ft. Lauderdale, FL 33335  
Phone: (954) 522-1182  
Fax: (954) 527-1191  
Toll Free: (800) 683-5823

February 15, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Re: Best and Final Offer – E-13-17

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Dear Mr. English:

Thank you very much for your time today and thank you for the opportunity.

As a follow up to our negotiation meeting for E-13-17, please see our "Best and Final" offer to the Co-op.

	ULSD	87 E-10
<b>Transport</b>	<b>+ 0.007</b>	<b>+ 0.007</b>
<b>Tankwagon</b>	<b>+ 0.089</b>	<b>+ 0.089</b>

All other pricing in the RFP will remain the same.

Should you have any questions or comments, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', written over a horizontal line.

Don Carlton  
President  
Port Consolidated

**COMPLETE THE PROPOSER INFORMATION FORM ON THE ATTACHMENTS TAB IN THE EBID SYSTEM. PROPOSERS ARE TO COMPLETE FORM IN ITS ENTIRETY AND INCLUDE THE FORM IN YOUR PROPOSAL THAT MUST BE UPLOADED TO THE RESPONSE ATTACHMENTS TAB FOR THE RFP IN THE EBID SYSTEM.**

**PROPOSER INFORMATION PAGE**

**RFP** E-13-17, Unleaded Gasoline and Diesel Fuel for Southeast Florida Purchasing Cooperative Group  
(number) (RFP name)

To: The City of Pompano Beach, Florida

The below named company hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) Don Carlton Title President

Company (Legal Registered) Port Consolidated

Federal Tax Identification Number 59-1173292

Address 3141 Se 14th Ave.

City/State/Zip Fort Lauderdale, FL 33316

Telephone No. 800-683-5823 Fax No. 954-527-1191

Email Address dcarlton@portconsolidated.com



January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Cover Letter – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA GOVERNMENTAL  
COOPERATIVE GROUP

---

Dear Mr. English:

On behalf of Port Consolidated, I would like to thank the City of Pompano Beach for the opportunity to participate in this RFP. Below you will find our official contact information.

Name of Firm: Port Consolidated  
Physical Address: 3141 SE 14<sup>th</sup> Ave., Ft. Lauderdale, FL 33316  
Mailing Address: PO Box 350430, Ft. Lauderdale, FL 3333  
Corporate Website: [www.portconsolidated.com](http://www.portconsolidated.com)  
Corporate Phone: 800-683-5823  
Corporate Fax: 954-527-1191  
Point of Contact: Don Carlton, President  
E-Mail Address: [dcarlton@portconsolidated.com](mailto:dcarlton@portconsolidated.com)

Per the terms of the RFP, the following is a brief outline of Port Consolidated and its history:

- The company has been marketing petroleum products in Florida since 1967.
- We have locations in Miami, Ft. Lauderdale, Pompano, Riviera Beach, West Palm Beach, Fort Pierce, Fort Myers, Tampa, Orlando, Palatka, Jacksonville, and Fernandina Beach.
- Port Consolidated currently supplies a multitude of municipalities throughout the State of Florida for not only day to day supplies, but hurricane and emergency fuel as well.



3141 SE 14th Ave. • P.O. Box 350430  
Ft. Lauderdale, FL 33335  
Phone: (954) 522-1182  
Fax: (954) 527-1191  
Toll Free: (800) 683-5823

- Our company owns and operates a fleet of over 60 tankwagons and over 60 tractor trailers, which gives us the largest and most comprehensive delivery capabilities in the area.
- We currently have supply agreements with several major oil companies, notably Chevron, Marathon, Valero, TPSI, Colonial, Gulf Oil, Indigo Energy, and Motiva. These supply agreements allow us to pull product from not just Port Everglades, but the Ports of Tampa, Canaveral, Jacksonville, Orlando, and Savannah as well. Our ability to pull product from multiple suppliers, in multiple Ports, during emergency situations allows us to continue to supply our customer base while our competitors will be forced to sit on the sideline.
- We own and operate over 15 different petroleum storage facilities throughout the State of Florida.
- Port Consolidated is privately owned and is registered as an "S" Corp with the State of Florida.

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', written over a horizontal line.

Don Carlton

President

Port Consolidated



3141 SE 14th Ave. • P.O. Box 350430  
 Ft. Lauderdale, FL 33335  
 Phone: (954) 522-1182  
 Fax: (954) 527-1191  
 Toll Free: (800) 683-5823

January 12, 2017

Jeff English  
 City of Pompano Beach  
 1190 NE 3rd Avenue  
 Building C  
 Pompano Beach, FL 33060

Qualifications and Experience – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA  
 GOVERNMENTAL COOPERATIVE GROUP

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Dear Mr. English:

Per the terms of the RFP, the following is a brief description of our firm's qualifications and experience along with a list of references:

Port Consolidated has been supplying fuel and lubricants throughout the State of Florida since 1967. We own and operate all of our own equipment, never having to rely on common carriers to deliver the products that we sell. Our customer service department, consisting of 15 representatives, is open Monday through Friday, 7:30 AM to 5:00 PM. In addition to that, we have 24 sales representatives out in the field to assist our customers with any/all technical questions.

Please see below a list of local references. We have serviced these entities over the years.

- Broward Sheriff's Office – Rick Torres – 954-831-8170
- City of Fort Lauderdale – Ann Debra Diaz – 954-828-5949
- Palm Beach County School Board – Morris Simpson – 561-434-8172
- Florida Power and Light – Patti Earley – Riviera Beach, FL – 561-881-3407
- Broward County School Board – Mark Alan - 754-321-0507

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

 A handwritten signature in black ink, appearing to read 'Don Carlton', is written over the word 'Sincerely,'.
 

Don Carlton  
 President  
 Port Consolidated



3141 SE 14th Ave. • P.O. Box 350430  
Ft. Lauderdale, FL 33335  
Phone: (954) 522-1182  
Fax: (954) 527-1191  
Toll Free: (800) 683-5823

January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Personnel – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA GOVERNMENTAL  
COOPERATIVE GROUP

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Dear Mr. English:

Per the terms of the RFP, the following is a list of key personnel that will be assigned to this account:

- Customer Service – Fay Francisco, Linda Rogers, Jane Mitchell, Natasha Corona, Vanessa Burch, Danielle Schatz – 954-522-1182
- Billing Inquiries – Heather - 877-345-1098 x1009
- Invoice Copy Request – Jesse Dechant – 877-345-1098 x1023
- Credit/Collections – Michelle Thompson – 877-345-1098 x8809
- 24/HR Emergency Line – 800-683-5823
- Account Manager – Don Carlton – 877-345-1098 x1017

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', is written over a horizontal line.

(Don Carlton)

President  
Port Consolidated



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January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Contractual Supply Obligation – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA  
GOVERNMENTAL COOPERATIVE GROUP

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Dear Mr. English:

Per the terms of the RFP, the following is a brief description of our supply chain that will ensure adequate fuel supply for the Co-op, not only on a day-to-day basis, but during a declared State-of-Emergency as well.

Port Consolidated's corporate headquarters sits in the heart of the Port Everglades, which supplies both gasoline and diesel fuel to all of South Florida. We have the ability to pull day to day product from Chevron, Citgo, Gulf Oil, Indigo, Mansfield, Marathon, Motiva, Petroleum Traders, and Valero.

For those times when supplies are tight, we have contractual arrangements with Chevron, Gulf Oil, Indigo Energy, and Marathon. These contracts will ensure a guaranteed, ratable supply to the Co-op. Attached to this letter, you will find copies of those current agreements.

Port Consolidated also has the ability to pull product from other Ports throughout the State of Florida, notably the Port of Tampa, Port Manatee, Port Canaveral, Orlando, and the Port of Jacksonville. Should Port Everglades become incapacitated for any length of time, these various Ports provide us with other options to pull product. We also have relationships in Savannah.

In addition to our regular supply points, Port Consolidated also has the ability to pre-purchase and store product at any one of our 13 facilities. Our total storage capacity is just under 3 million gallons for various petroleum products.

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

Don Carlton  
President  
Port Consolidated

20264

## GUARANTEED SUPPLY AGREEMENT

This is a Guaranteed Supply Agreement dated November 2, 2016 between Marathon Petroleum Company L.P. ("MPC"), a Delaware limited partnership with offices at 539 South Main Street, Findlay, Ohio 45840 and Port Consolidated, Inc. ("Port Consolidated"), a Florida corporation with offices at 3141 SE 14th Avenue, Fort Lauderdale, Florida 33316.

1. **Definitions.** "Products" shall mean gasoline, gasohol and distillates of all grades and types as are generally offered to MPC's Wholesale Reseller customers at a Terminal from time to time. "Terminal," "10-Day Volume," and "Monthly Volume," shall refer to the MPC terminals and the associated quantities (in gallons) listed in the table in Section 3, if applicable. "Month" (capitalized or not) shall mean a calendar month. "10-Day Period" shall mean 10 calendar days in a Month, beginning on the first day of the Month. The last 10-Day Period in a Month must end on the last calendar day of the Month and can be shorter or longer than 10 days depending on the amount of days in the Month.

2. **Term.** The initial term of this Agreement is from January 1, 2017 to December 31, 2017, inclusive. This Agreement shall automatically renew for up to two successive one-year renewal term(s) unless either party gives written notice of non-renewal at least 60 days prior to the end of the initial term or any subsequent one-year renewal term. In no instance shall this Agreement extend beyond December 31, 2019.

3. **Quantity.** (A) During each Month, Port Consolidated shall purchase 100% of the Monthly Volumes of each Product at the associated Terminal as shown in the table below. (B) During each 10-Day Period, Port Consolidated shall purchase the 10-Day Volumes of each Product at the associated Terminal as shown in the table below. (1) MPC shall not guarantee availability of Product for Port Consolidated's purchase in amounts greater than 110% of the 10-Day Volumes set forth in the table below. (2) During any 10-Day Period, all Product purchases over 110% of the 10-Day Volumes shall not apply toward Port Consolidated's obligation to purchase the Monthly Volumes. (C) In the event the needs of Port Consolidated increase beyond the volumes specified in the table below, Port Consolidated shall notify the MPC Regional Office in writing of the additional volume requested at least 30 days prior to lifting. The MPC Regional Office shall assess Product availability, and if the parties mutually agree, shall amend the volumes in the table set forth below.

Terminal	Product	Date Range	10-Day Volume	Monthly Volume
Tampa	GASOHOL	TERM	125,000	375,000
Tampa	ULSD	TERM	616,666	1,850,000
Fort Lauderdale	GASOHOL	TERM	275,000	825,000
Fort Lauderdale	ULSD	TERM	750,000	2,250,000
TOTAL MONTHLY VOLUME				5,300,000

4. **Price.** The price for any given load of Product shall be the applicable MPC Wholesale Reseller Price in effect at the following Terminal(s) as of the time that lifting ends: Tampa and Fort Lauderdale.

Port Consolidated acknowledges and agrees that MPC may use the Wholesale Reseller Price to manage customer liftings when MPC's Product supply at a Terminal is limited and Port Consolidated waives the right to claim that this method of pricing is unfair, anti-competitive, tortious, or a breach of contract.

5. **Remedies.** (A) MPC will, at its sole discretion, invoice Port Consolidated on a monthly basis an underlifting fee of \$.0300 per gallon not lifted if Port Consolidated fails to lift 100% of the Monthly Volumes of each Product at the associated Terminal as shown in the table in Section 3. Port Consolidated shall pay MPC within 15 days after receipt of the invoice for any applicable underlifting fees charged by MPC. No failure by MPC to charge for any underlifting fees to which it would be entitled in any given month shall operate as or imply any existing or future waiver of the right to charge such fees, nor shall it, in any way, limit or alter the rights of MPC set forth herein or prevent MPC from asserting its rights herein through estoppels or any similar legal theory. (B) MPC may cancel this Agreement upon 15 days' advance written notice if, for any two consecutive months, Port Consolidated fails to purchase the Monthly Volumes at the associated Terminal as shown in the table in Section 3. (C) If a supply interruption occurs at a Terminal, MPC may request Port Consolidated, to the extent logistically feasible, to lift Products at another MPC Terminal.

6. **General.** (A) THE ATTACHED PRODUCT SALES TERMS ARE PART OF THIS AGREEMENT, but the terms herein shall prevail over any conflicting terms in the Product Sales Terms. (B) The fee in Section 5(A) is not a penalty but is a reasonable liquidated damage amount. (C) This Agreement has been executed in two original counterparts. (D) Port Consolidated has the right to disclose the terms and conditions contained herein with its agents, employees, directors and officers with a need to know, however these terms and conditions are confidential, and any unauthorized disclosure by Port Consolidated without the express written consent of MPC is a material breach of this Agreement.

Marathon Petroleum Company LP  
By: MPC Investment LLC, its General Partner

By: Ken Marshall  
Title: Southern Region Manager

Port Consolidated, Inc.

By: [Signature]  
Title: President



10/31/16



(Revised 8/1/2016)

## PRODUCT SALES TERMS

These terms will apply to any agreement to which they are attached, in which they are incorporated by reference, or which is found on the other side of these terms. In the event of a conflict between that agreement and these terms, that agreement will control. That agreement and these terms are collectively referred to below as the "Agreement", and the term "Products" refers to the petroleum products sold by Marathon Petroleum Company L.P. ("Seller") under this Agreement to the buyer identified in this Agreement ("Buyer").

**1. Payment.** Payment terms are subject to change by Seller at any time. If Seller does not receive payment when due, it may impose a late payment charge not to exceed the maximum amount allowed by law and if the account is placed for collection or suit is filed thereon, Seller will be entitled to attorney fees and court costs. **PAYMENTS TENDERED IN FULL SETTLEMENT OF A DISPUTED AMOUNT MUST BE CLEARLY LABELED AS SUCH AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO: COMMERCIAL CREDIT MANAGER, MARATHON PETROLEUM COMPANY LP, 539 SOUTH MAIN STREET, FINDLAY, OHIO 45840.** Seller may set off amounts owed by Buyer to Seller or its subsidiaries or affiliates against amounts owed by Seller to Buyer.

**2. Taxes.** Buyer will pay, and indemnify Seller for, all taxes, fees, duties, environmental levies, and other charges (whether imposed on manufacture, processing, use, purchase, sale, resale, delivery, receipt, title transfer, inspection, removal from storage, measurement or passage through a measurement device, receipt of payment, or other activity, and regardless of when imposed) relating to Products, or their raw materials or feedstocks. The sole exception to this obligation is taxes based on or measured by Seller's income or net worth. Upon account set up, Buyer will promptly furnish Seller with the Buyer's appropriate state tax registration number(s), its federal identification number and any applicable tax exemption certificates. Buyer will promptly inform Seller of any changes to its tax registration or exemption status that may occur after account setup.

**3. Delivery.** All sales will be F.O.B. the "Ship From" location stated in this Agreement, unless this Agreement clearly provides otherwise. Title and risk of loss will pass to Buyer at the "Ship From" location as Product passes (as applicable) the transport truck or railcar inlet flange, barge permanent hose connection, or pipeline upstream flange. Title and risk of loss will not be affected by Seller's ownership of the transportation assets, arrangement of shipment, and/or pre-payment or collection of shipment expenses from Buyer. Seller will have no obligation to deliver Product at the "Ship From" location unless Buyer, its agents, and its carriers have entered into, and are in compliance with, agreements governing access to the "Ship From" location.

Where this Agreement clearly provides that delivery is F.O.B. the "Ship To" destination, title and risk of loss will pass to Buyer at the "Ship To" destination as Product passes (as applicable) the transport truck or railcar outlet flange, barge permanent hose connection, or pipeline downstream flange. Where shipment is by railcar, and Buyer is unable to accept delivery of the railcar when offered, then title and risk of loss will pass to Buyer at the time of constructive placement of the railcar. Buyer will pay and be responsible for any demurrage, fleet, shifting, parking, detention, port or other charges related to receipt or delivery of Product, unless solely caused by Seller.

**4. Quantity and Inspection.** Quantities will be determined by (in order of preference) calibrated meters; terminal tank gauges or short tank downgauges; or any applicable ASTM method. Quantities may be temperature-adjusted to 60°F, at Seller's option, using built-in temperature compensators or ASTM tables. Either party may require that Product quantity and quality be determined by a jointly-selected, licensed petroleum inspector, whose findings will be conclusive. Customary inspection costs will be shared equally, but additional services will be paid for by the party requesting them.

**5. Compliance With Laws.** Buyer, its agents, and its carriers will comply with all laws, regulations, and standards applicable to the sale, delivery (including loading, unloading, and/or transloading), transportation, storage, use, and disposition of Products, and Buyer will not deliver, or allow to be delivered, to an RVP or RFG control area any Product that would be in violation of U.S. EPA regulations applicable to that area. Buyer will require similar commitments from its purchasers. Product identified as Blend-Grade, CBOB or RBOB is for use as blending component only.

**6. Safety and Health.** Buyer shall thoroughly review and adhere to all Safety Data Sheets (SDS) and other safety-related information provided by Seller concerning the Products, including but not limited to the recommended use, restriction on use, precautionary measures and exposure controls for each of the Products as described in the SDS. Buyer shall comply with all state and federal laws, regulations and codes pertaining to the maintenance and distribution of SDS. Buyer acknowledges the hazards and assumes the risks associated with handling

and using each of the Products. SDS for Products are available at the following internet address: <http://www.marathonpetroleum.com/brand/products/sds/>. Buyer may request to receive SDS via email by contacting the Seller at [sdsinfo@marathonpetroleum.com](mailto:sdsinfo@marathonpetroleum.com).

Buyer's employees, agents, and subcontractors will comply with all applicable safety standards, policies, practices and rules of conduct mandated by Seller when involved in any operations on Seller's premises in connection with the performance of this Agreement.

**7. Warranties.** Seller warrants good title to all Products supplied hereunder at the time of delivery to Buyer, and that each Product supplied hereunder will comply with all applicable federal, state and local rules and regulations in effect at the time and place title thereto passes to Buyer. **MPC DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE PERFORMANCE OR QUALITY OF PRODUCTS SUPPLIED HEREUNDER INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR BUYER'S PARTICULAR OR INTENDED PURPOSES OR USAGE.** Seller will, at its option and its cost (including expense of return and redelivery), remedy the defect in, replace, or refund the purchase price of, any Product that fails to meet this warranty. **THIS IS BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.**

**8. Claims.** All claims must be in writing. Product quality or quantity claims must be delivered to Seller within 30 days after delivery of the Product, and all other claims by Buyer must be delivered to Seller within 60 days after the event giving rise to the claim. Buyer will preserve, and permit Seller to inspect and sample, the subject Product. **ANY LAWSUIT AGAINST SELLER WHICH INVOLVES THIS AGREEMENT OR THE SALE OF PRODUCTS MUST BE BROUGHT WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.**

**9. Limitation of Liability.** **IN NO EVENT WILL SELLER'S LIABILITY FOR DAMAGES (WHETHER ARISING FROM BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE) EXCEED THE PURCHASE PRICE OF THE PRODUCT CONCERNED NOR WILL SELLER BE LIABLE FOR PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**10. Force Majeure and Allocation.** Neither party will be liable to the other for any delay or failure in performance (other than to make payments when due) to the extent that it is caused by circumstances beyond its reasonable control, or by fire; explosion; flood; earthquake; storm; act of God; mechanical breakdown; sabotage or vandalism; strike or other labor disturbance (Seller will not be required to settle a labor dispute or take an action that might involve it in a labor dispute); shortages of, or delays in obtaining, crude oil, feedstocks, raw materials or finished products, equipment, labor, transportation, or storage; interruption of utility services; or compliance with any law, regulation or order (regardless of validity) of any governmental or military authority. Further, if Seller at any time decides that its Product supply is insufficient to meet the actual or forecasted needs of Seller, its divisions and subsidiaries, and its and their customers (whether under contract or not), Seller may allocate its supply among all of them in any fair and reasonable manner determined by Seller.

**11. Indemnity.** Buyer will indemnify and defend Seller and its employees and agents against any loss, claim, liability (actual or alleged), fine, penalty, or expense (including court costs, attorney fees, and litigation expenses), of any kind (including those based in tort, warranty, or strict liability), arising out of, or in connection with: (i) the performance of this Agreement; (ii) any failure of Buyer, its agents or employees to comply with the terms and conditions of this Agreement; or (iii) any act or failure to act in the handling, storage, transportation, loading, unloading, transloading, resale, or other use, by Buyer or others, of a Product sold under this Agreement. The only exception to this obligation is when Seller's negligence or intentional misconduct is determined by a court to be the sole cause of the damage. In responding to any third-party claims, Seller may select an attorney and may enter into any settlement without affecting this obligation.

**12. Default.** Seller may terminate this Agreement in the event of a material default by Buyer which is not cured within 10 days after notice of default is given. Seller may also terminate this Agreement at once (and

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(Revised 8/1/2016)

Buyer will have no right to cure) if Buyer either fails to pay any amount when due or violates the provisions of paragraph 14 below. The right to terminate is in addition to any other remedy that may be available. A waiver of a default in one instance does not extend to any subsequent default.

**13. Export Sales.** For any Product that will be exported from the U.S.A. by Buyer or another Party, all export-related requirements are the sole responsibility of Buyer or the Exporter. Seller is not responsible for compliance with U.S. export control laws or requirements in such transactions unless it agrees to assume that responsibility in writing. Buyer acknowledges that Product was designed and produced solely for commercial purposes. Further, Buyer agrees that unless specifically licensed by the United States government, no Product received from Seller is intended to be nor will be, shipped either directly or indirectly, to any country entity, or person or for any end-use that is prohibited under the Export Administration Regulations ("EAR"), Office of Foreign Assets Control ("OFAC") regulations, International Traffic in Arms Regulations ("ITAR") or as otherwise prohibited by any applicable law or regulation. Any diversion contrary to U.S. law is strictly prohibited. Buyer shall indemnify and hold Seller harmless from all fines, penalties, costs, and expenses (including reasonable attorney fees) incurred by reason of the breach of the foregoing.

Except where Seller has specifically provided to Buyer in writing the appropriate documentation necessary to substantiate that Product is eligible for NAFTA or other preferential duty treatment, Product sold hereunder is deemed not eligible for NAFTA or any preferential duty treatment.

For any Product that will be exported from the U.S.A. by Buyer, Seller reserves all rights as a manufacturer under 19 U.S.C. §1313 and related regulations and reserves all rights to claim drawback. Buyer will provide Seller with proof of export satisfactory to Seller and any other information needed by Seller for the timely and accurate filing of Seller's claim.

**14. Trademarks.** Buyer will not use Seller's name, trade or service marks, or trade dress in any way with regard to the Products.

**15. General.** (A) The sale of Products to Buyer, and this Agreement, will be governed by Ohio law, without giving effect to its principles of conflict of laws provisions and excluding the United Nations Convention on Contracts for the International Sales of Goods. (B) Buyer's obligations in paragraphs 2, 5, 6, 11, 13, and 14 above will survive termination of this Agreement. (C) The invalidity or unenforceability of any part of this Agreement will not affect the validity or enforceability of its remaining provisions. (D) This Agreement, and any rights or duties under it may not be assigned or delegated by Buyer; any attempted assignment or delegation by Buyer will be void. (E) In the event of a sale or transfer of all or substantially all of Buyer's equity shares or assets, or a controlling interest in either, by merger, acquisition, exchange, joint venture, or other similar transaction, Seller may, at its sole option, immediately terminate this Agreement. (F) No claim or notice relating to this Agreement to be given to Seller will be valid unless sent by certified mail return receipt requested or by a national overnight courier service to Seller addressed as follows: Manager, Wholesale Marketing, Marathon Petroleum Company L.P., 539 South Main Street, Findlay, Ohio 45840. All notices given by Seller to Buyer may be sent to the addresses shown on the most recent written correspondence sent to Seller by Buyer, or to such addresses as may be requested in writing by Buyer in the future. (G) No amendment or modification of this Agreement will be valid unless made in a writing signed by authorized representatives of both parties. Any attempt by either party, through a job order, purchase order, invoice, or other document, to vary in any degree any of the terms of this Agreement will be deemed immaterial and will be void, unless contained in an amendment executed as specified hereinabove. (H) No failure to exercise or election not to exercise any of a party's rights hereunder will constitute any waiver or modification of such rights, or be deemed to be a course of performance or dealing, modifying or waiving the parties' rights, remedies, duties, obligations or liabilities under this Agreement or any part thereof. (I) This Agreement contains the entire agreement of the parties with respect to its subject matter.



## Product Sales Contract (Reseller)

This contract is dated November 01, 2016, and is between Chevron Products Company, a division of Chevron U.S.A. Inc. ("Seller"), and PORT CONSOLIDATED INC ("Buyer").

Seller and Buyer agree as follows.

1. **TERM.** The term of this contract shall commence on **November 04, 2016**, and shall end on **October 31, 2017**, unless sooner terminated by either party in accordance with the provisions of this contract.
2. **PRODUCTS AND QUANTITIES.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller those grades of diesel fuel and other products specified in Exhibit A of this contract. Buyer agrees to purchase from Seller during each calendar month not less than the minimum quantities of products specified in Exhibit A. Seller shall not be obligated to sell to Buyer in any calendar month quantities of products in excess of the maximum quantities specified in Exhibit A, but Seller may elect to do so at its option after request by Buyer. Such minimum and maximum quantities shall be prorated for any period less than a calendar month included within the term of this contract. Buyer shall not represent or authorize or permit any other person to represent that the products purchased under this contract are the products of Seller or use or authorize or permit any other person to use any of the trademarks, service marks, trade names, color schemes or service station designs utilized by Seller or any other identification, designation or marking of any kind that would identify such products with Seller. It is understood and agreed that the products purchased under this contract shall be resold by Buyer under Buyer's brands and trade names, and Seller hereby gives its consent to the rebranding of such products. If Buyer breaches any of the provisions of this section 2, such breach shall, at Seller's option, be deemed a breach of this entire Agreement and, in addition to such other remedies as it may have, Seller shall have the right to terminate this Agreement forthwith.
3. **PRODUCT QUALITY.** The products sold under this contract shall be of the quality as is generally offered by Seller for similar use at the relevant delivery location. To facilitate the investigation of any claim or concern regarding the quality of the products delivered under this contract, Buyer shall keep complete and accurate records of Buyer's purchase, transportation, receipt, inventory, transfer, use, sale, or delivery of all products purchased by Buyer in bulk from Seller and any other supplier. Seller's representatives shall be permitted to inspect and audit such records at any time during Buyer's business hours on reasonable notice to Buyer for up to one year after the termination of this contract. Seller's representatives shall also have the right at any time to enter upon the premises where the products purchased under this contract are stored by or for Buyer and to take samples of such products for testing purposes, compensating Buyer (at Buyer's cost, which for this purpose shall be based on Seller's price to Buyer in effect at the time such samples are taken, or, at Seller's option, in kind) for any products so taken.
4. **PRICE.** The prices that Buyer shall pay Seller for products purchased under this contract shall be determined as set forth in Exhibit A (except as otherwise provided in section 22 with respect to any Discretionary Sales (as defined below)).
5. **PAYMENT AND FINANCIAL RESPONSIBILITY.** Buyer's payments for products shall be in U.S. dollars without discount by electronic transfer of immediately available funds to an account, bank and location designated by Seller.

~~Buyer shall, except at Seller's option, pay Seller cash before delivery for products purchased hereunder.~~

Buyer acknowledges the importance of payment within the terms specified when credit is extended and agrees that past due amounts shall bear interest at the rate of 18% per year or the maximum rate permitted by the state of Buyer's address for notices as specified in Exhibit A of this contract, whichever is less. If Buyer fails to make payment within the specified terms, such failure shall, at Seller's option, be deemed a breach of this entire contract and, in addition to such other remedies as it may have, Seller shall have thereafter the right to demand advance cash payment, to withhold deliveries until such advance payment (including payment of all amounts then outstanding for products delivered by Seller to Buyer hereunder) is received, or to terminate this contract. The acceptance of any payment by Seller after the due date shall not waive any of Seller's rights hereunder nor shall such withholding of deliveries or termination of this contract affect any obligation of Buyer hereunder. If credit is extended to Buyer by Seller, the buyer shall periodically provide to (Chevron) that financial information or security

Product Sales Contract (Reseller)

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deemed necessary by (Chevron) to support any credit extension. If during the life of this contract, the financial capacity of the buyer becomes impaired or unsatisfactory to (Chevron) in the sole judgment of (Chevron), advance cash payment or security satisfactory to (Chevron) shall be given by the buyer on demand by (Chevron) and shipments/deliveries may be withheld until such payment or security is received.

Seller's terms of payment are subject to change without notice at the discretion of Seller.

6. TAXES. Any tax, duty, toll, fee, impost, charge or other exaction, or the amount equivalent thereto, and any increase thereof now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transactions herein provided for (other than local, state and Federal net income taxes measured by the net income of Seller from all sources), or the transportation, importation, production, manufacture, use or ownership of the goods covered by this contract, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payments shall be in addition to the prices otherwise provided for in this contract. Buyer shall, at Seller's request, execute and deliver to Seller such certificates or other documents as Seller may reasonably require in order to enable Seller to secure any tax exemption which may be available in connection with sales or deliveries hereunder.
7. DELIVERIES. Product deliveries shall be made by Seller to Buyer at the locations specified in Exhibit A (except as otherwise provided in section 22 with respect to any Discretionary Sales). Title and risk of loss shall pass to Buyer at the point of delivery into Buyer's trucks, railcars, storage facilities, or other receiving unit. If deliveries are to be made into vehicles supplied by Buyer, Seller shall not be required to make such deliveries into such vehicles unless they are clean and empty immediately prior to delivery and shall not be required to load or deliver quantities less than the full capacity of the vehicle, except as otherwise authorized by Seller. If deliveries are to be made into Buyer's storage facilities, Buyer shall provide storage facilities sufficient to enable it to receive such deliveries and shall provide Seller with unimpeded access to make deliveries 24 hours per day. Buyer is responsible for ensuring that any vehicles and facilities used to receive deliveries are in safe condition and that Buyer's storage facilities can be accessed safely. Seller shall not be obligated to make any delivery to Buyer that cannot be made safely in Seller's sole judgment. Buyer shall comply with such reasonable rules and regulations as Seller may establish regarding deliveries by Seller into Buyer's vehicles or storage facilities. Orders for deliveries shall be placed by Buyer with such advance notice and in such manner as Seller may designate.
8. CONFLICTS OF INTEREST. Neither Buyer nor any director, employee or agent of Buyer shall (1) give to or receive from any director, employee or agent of Seller or its affiliates any commission, fee, or rebate, or any gift or entertainment of significant cost or value in connection with this contract, or (2) enter into any business arrangement with any director, employee or agent of Seller or its affiliates (other than as a representative of Seller or its affiliates) without prior written notice to Seller. Buyer shall promptly notify Seller of any violation of this section 8 and any consideration received as a result of such violation shall be paid over or credited to Seller. Any representative authorized by Seller may audit any and all records of Buyer for the sole purpose of determining whether there has been compliance with this section 8 for up to 24 months after the termination of this contract.
9. PREVENTION OF PERFORMANCE; SHORTAGE OF SUPPLY. There shall be no obligation to sell or deliver, or to purchase or receive, products under this contract when, and to the extent that, such actions are prevented or hindered by act of God, fire, riot, labor disturbances (whether involving employees of the party affected or of others and regardless of whether the disturbance could be settled by acceding to the demands of a labor group), accident, war, the acts of any government (at any level, foreign or domestic) or any causes beyond the reasonable control of the party affected, whether or not similar to any of the foregoing causes. Due to an interruption, loss or shortage of necessary facilities or supplies, or uncertainties in the supply-demand situation (which may include a decision by Seller that the costs of some products which might be available are unreasonable), Seller may not have sufficient supplies of one or more of the products covered by this contract to meet the full requirements of Buyer, of Seller's other customers, and of Seller for its own use. If there is a shortage of products deliverable under this contract, Seller may allocate deliveries of available products among Buyer, Seller's other customers (contract or otherwise, including Seller's affiliates) and Seller for its own use, on any basis which in Seller's sole judgment is fair and reasonable, allowing for such priorities as Seller deems appropriate. Allocation is fair and reasonable even if it is based on a shortage in the then-contemplated sources of supply or a general shortage in the supply system of Seller or its affiliates or on historical or planned deliveries.
10. OIL SPILLS. If a product spill occurs anywhere in connection with Buyer's performance of this contract, Buyer shall promptly notify Seller and the appropriate governmental authorities and shall take immediate action to clean up the spill and prevent further damage. Upon receipt of such notification, Seller shall have the right, at its election, to provide, or cause to be provided to Buyer such additional manpower, equipment and material as in Seller's sole discretion are deemed reasonable to complete the clean-up in a satisfactory manner. Buyer shall pay and be responsible for, and Buyer's indemnity obligation under section 11 of this contract shall include all costs and expenses incurred in connection with the clean-up operations, including reimbursement to Seller for all of its costs and expenses, and all fines, charges, fees or judgments imposed or levied by any Federal, state or local governmental agency as a result of such spill, except in the event the spill resulted solely from any act or omission on the part of Seller or Seller's employees.

11. INDEMNITY. Buyer shall indemnify, defend and hold harmless Seller and its affiliates, and their respective directors, employees and agents, from and against any and all expenses (including attorneys' fees), liabilities and claims of whatsoever kind and nature including those for damage to property (including property of Buyer), or for injury to or death of any person (including Buyer), directly or indirectly arising or alleged to arise out of or in any way connected with the acquisition, storage, handling, or use of any products purchased under this contract, or with the maintenance, upkeep, repair, replacement or operation of any premises used by Buyer in connection with this contract or anything located thereon, including any act or omission of Buyer or Buyer's agents or employees in the performance of this contract, or in the operation of any vehicle in connection with Buyer's business. The foregoing indemnity shall not apply to the extent and only to the extent such expense, liability or claims result from Seller's sole negligence or willful misconduct.
12. DEFINITIONS AND USAGES. In this contract, unless otherwise stated or the context otherwise requires, the following definitions and usages apply:
- "Seller and its affiliates" means Seller, its ultimate parent company Chevron Corporation, and the subsidiary and affiliated companies of each of them.
  - "U.S." refers to the United States of America, and all prices are expressed in U.S. currency and all units of measure are in U.S. units.
  - "Includes" means "includes, but is not limited to," and "including" means "including but not limited to."
  - Actions permitted under this contract may be taken at any time and from time to time in the actor's discretion.
  - "A or B" means "A or B or both."
13. APPLICABLE LAW AND DISPUTE RESOLUTION. This contract shall be governed, construed, interpreted, enforced and the relations between the parties determined in accordance with the laws of the state of California, without regard to its choice of law rules. In the event a dispute arises with respect to the interpretation or performance of, or the relationship created by, this contract, the parties shall attempt in good faith to resolve the dispute. If such efforts prove unsuccessful, each party agrees to consider the use of mediation, mini-trial, arbitration or other alternative dispute resolution techniques prior to resorting to litigation. If mediation, mini-trial, arbitration or other alternative dispute resolution techniques are utilized by the parties, each party agrees that no award or decision resulting therefrom shall include punitive damages. If the parties are unsuccessful in their good faith attempt to otherwise resolve a dispute, the parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of either (1) Contra Costa County in the State of California, or (2) the federal courts of the Northern District of California, for any actions, suits or proceedings arising out of or relating to this contract (and the parties each agree not to commence any action, suit or proceeding relating thereto except in such courts).
14. PRIOR AGREEMENTS; WAIVER; MODIFICATIONS. This contract constitutes the entire agreement of the parties with respect to its subject matter and terminates and supersedes any prior agreement, understanding, representation, or proposal relating to the sale by Seller of products to Buyer at the delivery locations specified in Exhibit A or ancillary Discretionary Sales contemplated by section 22. Waiver by Seller or Buyer of one or more breaches of this contract shall not be deemed to be a waiver of any other or continuing breach. No modification of this contract, and no waiver of any of its provisions, shall be binding on Seller or Buyer unless in writing and signed by Seller and Buyer.
15. SEVERABILITY. If any provision of this contract shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such provision shall be deemed omitted and the remaining provisions shall remain in full force and effect.
16. MSDS. Buyer acknowledges receipt of Material Safety Data Sheets (MSDS) for all products covered by this contract.
17. DAMAGES. In no event shall Seller be liable for any special, indirect or consequential damages of any kind including loss of profits, loss of use or claims of Buyer's customers due to loss of service whether the damages are based in contract or tort (including negligence or strict liability) or otherwise. Buyer's exclusive remedy for any and all losses or damages resulting from the purchase of products under this contract, including, but not limited to, any allegation of breach of warranty, breach of contract, negligence or strict liability, shall be limited, at Buyer's option, to either the return of the purchase price or the replacement of the fuel for which a claim is proved.
18. ASSIGNMENT AND DELEGATION. This contract is personal to Buyer and Buyer shall not, subject to any valid requirements of any applicable statute, assign any rights or delegate any duties that Buyer may have under this contract, either voluntarily, involuntarily or by operation of law, or otherwise, without the prior written consent of Seller. If Buyer is a corporation, any sale, conveyance, alienation, transfer or other change of interest in or title to or beneficial ownership of 50 percent or more of the voting stock (or securities convertible into 50 percent or more of the voting stock) of Buyer, either voluntarily, involuntarily, by operation of law, merger or other corporate proceedings, or otherwise, shall be construed as an assignment of Buyer's rights under this contract. Seller may assign any of its rights or delegate any of its duties under this contract without Buyer's consent.

19. NOTICES. Notices to be given under this contract shall be in writing and delivered by mail, in person, or by facsimile to the other party at the appropriate address specified in Exhibit A, or at such other address as either party may designate by written notice to the other. Notices shall be effective at time of receipt.
20. TERMINATION. Seller and Buyer shall have the right to terminate this contract at any time without cause upon giving the other party at least 30 days' prior written notice of termination. Termination of this contract shall not relieve the parties of responsibility for obligations incurred prior to termination. If Seller continues to accept orders from Buyer for the products covered by this contract following expiration of the term of this contract, such sales shall be upon all of the terms and conditions of this contract; provided that such sales shall not be construed to evidence a renewal of this contract by operation of law or otherwise.
21. WARRANTY. Seller warrants that it has title to the products sold under this contract. EXCEPT AS OTHERWISE PROVIDED IN THE FOREGOING SENTENCE AND IN THE FIRST SENTENCE OF SECTION 3 OF THIS CONTRACT, BUYER ACKNOWLEDGES AND HEREBY ACCEPTS THAT SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE.
22. DISCRETIONARY SALES. Seller and Buyer may (but are not obligated to) engage in sale transactions for products or delivery locations not specified in Exhibit A ("Discretionary Sales"). Unless otherwise agreed to in writing by Seller and Buyer, any Discretionary Sales shall be deemed made "under this contract" and on its terms except that the specific products, prices, quantities, and delivery locations for Discretionary Sales shall be as mutually agreed upon by Seller and Buyer for each such transaction. The quantities of products sold in Discretionary Sales shall not count against the minimum or maximum volumes specified in Exhibit A.

Seller

Chevron Products Company,  
a division of Chevron U.S.A. Inc.

By:  11/1/2016

Desmond Johnson,  
Attorney in Fact

Manager,  
Commercial Products Support

Buyer

PORT CONSOLIDATED INC.

By: 

Title: President



## EXHIBIT A

Supply #	Delivery Location	Delivery Mode	Product Name	Minimum Volume Gallon per Month	Maximum Volume Gallon per Month	Price Description	Pricing Provision	DIFF Clear (S/gal)	DIFF Dyed (S/gal)
1022	TAMPA FL TRM CHEVRON	Truck	CALCO (Unbranded) ULS CONV DF2	250,000	275,000		2.3.4		
1021	FT LAUDERDALE FL TRM CHEVRON	Truck	CALCO (Unbranded) ULS CONV DF2	1,000,000	1,100,000		1.2.3.4		
1107	ORLANDO FL TRM KINDER MORGAN	Truck	CALCO (Unbranded) ULS C (CARB) B0-B5 DF2	116,667	128,333		1.2.3.4		

## Pricing Provisions:

1. *OPIS CA CAR = OPIS Prior Day California Cap-At-Rack Assessment for Motor Gasoline (CTS/GAL). During periods when OPIS publishes CAR quotes for both summer and winter grades, Chevron will use the quote for the newer season.*
2. *OPIS CA CAR = OPIS Prior Day California Cap-At-Rack Assessment for Motor Gasoline (CTS/GAL). During periods when OPIS publishes CAR quotes for both summer and winter grades, Chevron will use the quote for the newer season.*
3. *OPIS CA LCFS = OPIS Prior Day California Low Carbon Fuel Standard for Motor Gasoline (CTS/GAL).*
4. *The per gallon price which Buyer shall pay Seller for PRODUCT NAME delivered to the DELIVERY LOCATION shall be established for the date of delivery using prior day pricing based on PRICE DESCRIPTION plus DIFF. The price above does not reflect applicable taxes and governmental fees, which will be added to the final invoice unless declared as exempt by the Buyer.*

For Platt's or OPIS-based pricing, if pricing includes day(s) on a weekend or holiday on which the market is closed, pricing will be calculated using the prior calendar day on which the market is open.

## Notice Addresses:

Seller:  
Chevron Products Company  
Attn: Brian Coomes, General Manager  
1500 Louisiana Street  
Houston, TX 77002  
UNITED STATES

Tel: (502) 420-7041

Buyer:  
PORT CONSOLIDATED INC  
Attn: Don Carlton  
3141 SE 14TH AVENUE  
FT. LAUDERDALE, FL 33316  
US

Tel: (800) 683-5823 x1233

*Handwritten signature*





**PETROLEUM PRODUCT SALE AGREEMENT**

[Unbranded-Term-Rack]

This *Petroleum Product Sale Agreement* ("Agreement"), dated to be effective as of October 1, 2016 (the "*Effective Date*"), is entered into by and between PORT CONSOLIDATED, INC., a Florida Corporation ("*Buyer*"), and INDIGO ENERGY PARTNERS, LLC, a Georgia limited liability company ("*Seller*"). Each of Buyer and Seller is referred to herein individually as a "*Party*" and collectively, as the "*Parties*."

1. Term. The term of this Agreement (the "*Term*"), shall be from the Effective Date through September 30, 2017 (the "*Expiration Date*").

2. Purchase and Sale. Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, the product or products described on Exhibit A (collectively, the "*Products*", and each individually, a "*Product*"), in accordance with the terms and provisions of this Agreement. Seller's obligations under this Agreement are expressly conditioned upon Buyer satisfying Seller's credit and other financial requirements.

3. General Terms and Conditions. The general terms and conditions set forth on the attached Exhibit B are incorporated herein for all purposes.

4. Volume Requirements; Delivery Point. Exhibit A attached hereto and made a part hereof designates the monthly ratable volumes (the "*Monthly Volume*"), and total aggregate gallons (the "*Total Volume*") of each Product that Buyer has agreed to purchase under this Agreement, and further designates the location (each, a "*Delivery Point*") where each Product will be delivered FCA to Buyer. During each calendar month during the Term, Seller agrees to sell, and Buyer agrees to purchase, not less than 90% and not more than 110% of the Monthly Volume at each Delivery Point (the "*Volume Range*"), which shall be ratable on a daily and weekly basis, and Buyer will not be allowed to purchase from Seller, and Seller will not be required to sell to Buyer, more than 110% of the ratable weekly portions of, or more than 110% of the ratable daily portions of the Monthly Volume. The volume of Product purchased will be determined solely by the amount set forth on the net bill of lading generated at the Delivery Point. The Monthly Volume may be adjusted from time to time upon mutual agreement; provided, however, in such case a formal amendment to this Agreement is not necessary.

5. Price and Payment. Buyer agrees to pay Seller, at the prices specified therefor on Exhibit A (the "*Price*"), for all Products purchased under this Agreement within ten (10) days after the date of the relevant bill of lading. Notwithstanding anything to the contrary contained herein, or contained in any other agreement between the Parties, Buyer shall pay to Seller on demand amounts equivalent to any and all (collectively, the "*Fees*"): Taxes, duties, charges, and fees, and any and all increases thereon which are now or hereafter imposed, directly or indirectly, on, against, in respect of, or measured by the Products, or any material contained in the Products, or the inspection, production, manufacture, sale, purchase, storage, transportation, delivery, or other handling of the Products or material contained in the Products, or any feature thereof, or otherwise relating to this Agreement. Fees are not included in the Price and will be billed as a separate line item on each invoice.

6. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice.

7. Ratability. In addition to any other rights that Seller may have under this Agreement as a result of Buyer's failure to purchase Products within the Volume Range, if Buyer fails to purchase at least

90% of the Monthly Volume for a given Product at a given Delivery Point, at Seller's sole discretion, upon written notice to Buyer (the "*Underlift Notice*"), Seller may reduce the Monthly Volume thereafter required to be sold and delivered by Seller to Buyer to the actual amount purchased by Buyer (the "*Adjusted Monthly Volume*"), which amount will be stated in the Underlift Notice.

8. Miscellaneous.

a. *Notices.* All notices required by, permitted by or otherwise related to this Agreement shall be in writing and sent by facsimile, overnight courier, hand, registered or certified mail, return receipt requested with all postage fully paid to the relevant Party at the address set forth below the signature block below. A Party may change or provide additional notice information to the other by giving notice in accordance with this section. A notice shall be deemed to have been received by a Party: (i) if delivered by hand or sent by overnight courier, on the day of delivery if a Business Day, or if not a Business Day, on the immediately following Business Day, (ii) if sent by registered or certified mail, return receipt requested, on the date of receipt, and (iii) if transmitted by facsimile, at the time of transmission with answer back confirmation of receipt.

b. *Counterparts; Facsimile Signatures.* The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronically scanned transmittal (including via electronic mail in portable document format) is effective execution for all purposes under this Agreement.

[signatures commence on following page]

Buyer and Seller have executed this Agreement to be effective for all purposes as of the Effective Date.

**BUYER:**

PORT CONSOLIDATED, INC.

By: Name: Don CarltonTitle: President**SELLER:**

INDIGO ENERGY PARTNERS, LLC

By: Name: David MansfieldTitle: Director of Sales**Notice to Buyer:**

Port Consolidated, Inc.

Attn: Don Carlton

P.O. Box 350430

Fort Lauderdale, FL 33335-0430

Fax: (954) 527-1191

**Notice to Seller:**

Indigo Energy Partners, LLC

Attn: ~~Blake Shirley~~ David Mansfield

P.O. Box 2535

Gainesville, GA 30005

Fax: (678) 928-4925

[Signature Page to Petroleum Product Sale Agreement]

**EXHIBIT A**  
**TO**  
**PETROLEUM PRODUCT SALE AGREEMENT**

**Certain Definitions:**

<b>PLATTS</b>	=	Platt's Oilgram Price Report.
<b>Same Day</b>	=	Quote for the day of delivery, except for weekend or holiday days, for which the most recently published relevant quote will apply

Delivery Point	Product	Price Per Gallon	Month	Volume (in Gallons)
J015 – US10454#FPRT Evgs FL-MOT Depot	GN MV 2D (S-15 PPM)		OCT	1,050,000
			NOV	1,050,000
			DEC	1,050,000
			JAN	1,050,000
			FEB	1,050,000
			MAR	1,050,000
	GN NR 2D (S-15 PPM)-DYED		APR	1,050,000
			MAY	1,050,000
			JUN	1,050,000
			JUL	1,050,000
			AUG	1,050,000
			SEP	1,050,000
		Total	12,600,000	

- \* Seller may increase these adders during the Term if and to the extent that Seller's actual secondary costs increase after the Effective Date, but must give Buyer at least 30 days' notice of any changes before they become effective.

[End of Exhibit A]



3141 SE 14th Ave. • P.O. Box 350430  
Ft. Lauderdale, FL 33335  
Phone: (954) 522-1182  
Fax: (954) 527-1191  
Toll Free: (800) 683-5823

January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Obligations of Co-Op Participants – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA  
GOVERNMENTAL COOPERATIVE GROUP

---

Dear Mr.English:

Per the terms of the RFP, the following is a brief description of the obligations of the Co-op participants.

1. All Participants' storage tanks must be registered accordingly with all local code enforcement agencies.
2. Participating agencies can order fuel Monday through Friday from 7:30 AM to 5:00 PM.
3. Orders will be accepted via phone, fax, or e-mail. Automatic deliveries and/or weekly top-offs are recommended for tankwagon deliveries.
4. Orders in by 3 PM are guaranteed next day service.
5. Port Consolidated expects Co-op participants to pay within the defined terms of the agreement. Failure to do so may result in refusal of service.
6. Port Consolidated does not have volume purchase requirements for participating agencies. However, if an agency does not purchase product on a regular basis, we cannot guarantee supply during an emergency situation.

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', is written over a horizontal line.

Don Carlton  
President  
Port Consolidated



January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Contingency Plan of Action – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA GOVERNMENTAL COOPERATIVE GROUP

---

Dear Mr. English:

Per the terms of the RFP, the following is a brief description of our Contingency Plan of Action.

1. Port Consolidated has contracted with 3 different suppliers in Port Everglades for approximately 4 million gallons per month of diesel and 825K gallons per month of gasoline.
2. Port Consolidated has contracted with 2 different suppliers in the Port of Tampa and Orlando for approximately 2.25 million gallons per month of diesel and 375K gallons per month of gasoline.
3. Port Consolidated also has active accounts in Port Everglades with 7 other suppliers.
4. Port Consolidated operates 13 different petroleum storage facilities in Florida that can hold up to 3 million gallons of product.
5. Port Consolidated has more rolling assets than any supplier in the State of Florida. We have the ability to shift those assets from one market to another depending on where the emergency needs arise.
6. Port Consolidated fills any/all petroleum storage available throughout its network prior to any named storm. This storage capacity will allow us continuous operation while the other terminals are not releasing product.
7. Port Consolidated operates 9 offices throughout the State of Florida. We have computer servers stored at a hurricane proof facility in Dade County. Our office can function from any one of our 9 offices throughout the State.
8. Port Consolidated has 6 satellite phones to utilize during times of crisis when AT&T is not operating.
9. Port Consolidated has a fleet of mobile generators in stock to position at any of our locations that may experience a power outage.



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Ft. Lauderdale, FL 33335  
Phone: (954) 522-1182  
Fax: (954) 527-1191  
Toll Free: (800) 683-5823

10. Port Consolidated operates 6 different Cardlock facilities (private fueling stations) throughout the Tri-County area. These facilities are not open to the public. They do require card activation through the CFN network.
11. Port Consolidated has the ability to pull product from all other Florida Ports should Port Everglades become incapacitated.

These 11 simple steps should allow us to function properly throughout a time of crisis.

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', is written over the typed name.

Don Carlton  
President  
Port Consolidated

**COMPLETE THE PROPOSER INFORMATION FORM ON THE ATTACHMENTS TAB IN THE EBID SYSTEM. PROPOSERS ARE TO COMPLETE FORM IN ITS ENTIRETY AND INCLUDE THE FORM IN YOUR PROPOSAL THAT MUST BE UPLOADED TO THE RESPONSE ATTACHMENTS TAB FOR THE RFP IN THE EBID SYSTEM.**

**PROPOSER INFORMATION PAGE**

RFP E-13-17, Unleaded Gasoline and Diesel Fuel for Southeast Florida Purchasing Cooperative Group  
(number) (RFP name)

To: The City of Pompano Beach, Florida

The below named company hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) Don Carlton Title President

Company (Legal Registered) Port Consolidated

Federal Tax Identification Number 59-1173292

Address 3141 Se 14th Ave.

City/State/Zip Fort Lauderdale, FL 33316

Telephone No. 800-683-5823 Fax No. 954-527-1191

Email Address dcarlton@portconsolidated.com



RFP E-13-17  
**UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST  
 FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE GROUP**

**ATTACHMENT "A"  
 SPECIFICATIONS & REQUIREMENTS**

The table included in Attachment "B" provides information from each Participating Agency as regards the size, type and location of fuel storage tanks and their estimated monthly usage of the various fuels included in this Request for Proposals.

I. SPECIFICATIONS

- 1.1 Successful Proposer will sell to all participating agencies the following products (the "Products"):
- "Ultra Low Sulfur diesel": No. 2 Ultra Low Sulfur, on-road, clear, taxable diesel fuel per ASTM D975-08a specifications, or latest revision.
  - "Ethanol Gasoline": 10% Ethanol blended gasoline per ASTM D4814-07b specifications, or latest revision.
- 1.2 Additional, Optional Fuel Products:
- Midrange Unleaded Gasoline: Minimum Octane of 89.0
  - Ultra Low Sulfur #2 Red Dye Diesel
  - "5% Biodiesel Fuel": Ultra Low Sulfur 5% Biodiesel blended fuel, on-road, clear, taxable diesel fuel. The B100 will conform to ASTM D6751-08 or latest revision.
  - "20% Biodiesel Fuel": Ultra Low Sulfur 20% Biodiesel blended fuel, on-road, clear, taxable diesel fuel. The B100 will conform to ASTM D6751-08 or latest revision.
  - E85 Fuel Ethanol: Shall conform to the chemical and physical standards for fuel Ethanol as set forth in the ASTM International Designation D5798-99, "Standard specification for fuel Ethanol (Ed 75-Ed85) for Automotive Spark-Ignition Engines".
- 1.3 The products supplied as a result of this Request for Proposals must conform to the specifications of the State of Florida and comply with all Federal, State and local laws and regulations as applicable on date of delivery.

2. PRICING METHODOLOGY:

- 2.1 Prices proposed are to be F.O.B. delivered expressed as a positive or negative differential from the applicable daily **OPIS** price published in the "OPIS Contract Benchmark File" as described herein for the date of delivery of product to the Participating Agency and are exclusive of all Federal, State and County Excise taxes and fees. Any other applicable taxes and fees shall be added at the time of invoicing. See Paragraph 3, TAXES .

Item No.	Description	Transport Delivery Differential Proposed (+)/(-) per gallon*	Tankwagon Delivery Differential Proposed (+) (-) per gallon*
1	87 Octane Unleaded	\$ <u>(+) 0.019</u>	\$ <u>(+) 0.089</u>
2	Diesel Fuel #2 Ultra Low Sulfur	\$ <u>(+) 0.019</u>	\$ <u>(+) 0.089</u>
3	Lump Sum Additional Delivery Charge for Deliveries <u>beyond</u> 30 mile radius of Port Everglades only.	\$ <u>Ø</u> /each	\$ <u>Ø</u> /each

\* Calculate differential proposed to fourth decimal point. Differential proposed to remain firm during initial contract period and any renewal period.

Note: If your proposal is contingent on your firm being awarded a contract for all products and all delivery methods, Proposer must indicate this condition in the proposal response.

- 2.2 Pricing of Unleaded 87 Octane Gasoline is to be proposed using the following methodology:

Daily Published **OPIS Gross CBOB Ethanol 10% Unleaded Unbranded Rack Average Price** (For the applicable Reid Vapor Pressure - RVP on the date of delivery of product at the rack)

**Plus**

Positive or Negative differential proposed for 87 Octane Unleaded on Proposal Form, Paragraph 6. (Differential to be constant regardless of the applicable RVP.)

- 2.3 Pricing of Ultra Low Sulfur Diesel #2 is to be proposed using the following methodology:

Daily Published OPIS Gross Ultra Low Sulfur Distillate No. 2 **Unbranded Rack Average** prices.

**Plus**

Positive or Negative differential proposed for Diesel Fuel #2 Ultra Low Sulfur on Proposal Form, Paragraph 6.

- 2.4 The price proposed with differential shall include the vendor's cost of product, vendor's profit, the cost of delivery within a 30 mile radius of Port Everglades, and any and all other costs. A lump sum, additional delivery charge only applicable to deliveries beyond a thirty (30) mile radius of Port Everglades may be proposed on the pricing sheet. Within the thirty (30) mile radius of Port Everglades the proposed costs must include delivery regardless of the actual varying road miles required to be driven to make deliveries within that radius to each tank location. The differential proposed for Unleaded Gasoline and Diesel Fuel or any additional fuel products shall not change during the initial term of the contract or any renewal periods. No other charges shall be added. Differential must be expressed in dollars and/or cents per gallon.
- 2.5 The selected proposer shall advise the Lead Agency of all available Federal or State credits and discounts available on all fuel types being purchased herein. The selected proposer shall apply all applicable credits and discounts to the price charged to the Co-Op and identify and reflect the discount on the applicable invoices. (Note: the applicable credits and discounts will be incorporated after award and shall not be reflected in the Price proposal Schedule.)

2.6 **Alternative Fuels**

Considering the dynamic nature of fuel technology and the growing demand for alternative fuels, the Co-Op reserves the right to add any alternative fuel to the fuel types required. When such a need arises, the Co-Op shall contact the selected Proposer to determine if the selected proposer has the ability to provide or obtain the alternative fuel. The Co-Op shall provide the selected Proposer with information on the fuel type, the technical specifications of the fuel, the acceptable operating parameters, the estimated quantities, delivery requirements, and any other relevant information available. The selected proposer shall submit a written price offer for the supply of the alternative fuel for the Co-Op's review and approval.

However, if the selected proposer is unable to supply the alternative fuel type, or the Co-Op does not accept the selected proposer's price offer, the Co-Op shall have the right to purchase the alternative fuel elsewhere.

- 2.7 Additional Fuel Products: Proposers may submit under a separate cover a price proposal on the following fuels. Proposers must outline the Pricing Methodology for each additional fuel product proposed.

Item No.	Description
1	Midrange Unleaded 89 Octane
2	Recreational Unleaded 90 Octane

3	Ultra Low Sulfur #2 Red Dye Diesel
4	Biodiesel Fuel B5
5	Biodiesel Fuel B20
6	E85 Fuel Ethanol

3. TAXES:

- 3.1 The agencies listed herein are counties, municipalities or subdivisions of the State of Florida and are exempt from Federal Gasoline and Diesel (excise) Road taxes and Florida Sales Tax.
- 3.2 Proposals will be considered only from Proposers who do not require the payment of these taxes.

4. SUBSTITUTE/ALTERNATE METHOD FOR PRICE ADJUSTMENT:

- 4.1 The City reserves the right, based on mutual agreement with the successful proposer, to substitute an alternate method for price adjustment for a specified, negotiated period of time if:
- A. An interruption in the OPIS Index is experienced beyond existing scheduled holidays (Independence Day, Christmas, etc.), or
  - B. The listing of prices for the OPIS Index are interrupted or modified to a degree which would require alteration of the computation formula to determine a fair price, or
  - C. The use of the OPIS Index prices becomes non-representative of the market.
  - D. The Successful Proposer provides clear and convincing proof that market conditions unrelated to the OPIS Index have been materially altered from those that existed at the time of award or renewal of contract. Such proof may consist of contracts with suppliers, invoices or published indexes, etc.
- 4.2 The City may, if deemed to be in the City's best interest, elect to modify the pricing methodology in the situations listed above in the following manner using any nationally recognized, published benchmark or index.

The firm markup or discount will include the vendor's cost of product, profit, delivery costs and any other costs. The firm markup or discount for Unleaded Gasoline or Diesel shall not change during the negotiated term of the contract amendment. No other charges shall be added.

- 4.3 The City may also negotiate a per transport or tank wagon delivery surcharge, if market conditions necessitate such a solution.
- 4.4 If it is determined by the City to be in its best interest to substitute an alternate method for price adjustment as specified above, the contractor(s) will be notified thirty (30) days prior to the effective date for the alternate adjustment. If an alternate price adjustment method is not acceptable to all awarded contractor(s), the City may cancel this contract in whole or in part by giving the contractor(s) ninety (90) days prior written notice.

## 5. INVOICING

- 5.1 All invoices shall be provided to each participating agency via an electronic method within twenty-four (24) hours of date of delivery of product. Each invoice shall reference the date of the applicable published **OPIS** price for that day with the appropriate differential as per the contract. Successful proposer shall list separately on invoice each individual non-exempt tax/fee and the amount of the differential.

## 6. ORDERING & PAYMENT:

- 6.1 Each participating governmental agency will, based on the award of contract made by the Lead Agency and with the same prices, terms, and conditions establish its own contract with the successful proposer(s) in a manner acceptable to the successful proposer; will issue its own purchase orders; will require separate billing and will issue its own tax exemption certificates as required by the successful proposer.
- 6.2 The City of Pompano Beach Purchasing Division will furnish a copy of proposers list and any other information submitted with the proposals to all participating agencies.
- 6.3 Payment will be *made by each Participating Agency* within fifteen (15) calendar days from delivery of product at Participating Agencies location via wire transfer to seller's account and bank, as indicated on the invoice.
- 6.4 It is understood and agreed that the City of Pompano Beach is not a legally bound party to any contractual agreement made between any other agency and the successful proposer as a result of this Request for Proposals.
- 6.5 After award of contract(s) to successful proposer(s) the City reserves the right to issue purchase orders in accordance with the terms of this contract.

## 7. Reporting Requirements

The selected Proposer shall submit to the Lead Agency a Fuel Purchasing Report on a monthly basis. The fuel Purchasing Report shall include fuel volume totals by fuel type for each participating agency. The report shall also include a "Grand Total" (year-to-date) fuel volume for all Participating Agencies for each fuel type. The required fields are the following:

- Reporting Period (specify month)
- Participating Agency

- Delivery volume (do not round off reported volume amounts, allow volumes to be reported up to as many decimal places as needed).
- Subtotal volume (per fuel type for each Participating Agency)
- Cumulative Total Volume Year to Date (per fuel type for all Participating Agencies)
- Note regarding fuel types: report must specify the ethanol and biodiesel blend being delivered.

The Fuel Purchasing Report shall be sent in electronic format (Excel format preferred) via email to: [purchasing@copbfl.com](mailto:purchasing@copbfl.com).

## 8. DELIVERY REQUIREMENTS

For the purposes of this section the term Carrier shall mean the Seller or an independent contractor hired by the Seller for the delivery of fuel to the Participating Agencies.

### 8.1 LEGAL REQUIREMENTS:

- A. **Compliance with Laws and Codes:** Federal, State, County, and local laws, ordinances, rules and regulations that in any manner, affect the terms covered herein apply. Lack of knowledge by Carrier shall in no way be a cause for relief from responsibility. The Carrier shall strictly comply with Federal, State and Local building and safety codes. Equipment shall meet all State and Federal Safety Regulations.
- B. **Independent Contractor Relationship:** The Carrier is, and shall be, in the performance of all work, services, and activities under the Agreement, an Independent Contractor and not an employee, agent, or servant of any Participating Agency. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Carrier's sole direction, supervision, and control. The Carrier shall exercise control over the means and manner in which it and its employees perform the work and in all respects the Carrier's relationship, and the relationship of its employees, to any Participating Agency shall be that of an independent contractor and not as employees or agents of any Participating Agency.
- C. **Certifications, Licenses and Permits:** Carrier shall provide a copy of all applicable Certificates of Competency issued by the State of Florida in the name of the Carrier. It shall also be the responsibility of the Carrier to submit prior to commencement of work a current Occupational License and all permits required to complete this contractual service at no additional cost. It is the responsibility of the Carrier to ensure that all required certifications, licenses and permits are maintained in force and current throughout the term of the Agreement.

## 9. DELIVERY/RESPONSE TIME:

- A. Delivery shall be required within twenty-four (24) hours unless an alternate delivery date has been requested by the Participating Agency.

- B. Daily orders shall be placed by e-mail from a participating agency representative by 10:00 a.m., Monday through Friday.
- C. Deliveries shall be made within 24 hours of order placement unless the participating agency specifically requests otherwise as indicated on the order, in which case, requested delivery date and time shall become the required delivery time.
- D. Orders placed on Friday shall be delivered no later than 5:00 p.m. the following Monday, unless the participating agency specifically requests otherwise, in which case, requested delivery date and time, shall become the required delivery time. The participating agency shall not require the carrier to deliver on Sundays (except for declared emergency situations).
- E. A transport load shall be defined as no less than 7,500 gallons of Ethanol blended or regular gasoline or no less than 7,000 gallons of Ultra Low Sulfur Diesel or 5% biodiesel fuel or 20% biodiesel fuel.
- F. The Participating Agencies reserve the right to split any load between no more than two delivery sites for their agency.**
- G. If the carrier is unable to meet the delivery requirements, it shall be the responsibility of the carrier to notify the participating agency within 2 hours of the delay occurring so that the participating agency can determine if it needs to transfer fuel between its sites to cover delay.
- H. At time of delivery, carrier shall present a delivery ticket/bill of lading to a participating agency representative, or if requested, deliver document to a specified location. The delivery ticket/bill of lading shall include:
- Bill of lading number.
  - Name of supplier and carrier.
  - Date and time of delivery.
  - Type of fuel delivered.
  - Gross gallons and net gallons delivered.
  - Inches in fuel tank, before and after delivery.
  - Driver's signature.
  - Signature of participating agency employee receiving delivery, unless otherwise indicated.
  - Delivery address.
- I. Carrier shall be adequately equipped, staffed, and supplied to, promptly, and efficiently, furnish, deliver, and dispense, all products that are submitted at various facilities.
- J. Carrier shall have the ability to fill above-ground tanks.
- K. Carrier shall be fully responsible for any and/or all actions of their employees that require clean up or ground sterilization as the result of an "improper" delivery. Carrier shall have and shall maintain those types and quantities of materials necessary to contain spilled

product(s). Carrier shall be responsible for prompt and thorough cleanup of all spillage, as per EPA specifications, and for any agency fines or fees that result from contamination.

- L. Discovery or occurrence of a spill, on overfill, excess water in the tank, suspected contamination of surrounding area, suspected tank failure, or any other indication of chemical release shall be immediately reported by the Carrier to the participating agency. Where the event is directly or indirectly the result of carrier's actions, the carrier shall also affect containment and initiate cleanup immediately.
- M. All transport truck deliveries will be temperature adjusted to 60 degrees F in accordance with the latest edition of the American Society for Testing and Materials (ASTM) Table 6B, Volume II, Petroleum Measurement Tables. Delivery tickets and invoices shall reflect the net gallons delivered after temperature compensation.
- N. Any Tankwagon deliveries will be metered in gross gallons and invoiced in gross gallons.
- O. Agencies will accept fuel from trucks with sealed State approved and inspected meters. Trucks that have State of Florida Department of Agriculture and Consumer Services sealed, calibrated and certified compartment tank volume markers for the petroleum product being delivered, are also acceptable.

10. SPILLAGE:

- A. The Contractor and/or his subcontractors making deliveries shall be fully responsible for any errors or mistakes that require clean up or ground sterilization. Contractor will be responsible for prompt and thorough cleanup of all spillage per EPA specifications and for any agencies fines or fees for any contamination that result from improper delivery of fuel.

11. PRIORITY DELIVERIES:

Preference of deliveries shall be given to agencies providing emergency relief and response services and members of the co-op who are participating in this contract, in case of declared emergencies or natural disasters.

**Proposers shall attach an emergency plan that assures continued deliveries of these products in case of emergencies and/or when additional quantities may be required.**

12. WORK SITE SAFETY/SECURITY:

The carrier shall at all times guard against damage or loss to the delivery site property, the Carrier's own property, and/or that of other contractors, and shall be held responsible for replacing or repairing any such loss or damage. When applicable, the Carrier shall provide fences, signs, barricades, flashing lights, etc. necessary to protect and ensure the delivery site(s) and insure that all county, State of Florida, OSHA, and other applicable safety regulations are met. Additionally, carrier shall provide for the prompt removal of all debris from delivery sites. All participating agencies may withhold payment or make such deductions as deemed necessary



to ensure reimbursement or replacement for loss or damage to property through negligence of the Carrier or its agents.

13. ADDITION OF DELIVERY SITES:

Each Participating Agency shall be able to add delivery sites to the attached list, with 7 days notice to the seller.



January 12, 2017

Jeff English  
 City of Pompano Beach  
 1190 NE 3rd Avenue  
 Building C  
 Pompano Beach, FL 33060

Additional Products – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA GOVERNMENTAL COOPERATIVE GROUP

Dear Mr. English:

Per the terms of the RFP, please see below quote for Additional Fuel Products:

Item No.	Description	Transport Delivery Differential Proposed	Tankwagon Delivery Differential Proposed
1	Midgrade UNL 89 Octane E-10	+0.099	+0.199
2	Recreational Unleaded 90 Octane	+0.099	+0.199
3	Ultra Low Sulfur #2 Red Dye Diesel	+0.149	+0.349
4	Biodiesel Fuel B5	+0.049	+0.149
5	Biodiesel Fuel B20	+0.049	+0.149
6	E85 Fuel Ethanol	.10 under 87E10	.10 under 87E10
7	Biodiesel Fuel B5	.01 under ULSD	.01 under ULSD
8	Biodiesel Fuel B10	.015 under ULSD	.015 under ULSD
9	Biodiesel Fuel B20	.02 under ULSD	.02 under ULSD
10	Premium UNL 93 Octane E-10	+0.099	+0.199

We will utilize the same OPIS Unbranded Rack Index as outlined in Section 2 of the RFP, "Pricing Methodology".



Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', is written over the word 'Sincerely,'.

Don Carlton  
*President*  
Port Consolidated



January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Alternate Proposal – UNLEADED GASOLINE & DIESEL FUEL FOR SOUTHEAST FLORIDA GOVERNMENTAL COOPERATIVE GROUP

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Dear Mr. English:

Please be advised. For those municipalities that wish to haul their own product, Port will deduct \$0.01 per gallon from the standard delivered transport offering.

Port Consolidated also has the ability to arrange for "Fixed Price" fuel contracts. These programs will allow municipalities to budget their fuel costs without having to combat day to day market volatility.

Please see the attached "Fixed Price" Supply Agreement. Pricing or quotes for such programs change by the minute. We would prefer to quote accordingly if and when the need arises.

Should you or the City of Pompano Beach Purchasing Division have any questions on this proposal, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', is written over a horizontal line.

Don Carlton  
President  
Port Consolidated

**Port Consolidated**  
**3141 SE 14<sup>th</sup> Ave.**  
**Fort Lauderdale, FL 33335**

Exhibit A

**Petroleum Product**  
**Sales/Purchase Agreement**

SUBJECT TO THE TERMS AND CONDITIONS OF THIS SALES/PURCHASE AGREEMENT, BUYER AGREES TO PURCHASE AND SELLER AGREES TO SELL AND DELIVER THE FOLLOWING PRODUCT(S) AT THE PRICE(S) AND IN THE QUANTITIES (TO BE PULLED RATABLY THROUGHOUT THE DELIVERY PERIOD) AS SET FORTH IN THIS AGREEMENT.

ACCEPTED AND AGREED TO ON

<b>Buyer:</b>	<b>Seller: PORT CONSOLIDATED</b>
Attn:	Attn: JOSEPH R. SISK
Title:	Title: CFO / TREASURE
Phone:	Phone: 954-522-1182 x233
Fax:	Fax: 954-527-1191
By: _____	By: _____
Print Name:	Print Name: Donald Carlton, Jr.
Title: Owner	Title: President

1. F.O.B. <u>Delivery Point(s)</u>	<u>Monthly Gallons</u>	<u>Product</u>

2. Payment Terms: Payment Net 15 Days from date of bill of lading. All payments shall be made in US Dollars. Volume shall be determined solely by the terminal net bill of lading or certified meter reading.

3. Term: The Term of this Agreement shall be for a period of \_\_\_\_\_ months, beginning on \_\_\_\_\_ and ending on \_\_\_\_\_.

4. Price:

5. Credit: Upon request Buyer will promptly furnish to Seller financial statements, references from banks and trade organizations and any other information requested by Seller. Buyer represents and warrants that all financial statements or similar documents provided by Buyer to Seller (previously or hereafter) (i) do or will fairly present in all material respects Buyer's financial condition as of the date of such documents; (ii) have been prepared in accordance with U.S. generally accepted accounting principles and (iii) if audited, have been certified without reservation by a firm of independent public accountants. Seller shall determine a credit limit ("Credit Limit") for Buyer. Buyer agrees that it shall not contract for Product(s) in excess of its Credit Limit. Buyer shall have the right to contract for amounts reflecting the difference between the Credit Limit and any amounts due and owing to Seller. Seller in its discretion may require Buyer to make a good faith deposit at initiation of this Agreement to secure Buyer's performance. [Alternative: Seller in its discretion may require Buyer to make several deposits on demand during the Term of the Agreement to secure Buyer's performance.] Such deposit(s) will constitute credit against future delivery and may be applied against one or more invoices (exclusive of taxes) in Seller's discretion. Seller has the right to use any deposit(s) to set off against any obligations of this Agreement in the event Buyer defaults, becomes insolvent or files for bankruptcy.

6. Taxes/Fees: Buyer acknowledges that taxes and fees are not included in the price set forth above, shall be billed as a separate line item and are subject to change from time to time without notice. Buyer further acknowledges that it is responsible for paying on demand any and all (a) costs and expenses for transportation from the designated supply point(s) set forth herein and (b) taxes, duties, charges, assessments and fees (including without limitation superfund and environmental fees) imposed, directly or indirectly, now or hereafter on, against, in respect of, or measured by the Product(s), or any material contained in the Product(s), or related to inspection, production, manufacture, sale, use, purchase, storage, transportation, delivery, or

## EXHIBIT A

other handling of the Product(s) or material contained in the Product(s), or any feature thereof, or otherwise relating to this Agreement. The parties specifically agree that the preceding sentence shall apply regardless of any other term or condition contained herein or any other agreement between the parties. Should Buyer claim exemption from any taxes, Seller is under no obligation to verify such status and Buyer shall indemnify Seller pursuant to Paragraph 15 in the event Buyer is or was not exempt from such taxes.

7. Specification: Per Seller specifications.

8. Quantity/Volume: Buyer shall purchase 100% of Monthly Gallons per each Delivery Point. Buyer is required to lift Product(s) ratably on a weekly basis at all Delivery Points.

9. Ratable Usage: During each calendar month of this Agreement, Buyer is required to lift each Product on a ratable basis by the week at any or all of the delivery points. The weekly ratable volume for each Product by delivery point is 7/30 of the maximum monthly volume (defined as one twelfth of Purchaser's yearly commitment or otherwise computed on a pro rata basis based on the number of months of this Agreement) specified for each delivery point.

10. Default and Remedies: For the purposes of this Agreement, Buyer's default includes (a) the making of any false or misleading representation in this Agreement and (b) the failure to observe or comply with any provision or covenant in this Agreement. In the event of Buyer's default, Seller may seek all legal and equitable remedies, including, without limitation, all rights provided by Article 2 of the Uniform Commercial Code. Seller may also seek its attorneys' fees, costs and expenses incurred in connection with Buyer's default. In addition, in the event that any invoice is not paid when due or Buyer takes delivery in violation of Buyer's Credit Limit, Seller may at its option (i) suspend or condition further deliveries or (ii) terminate this Agreement, without notice or demand, and all unpaid balances shall be immediately due and payable. In the event Buyer fails to take delivery of any portion of any Product(s) during the Term, including non-delivery as a result of Buyer's default, Buyer agrees to pay Seller immediately Seller's lost profits on the undelivered quantity of Product(s). All amounts not paid when due shall bear interest at \_\_\_% per annum and shall be payable with all costs of collection, including, without limitation, Seller's attorneys fees, costs and expenses. Upon the occurrence of any default, Seller may set off against the indebtedness of any amounts owing by Seller to Buyer, whether or not those amounts are immediately payable. Seller shall have the right to require the Buyer to take possession of the Product with or without demand and with or without process of law and the right to sell or dispose of the Product.

11. Notices: Any notice, request or other communication required or permitted by or pertaining to this Agreement ("Notices") shall be in writing and issued to the addresses as listed above. Notices shall be delivered by (a) by a nationally recognized courier or messenger service with confirmed delivery, (b) personal service or (c) first class mail prepaid. Notice using the methods set forth in (a) or (b) shall be deemed effective if delivered between 9AM (EST) and 5PM (EST) ("Business Hours") on a day on which commercial banks are open for business ("Business Day"); any notices delivered after Business Hours or on a non-Business Day shall be deemed delivered as of 9AM (EST) on the first succeeding Business Day. Notices by first class prepaid mail shall be deemed received 5 calendar days after mailing. Refusal by a party to accept notice shall not affect its validity.

12. Allocation: Seller, in its sole discretion, may decide to allocate or limit quantities of Product(s) available for sale. In such instance, Seller shall exercise reasonable efforts to provide all of its buyers with allocations of Product(s) reflecting amounts purchased previously on a regular basis prior to allocating any Product(s) to non guaranteed quantity purchase customers and/or new customers.

13. Over Lifting: For purchases of Product(s) exceeding the amounts set forth in Section 1 above, the Buyer shall be charged in accordance with current Port Consolidated delivered prices.

14. Non-Reliance: Buyer represents that is entering into this Agreement as a principal (rather than as agent of any person or entity) and has made its own independent decisions to enter into this Agreement. Buyer is not relying on any communication (written or oral) of Seller as a recommendation to enter into this Agreement. Buyer is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement.

15. Warranties: Seller warrants that Product(s) delivered to Buyer will conform to the description(s) set forth on page 1 of this Agreement. This is Seller's sole warranty. **SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY PRODUCT(S) PURCHASED HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND SPECIFICALLY EXCLUDED.**

16. LIMITATION OF LIABILITY: SELLER DISCLAIMS AND BUYER HOLDS SELLER HARMLESS FROM AND AGAINST ANY LIABILITY FOR CONSEQUENTIAL OR OTHER INCIDENTAL DAMAGES. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY CLAIMS OF LIABILITY ARISING FROM USE OF THE PRODUCT, WHETHER SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES. Seller shall not be liable for damages, whether arising from performance of Seller's obligations under this Agreement, tort (negligence), or otherwise for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruption, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental or consequential loss or damage. Buyer agrees to defend, indemnify and hold harmless Seller from and against any and all liability, losses, damages, costs, claims, lawsuits, judgments, settlements and expenses, including without limitation, reasonable attorneys fees, costs and expenses arising or related to this Agreement or Seller's performance under this Agreement. Buyer assumes all risk and liability for and shall indemnify and hold Seller harmless from and against any and all loss, damage or injury to persons or property (whether to Buyer or third parties) arising out of the ownership, use, custody, control or disposition of the Product(s) by Buyer, its agents and employees or by any third parties.

17. Risk of Loss and Title: Identification of the Product(s) shall occur the Agreement is effective. Risk of loss passes to Buyer on identification. Title of the Product(s) shall pass to Buyer on physical possession.

18. Defects: Buyer shall within 2 days advise Seller of any alleged defect or failure to conform with specifications. If the parties agree that the Seller is responsible, at Seller's option (a) the defective Product(s) shall be returned at Buyer's expense, properly safeguarded against normal transit

## EXHIBIT A

risks as required by Seller, for replacement by Seller or (b) the parties shall negotiate a mutually acceptable amount to be deducted from the Agreement price, the payment of which shall operate as a full release of Seller. Buyer's failure to notify Seller of any alleged defect or failure to meet specification within 2 days shall constitute a complete waiver of any claim with respect to defects or failure to conform and Buyer's release and covenant not to sue Seller with respect to any such claim.

19. Acceptance: Buyer's acceptance of delivery of Product(s) shall constitute irrefutable evidence of its agreement to the terms and conditions set forth herein.

20. Responsibility to Warn and Report: Buyer assumes all responsibility for (a) warning and protecting its personnel and any third parties of all hazards to persons and property related to the Product(s) and (b) complying with all relevant reporting obligations under the Emergency Planning and Community Right to Know Act of 1986, 42 USC Sections 11001-11049 resulting from the presence of chemicals under this Agreement.

21. Applicable Law/Forum/Jury Waiver: This Agreement is governed by and shall be construed under the laws of the State of Florida without reference to conflicts of laws rules or principles. With respect to any suit, action or proceedings relating to this Agreement ("Proceedings") each Party irrevocably (a) submits to the exclusive jurisdiction of the courts of the State of Florida and the United States District Court located in Broward County; (b) waives any objection that it may have at any time to the laying of venue of any Proceedings brought in such court, (c) waives any claim that such Proceedings have been brought in an inconvenient forum and (d) further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such party, INsofar AS PERMITTED BY LAW. EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING IN CONNECTION WITH THIS AGREEMENT AND ACKNOWLEDGES THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT. The prevailing party in any litigation between the parties shall be entitled to recover reasonable costs including external attorneys fees.

22. Waiver: No waiver by either Party hereto of a breach of an obligation owed hereunder by the other shall be construed as a waiver of any other breach, whether of the same or of a different nature. No delay or failure on either Party's part to enforce any right or claim, which it may have hereunder, shall constitute a waiver on the respective Party's part of such right or claim. All rights and remedies arising under this Agreement as amended and modified from time to time are cumulative and not exclusive of any rights or remedies which may be available at law or otherwise.

23. Assignment: Neither Party shall assign this Agreement without the consent of the other Party hereto. Any such attempt to assign this Agreement shall be null and void. Nothing herein shall confer or is intended to confer on any person or entity which is not a party to this Agreement any rights or benefits under this Agreement.

24. Amendment: This Agreement shall not be modified or amended, except by written instrument duly executed by officers or other duly authorized representatives of the respective Parties. Notwithstanding the foregoing, Buyer agrees that Seller may modify the terms of this Agreement at any time to comply with changes in applicable law. Acceptance or acquiescence in a course of performance rendered shall not be relevant to determine the meanings of these terms and conditions. Notwithstanding any provisions therein to the contrary, any terms and conditions in a Buyer's purchase order, confirmation, acknowledgement form or other document issued by the Buyer that conflict with this Agreement or increase Seller's obligations are rejected and shall not be binding on Seller unless expressly accepted by Seller in writing.

25. Severability: Any provision hereof which is legally unenforceable shall be ineffective only to the extent of such unenforceability without thereby invalidating the remaining provisions hereof or affecting the validity of enforceability of this Agreement as a whole.

26. Entire Agreement: This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other promises, representations, or warranties affecting it.

27. Force Majeure: In no event shall the Seller be held liable (a) for indirect, consequential, punitive, or multiple damages or (b) for any loss of any kind caused, directly or indirectly, by federal, state or local law, order or regulation, government restrictions, war (whether declared or undeclared), terrorist acts, insurrection, riots, fires, flooding, strikes, failure of utility services, accidents, adverse weather or other events of nature, or other conditions beyond its reasonable control.

28. Insurance: Buyer shall carry and maintain comprehensive general public liability insurance, including contractual liability, bodily injury and property damage, workmen's compensation, and employer's liability insurance throughout the Term of the Agreement and any extension of this Agreement.

29. Recording: Each party may, in its commercially reasonable discretion, record, on tape or otherwise, any telephone conversation between the parties and involving their respective officers, agents and employees, and each party hereby agrees and consents thereto.

30. Time is of the Essence: Time is of the Essence in this Agreement. Failure to meet a deadline shall be a breach.

31. Headings: Headings in this Agreement are for convenience only and should not be used for interpretive purposes.

32. Authority to Sign: Each party executing this Agreement is duly authorized to do so and all entity action necessary for the making of this Agreement has been duly taken.



**City of Pompano Beach, Purchasing Division**  
**1190 N.E. 3rd Avenue, Building C**  
**Pompano Beach, Florida, 33060**

December 22, 2016

**ADDENDUM #1, BID E-13-17**

**Unleaded Gasoline and Diesel Fuel for Southeast Florida Purchasing Cooperative Group**

To Whom It May Concern,

Please review the following question and the City's answer.

**Q1:** I wanted to confirm the volume on the bid as it seems to be a sizable difference from last year. Last year's volume: 21,434,744 gallons. This year's volume: 3,621,580 gallons. I wanted to make sure we recorded the correct gallons in our system and communicated it to our bid team.

**A1:** The aggregate fuel capacity of the Southeast Florida Governmental Purchasing Cooperative Group, which is shown in Attachment B, represents only one fill-up of all the tanks owned by each participating Co-op member. Attachment D "Co-op volume report Jan-Dec 2015" may be more useful for annual volume projections, as it records a full year's history of multiple deliveries.

**Q2:** [We] would like to prepare a proposal for the above referenced bid. However, I would like to know if we have to bid on all sites, or can we bid on just the tanker sites?

**A2:** This is an "all or nothing" solicitation. The successful proposer will be expected to provide diesel AND unleaded gasoline to all participating Co-op agencies.

**Q3:** Please provide a copy of the prior bid tabulations, invoice and bill of lading for our records for each location with a tank capacity of 5,000 or more.

**A3:** The previous contract, Attachment C Coral Springs Contract 14-A-035 RFP has been added to the attachments tab. As the successful proposer will bill, deliver to, and enter into separate contracts with approximately 40 participating Co-op agencies, there is no single source for the invoices and bills of lading for each of these agencies.

**Q4:** What are the volumes for this bid, either by agency or total? I need to be able to judge the commitments that need to be made and realistic projections of what products will be needed and in what quantity.



Addendum #1, E-13-17

**A4:** Attachment D "Co-op volume report Jan-Dec 2015" has been added to the attachments tab.

**Q5:** What agencies may use their own trucks and what volumes would they require?

**A5:** Presently, the City of Boca Raton uses their own trucks. Attachment D "Co-op volume report Jan-Dec 2015" contains a record of their volume.

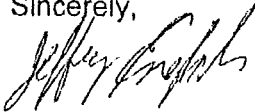
Attachments C and D have been added to the attachments tab of the electronic solicitation. Addendum #1 is posted on the City's eBid website: <http://pompanobeachfl.ionwave.net>. Acknowledge receipt of this Addendum using the Addendum Attribute on the Attributes tab in the eBid System.

The deadline for receipt of written questions is **5:00 p.m. (local) December 28, 2016**. No further questions will be accepted after this date. Oral and other interpretations or clarifications will be without legal effect.

The deadline for acceptance of sealed bids in the Purchasing Office, 1190 N.E. 3<sup>rd</sup> Avenue, Bldg. C, Pompano Beach, 33060, is **2:00 p.m. (local), January 4, 2017**.

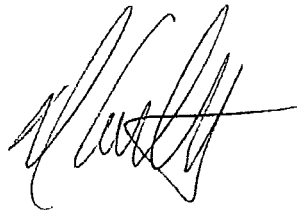
The remainder of the solicitation is unchanged at this time.

Sincerely,



Jeff English  
Purchasing Agent

cc: website



Don Carlton  
Pont Consolidated



3141 SE 14th Ave. • P.O. Box 350430  
Ft. Lauderdale, FL 33335  
Phone: (954) 522-1182  
Fax: (954) 527-1191  
Toll Free: (800) 683-5823

January 12, 2017

Jeff English  
City of Pompano Beach  
1190 NE 3rd Avenue  
Building C  
Pompano Beach, FL 33060

Re: Confirmed Cardlock Locations and Pricing

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Dear Mr. English:

Please be advised. Port Consolidated has six locations throughout the South Florida where customers can fuel their vehicles directly from our automated fueling stations. They are as follows:

- 11550 NW 36<sup>th</sup> Ave., Miami, FL 33167 – Diesel and Gasoline -Mon. through Fri., 7 AM – 5 PM
- 3141 SE 14<sup>th</sup>, Ave., Ft. Lauderdale, FL 33316 – Diesel and Gasoline 24/7
- 2301 NW 15<sup>th</sup> Ave., Pompano, FL 33069 – Diesel and Gasoline 24/7
- 1126 Hammondville Rd., Pompano, FL 33039 – Diesel Mon. through Fri., 7 AM – 5 PM
- 1782 Skees Rd., West Palm Beach, FL 33411 – Diesel and Gasoline 24/7
- 6951 Garden Rd., Riviera Beach, FL 33404 – Diesel and Gasoline 24/7

Pricing for the above facilities will be the same as our confirmed delivered tankwagon pricing. I will send out Cardlock set-up/activation forms with additional information to the Co-op at a later date.

Should you have any questions or comments, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Carlton', is written over the word 'Sincerely,'.

Don Carlton  
President  
Port Consolidated

**Exhibit C****Rate Schedule**

Prices are F.O.B. delivered as a differential from the applicable OPIS price published in the "OPIS Contract Benchmark File" as described herein for the date of delivery of product to the City, and Participating Agencies, and are exclusive of all Federal, State and County Excise taxes and fees. Any other applicable taxes and fees shall be added at the time of invoicing. The differential shall remain firm during the initial contract period and any renewal period unless agreed to in writing by both parties. The below pricing also includes the alternate fuels listed in RFP E-13-17.

Item No.	Description	Transport Delivery Differential	Tankwagon Delivery Differential
1	Unleaded Gasoline	0.007	0.089
2	Diesel Fuel	0.007	0.089

## CITY OF LAUDERDALE LAKES

### Agenda Cover Page

Fiscal Impact: Yes

Contract Requirement: No

Title
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RESOLUTION 2017-051 AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE A PROCUREMENT PURCHASE EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000) BUT LESS THAN FORTY THOUSAND DOLLARS (\$40,000) WITH HOME DEPOT
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Summary
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This Resolutions authorizes the City Manager to execute a procurement purchase and purchases order(s) exceeding twenty-five thousand (\$25,000.00) dollars, but less than forty thousand (\$40,000.00) dollars to Home Depot for the provision of the maintenance, repair, operating supplies, industrial supplies, and related products in accordance with the U.S Communities Cooperative Government Purchasing Alliance Contract No. 16154 (lead agency Maricopa County, Phoenix, Arizona) Agreement.
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Staff Recommendation
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#### Background:

The Procurement Code authorizes the City Manager or designee to approve and execute all procurement related non-capital improvement purchase orders, contracts, contract amendments and contract renewals in the amount of twenty-five thousand dollars (\$25,000) or less.

Due to an increase in capital improvements and increases in facility maintenance and other citywide repairs, the need to procure items from Home Depot has increased. The City requests the authorization to purchase more than twenty-five thousand dollars (\$25,000) but less than forty thousand dollars (\$40,000) in any one fiscal period with Home Depot.

As a partner of the U.S. Communities Cooperative Purchasing Alliance Program, the City receives rebates for annual usage from Home Depot which is credited as miscellaneous revenue on an annual basis.

The current contract period with Home Depot is through December 31, 2021.

#### Funding Source:

For Fiscal Year 2017, there is adequate funding budgeted in the Public Works Department operating budget and in the capital improvement accounts approved by City Commission.

**Sponsor Name/Department:** Susan Gooding-Liburd, MBA, CPA, CGFO, Financial Services Dir & Ronald Desbrunes, Public Works Dir.

**Meeting Date:** 4/11/2017

#### ATTACHMENTS:

Description	Type
2017-051 - Home Depot	Resolution

## RESOLUTION 2017-051

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROCUREMENT PURCHASE ORDER(S) EXCEEDING TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), BUT LESS THAN FORTY THOUSAND DOLLARS (\$40,000.00), TO HOME DEPOT FOR THIS PROVISION OF MAINTENANCE, REPAIR, OPERATING SUPPLIES, INDUSTRIAL SUPPLIES, AND RELATED PRODUCTS, IN ACCORDANCE WITH THE US COMMUNITIES GOVERNMENT PURCHASING ALLIANCE CONTRACT #16154 AGREEMENT; PROVIDING FOR INSTRUCTIONS TO THE DEPARTMENT OF FINANCIAL SERVICES; PROVIDING FOR THE ADOPTION REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has historically used the maintenance, repair, operating supplies, industrial supplies, and related products agreement under the US Communities Government Purchasing Alliance Contract #16154 under the “piggy-back” method of procurement;

WHEREAS, 90,000 other governmental agencies across the nation are members of the US Communities Government Purchasing Alliance and share the benefits of the best government pricing due to the increased purchasing power;

WHEREAS, the lead agency (Maricopa County, Phoenix, Arizona) formally advertised and issued the Request for Proposal in order to obtain pricing and service capability information for maintenance, repair, operating supplies, industrial supplies, and related products industry and to successfully awarded the contract to Home Depot on January 11, 2017 through December 31, 2021;

WHEREAS, the City is satisfied with the delivery, product and services provided by Home Depot and recognizes the increased use of such services;

WHEREAS, it is appropriate to authorize the City Manager to execute a purchase order(s) exceeding Twenty-Five Thousand Dollars (\$25,000.00) but less than Forty

Thousand Dollars (\$40,000.00), for the purchase of such maintenance, repair, operating supplies, industrial supplies, and related products as needed;

WHEREAS, pursuant to Section 82-196.8 (d), it is in the best interest of the City to participate in the cooperative agreement as it is more advantageous to the City due to the substantial savings and discounted pricing; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Commission of the City of Lauderdale Lakes, Florida, hereby approves the execution of a purchase order(s) to Home Depot for maintenance, repair, operating supplies, industrial supplies, and related products and authorizes the City Manager and Financial Services Department to take steps necessary and appropriate to process such purchase order(s).

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF LAUDERDALE LAKES AT ITS REGULAR MEETING HELD APRIL 11, 2017.

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HAZELLE ROGERS, MAYOR

ATTEST:

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SHARON HOUSLIN, CITY CLERK

JCB:jl

Sponsored by: SUSAN GOODING-LIBURD, MBA, CPA, CGFO, Financial Services  
Director and Ronald Desbrunes, Public Works Director

**VOTE:**

Mayor Hazelle Rogers	_____	(For)	_____	(Against)	_____	(Other)
Vice-Mayor Veronica Edwards Phillips	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Sandra Davey	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Gloria Lewis	_____	(For)	_____	(Against)	_____	(Other)
Commissioner Beverly Williams	_____	(For)	_____	(Against)	_____	(Other)