

CITY OF PLANTATION

Invitation to Bid

COVER SHEET FOR BID

Project Title: Supply and Delivery of Sodium Hypochlorite

Mandatory Pre-Bid Meeting Yes [] No [X]

If yes, Date: N/A Time: N/A
Location: N/A

Bid Bond Required Yes [X] No []

Performance Bond Required Yes [] No [X]

Liquidated Damages Yes [] No [X]

Department: Procurement Division

Contact person (contract issues): Charles Spencer

Address: 400 NW 73 Avenue, Plantation, FL 33317

Telephone: 954 [797-2647]

Department: Procurement Division

Contact Person (technical issues): Charles Spencer

Address 400 NW 73 Avenue, Plantation, Florida

Telephone: 954 [797-2647]

Today's date: May 20, 2016

Opening date: June 21, 2016

Opening time: 11:00 A.M.

[59]9001-14001

NOTICE TO BIDDERS
Invitation to Bid # 016-16

CITY OF PLANTATION
PLANTATION, FLORIDA

The City of Plantation, Florida is soliciting bids for *Supply and Delivery of Sodium Hypochlorite*. The project will generally consist of, but is not limited to, the following:

The sole purpose and intent of this Invitation to Bid is to establish a firm fixed term contract for the purchase and delivery of Sodium Hypochlorite in bulk and less than tanker loads to various locations throughout the City of Plantation

Proposals will be accepted until 11:00 am. on Tuesday, June 21, 2016 , at City Hall, Office of the City Clerk, City of Plantation, 400 NW 73rd Ave, Plantation, Florida 33317, at which time Bids will be opened, read and recorded pursuant to State of Florida Law and City of Plantation code.

It will be the responsibility of the Bidder to insure that bids are received no later than the time indicated above. **Bids received after that time will not be considered.**

Detailed specifications containing Instructions and Bid Forms may be obtained from Charles Spencer in the Procurement Division, 400 NW 73 Avenue, Plantation or through the Plantation website of www.Plantation.org. The bid may also be obtained from the web link <http://ftp.plantation.org> or www.Demandstar.com website. All questions may be addressed in writing to the [*Procurement Administrator, Charles Spencer*], 400 NW 73rd Avenue, Plantation Florida 33317. [*Charles Spencer*] can be reached at [*954-797-2647*], Monday through Friday, 8AM to 4PM, Email: [*espencer@plantation.org*].

- [X] Proposals must be sealed and the INVITATION TO BID number and proposal title must be plainly marked on the outside of the envelope. (*check if necessary*)
- [X] Proposal Security: All Proposals shall include a surety bond in the form set forth in paragraph 6.4 (**and on the Bid Bond Form provided**) of the Instructions to Respondents. The Penal Sum of the surety bond shall be (5%) of the total proposal. (*check if necessary*)

As a further condition precedent for consideration of any bid, such Bid must strictly comply with the Instructions to Bidder as issued by the City. The City reserves the right in its sole discretion to reject any bid which does not strictly comply with said Instructions to Bidder and further reserves the right to accept or reject any bid as set forth in said instructions.

Instructions to Bidders

Invitation to Bid #016-16

1. Defined Terms:

Terms used in these Instructions to Bidders have the meanings assigned to them in the GENERAL CONDITIONS. The following terms have the meanings indicated which are applicable to both the singular and plural thereof.

- 1.1 **Bidder:** One who submits a Bid directly to OWNER, as distinct from a sub-Bidder, who submits a bid to a Bidder.
- 1.2 **Successful Bidder:** When the City utilizes an INVITATION TO BID, the award shall be made to the responsible bidder who submitted the lowest bid, taking into consideration the evaluation factors and criteria set forth in the INVITATION TO BID.
- 1.3 **Contractor:** The Bidder with whom OWNER enters into a Contract for the Work.

2. Copies of Bidding Documents:

- 2.1 Complete sets of the Bid Documents for the fee stated in the "Notice to Bidders" may be obtained from the City of Plantation – Procurement Division, <http://ftp.plantation.org> or www.Demandstar.com.
- 2.2 Complete sets of Bid Documents shall be used in preparing Bids, neither OWNER nor the CITY REP that prepared or assisted in the preparation of the Bid Documents assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.
- 2.3 OWNER and CITY REP in making copies of Bid Documents available 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. Qualifications of Bidders:

No bid will be accepted from, nor will any Contract be awarded to, any person or firm who is in arrears to OWNER, upon any debt or contract, or who is a defaulter, as surety or otherwise, upon any obligation to said OWNER, or who is deemed irresponsible or unreliable by OWNER. The City shall have no liability to any successful Bidder unless and until the City executes a contract with such successful Bidder.

OWNER shall also have the right, unless prohibited by law, to meet with one or more Bidder after bids are opened to ensure that all OWNER's expectations with respect to performance can be met and that the requirements and scope of the Contract Work are clearly understood.

4. Examination of Bid Documents and Site:

- 4.1 Before submitting a Bid, each Bidder(s) must (a) examine the Bid Documents thoroughly; (b) visit the site to familiarize themselves with local conditions that may in any manner affect performance, cost, progress or furnishing of the Work as required by the solicitation; (c) familiarize themselves with Federal, State, and local laws, ordinances, Florida Building Code or other applicable construction codes, rules and regulations affecting the performance, cost, progress, or furnishing of the Work; (d) study and carefully correlate their observations with the requirements of Contract Documents, and (e) notify CITY REP of all conflicts, errors or discrepancies in the Contract Documents.
- 4.2 Bidders should also note any references made to the Specifications for identification of those surveys and investigation reports of subsurface and latent physical conditions at the site or otherwise affecting performance, cost, progress or furnishing of the Work which have been relied upon by CITY REP in preparing the Drawings and Specifications, if any. OWNER will make copies of such surveys and reports, which are not bound into these documents, available to any Bidder requesting them. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Bid Documents.
- 4.3 The submission of a Bid will constitute an incontrovertible representation by the Bidder that they have complied with every requirement of this Article 4 and that the Bid Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
- 4.4 Any information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to OWNER and CITY REP by owners of such Underground Facilities or others, and neither OWNER nor CITY REP assumes responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in SUPPLEMENTARY CONDITIONS.
- 4.5 SUPPLEMENTARY CONDITIONS, if any, may identify for limited reliance by the contractor certain specified technical data. These (as well as other documents) should be reviewed.

- 4.6 Before submitting a Bid, each Bidder will, at its own expense, make or obtain any additional examinations, investigations, explorations, surveys, tests and studies and obtain any additional information or data which pertains to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine their Bid price for performance and furnishing of the Work in accordance with the time, price and other terms and conditions of the Bid Documents.
- 4.7 On request in advance, OWNER will provide each Bidder access to the site to conduct explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.
- 4.8 The lands upon which the Work is to be performed, and the right-of-ways and easements for access thereto and other lands designated for use in performing the Work are identified in the Bid Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment or construction operations are to be provided by the CONTRACTOR.

5. Interpretations and Addenda:

All questions about the meaning or intent of the Bid Documents shall be submitted to CITY REP in writing, with a copy to OWNER. Interpretations or clarifications considered necessary by CITY REP in response to such questions will be issued by Addenda mailed or delivered to all parties and recorded by OWNER'S Purchasing Department as having received the Bid Document. Questions received less than ten (10) days prior to the date for opening of Bids will be answered at the option of the OWNER. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

In the event of conflict between the Notice to Bidders and the terms written within the Scope of Services and/or Specifications contained within Bid documents, the terms within the Scope of Services and/or Specifications shall control.

6. Bid Security:

- 6.1 A bid bond [X] is [] is not required for this bid. The amount and type of Bid Security is stated in the "Notice to Bidders" where required. The required security must be in the form of a certified or bank issue cashier's check made payable to City of Plantation or bid bond by a surety licensed to conduct business in the State of Florida and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, United States

Treasury Department. The form of the bid security is set forth in paragraph 6.4

- 6.2 The Bid Security of the Successful Bidder will be retained until such successful Bidder and the OWNER have executed the Agreement and furnished the required insurance and Contract security [for performance and payment obligations (i.e., the public construction bond), whereupon it will be returned. If Successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security and insurance coverages within fifteen (15) calendar days of the later of a Notice of Award or demand to execute contract, unless such deadline is extended by the OWNER, the Bid Security of that Bidder will be forfeited.
- 6.3 The Bid Security of any Bidder whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until earlier of the seventh calendar day after the executed Agreement is delivered by OWNER to CONTRACTOR and the required Contract Security and insurance is furnished, or the ninety-first (91st) day after the Bid opening. Bid Security of other Bidders will be returned within twenty-one (21) calendar days of the Bid opening.
- 6.4 The Bid Bond or security shall contain the following language:
“Now, therefore, if the Owner shall accept the Bid of the Contractor and the Contractor shall enter into a Contract with the Owner in accordance with the terms of such Bid, and give such Public Construction, Performance and Payment Bond or Bonds as may be specified in the Bid or Contract Documents with good and sufficient surety acceptable to the Owner, and furnish insurance coverages to Owner as required by the Contract Documents then this obligation shall be null and void, otherwise Surety shall pay over to the Owner immediately the full penal sum of this Bid Bond upon demand. The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety shall not be impaired or affected in any way by any extensions of the time within which the Owner may accept the Bid of the Contractor and said Surety does hereby waive notice of any such extension.”

7. Contract Time:

The number of calendar days within which the Work is to be completed is specified in Article 3 of the Agreement. *[The initial term of this contract will be for one (1) year with an option to renew for four (4) additional one (1) year time periods for a cumulative total of five (5) years. Prices shall remain firm for the initial one (1) year period. At the beginning of each of the four (4) additional years of the initial term, and at the commencement of each of the four (4) one- year renewal options, the City may consider a single annual price adjustment to the unit price of each item based on the U.S.Department of Labor, Bureau of Labor Statistics, Consumer Price Index*

(CPI-U, All items, Not Seasonal Adjusted (NSA). The website is <http://www.bls.gov/cpi/home.htm>. At the City's sole discretion, the annual adjustment shall be calculated by using the appropriate annual percentage s provided by the Bureau of labor Statistics not more than 120 days nor less than 30 day prior to the first day of each one year period of this contract. (Increase shall not exceed 3% of the consumer price index or whichever is lower). Prices may be adjusted upward or downward based on the CPI.]

8. Subcontractors, Suppliers and Others:

- 8.1 OWNER requires the identity of major Subcontractors working on the project and Suppliers of unique material or products to be submitted to OWNER in advance of the Notice of Award the apparent Successful Bidder. Any other Bidder requested by City in writing will, within seven (7) calendar days, submit to OWNER a list of all Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for portions of this Project. An experience statement shall accompany such list with pertinent information as to similar projects and other evidence of qualifications for each identified Subcontractor, Supplier, person and organization.
- 8.2 If OWNER or CITY REP after due investigation has reasonable objection any proposed Subcontractor, Supplier or other person or organization, may before giving the Notice of Award 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, OWNER may award the contract to the next lowest Bidder whose bid is determined to be the most advantageous to the City taking into consideration the evaluation factors and criteria set forth in the INVITATION TO BID or the code if none are provided in the INVITATION TO BID that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The Bidder declining to make requested substitutions would not constitute grounds for sacrificing the Bid Security of any Bidder.
- 8.3 No Bidder shall be required to employ any Subcontractor, other person or organization against whom Bidder has reasonable objection.

9. Bid Form:

- 9.1 The Bid Form is included with the Bid Documents; additional copies may be obtained from the Purchasing Division at the reproduction cost of \$.25 per page.
- 9.2 All blanks on the Bid Forms must be completed in ink or by typewriter and submitted in triplicate. The bid price of each item on the form must be

stated in words and numerals: in case of conflict, words will take precedence. Whiteout of prices or words and numerals on Bid Form is not permitted.

- 9.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate office accompanied by evidence of authority to sign). The corporate seal must be affixed and attested by the secretary or an assistant secretary or notarized by a licensed Notary together with a corporate Resolution authorizing the submittal of the bid. The corporate address and state of incorporation must be shown below the signature.
- 9.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 9.5 All names must be typed or printed below the signature. The signer shall date all signatures.
- 9.6 The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 9.7 The address and telephone number for communications regarding the Bid must be shown.

10. SUBMISSION OF BIDS:

- 10.1 Bids shall be submitted before the time and at the place indicated in the Notice to Bidders and shall be submitted in a sealed package. The package shall be marked on the exterior with the Project title and, if applicable, the designated portion of the Project for which the Bid is submitted and with the name and address of the Bidder and accompanied by the Bid Security and other required documents. 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 "SEALED BID PACKAGE ENCLOSED" on the face thereof. Only bids stamped "RECEIVED" by the City Clerk's Office by the time and date stated in the Notice to Bidders shall be considered.
- 10.2 Bidders shall submit one separate unbound copy of the Bid Form, Bid Bond, Drug-Free Workplace Form, Public Record Compliance Certificate, Questionnaire, Non Collusive Affidavit, Public Entity Crimes Form and any other form herein with each copy of the Bid Documents purchased by the prospective Bidders.
- 10.3 More than one Bid received for the same work from an individual, firm or partnership, a Corporation or Association under the same or different

names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the same work will cause the rejection of all such Bids in which the Bidders is interested. If there are reasonable grounds for believing that collusion exists among the Bidder, the Bids of participants in such collusion will not be considered.

11. Modification and Withdrawal of Bids:

- 11.1 Bids may be modified or withdrawn 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 opening of Bids.
- 11.2 If within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed, written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER 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. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Bid Documents.

12. Opening of Bids:

Bids will be opened, read and recorded pursuant to State of Florida Law and City of Plantation code.

13. Bids to Remain Subject to Acceptance:

- 13.1 All bids MAY remain subject to acceptance for sixty (60) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return any Bid security prior to that date.
- 13.2 Extension of time when Bids shall remain open beyond the original period may be made only by mutual agreement between OWNER, the Successful Bidder, and the surety, if any, for the Successful Bidder.

14. Award of Contract:

- 14.1 OWNER reserves the right to reject any and all Bids, to waive any and all informalities, incompleteness, or irregularities not involving price, time or material changes in the Work, and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced, incomplete, irregular, or conditional Bids. Also, OWNER reserves the right to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsible or the Bidder is unqualified or of doubtful financial ability or fails to

meet any other pertinent standard or criteria established by OWNER. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.2 OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bidder and to establish the responsibility, reputation, work load, qualifications and financial ability of Bidder, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER's satisfaction within the prescribed time.

14.3 The OWNER shall not be obligated to any Bidder to enter into a contract with the Bidder despite the OWNER governing body prospectively awarding the contract to a successful Bidder. The OWNER shall be obligated to any Bidder for the project if and only if the OWNER enters into a contract for the project with the Bidder, and further, no action will lie against the OWNER to compel OWNER to execute any such contract, or to recover from the OWNER any damages, costs, lost profits, expenses, etc., that Bidder may incur if the OWNER chooses not to sign such contract. By bidding on this project, all Bidders acknowledge and agree that no enforceable contractual relationship arises until the OWNER signs the contract, and that no action shall lie to require OWNER to sign such contract at any time, and that Bidder waives all claims to damages, lost profits, costs, expenses, etc., as a result of the OWNER not signing such contract.

14.4 If the contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award.

14.5 Bid prices will be compared after adjusting for differences in the time designated in the Bid for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages indicated for Substantial Completion for each day after the desired date appearing in Article 19 of this Document.

15. Contract Security:

When the Successful Bidder delivers the executed Agreement to OWNER, the required Public Construction Bond must accompany it. This bond shall be required for all Projects having an estimated construction cost of \$200,000 or greater or such lesser amount stated in any future amendment to Section 255.05, Florida Statutes. The Public Construction Bond shall also apply to smaller Projects when required by Bid Documents.

16. Signing of Agreement:

When OWNER gives a Notice of Award to the Successful Bidder, the OWNER will follow-up by forwarding at least three (3) unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen (15) days thereafter, unless extended by OWNER, CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds. Within fifteen (15) days thereafter OWNER shall deliver one fully signed counterpart to CONTRACTOR. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

17. Taxes:

The CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required by law. The CONTRACTOR is responsible for reviewing the pertinent state statutes involving the sales tax and complying with all requirements.

18. Insurance Requirements:

All Bond and Insurance requirements are described in the GENERAL CONDITIONS and detailed in Tab 4 of this solicitation.

19. Liquidated Damages:

OWNER and CONTRACTOR recognize that time is of the essence as to Completion and that OWNER will suffer financial and other losses, if the Work is not completed within the time specified, plus extensions therefor allowed. OWNER and CONTRACTOR recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER ___N/A___ per day (or \$500 per day if not filled in) for each day that expires after the time specified for Substantial Completion (adjusted for any extensions thereof made in accordance with this Contract) until the Work has obtained Substantial Completion, and ___N/A___ per day (or \$250 per day if not filled in) for each day that expires after the time specified for Final Completion (adjusted for any extensions thereof made in accordance with this Contract) until the Work reaches Final Completion.

20. Indemnity:

The Contract documents certain indemnification provisions, which are found in Paragraph 5.31 of the General Conditions, which indemnities are hereby incorporated by reference as if fully set forth herein.

21. Schedule of Values:

The proposed schedule of values shall be submitted with the proposal so that the City may review it in connection with a determination on whether the proposal is balanced.

The City may adjust the schedule of values with Supplementary Conditions to the Contract.

22. Text of Proposed Contract Documents:

The Bidders shall review the text of the Contract Documents referred to or referenced herein. In the event Bidders have any objection to the terms of such documents, the objections shall be disclosed at the time the bid is submitted.

23. Fees Waiver Disclosure:

The OWNER shall not require the CONTRACTOR to pay any of the OWNER's permit fees, license fees, impact fees, or inspection fees or any of the other usual OWNER permits and fees that may be associated with a construction project. These fees will be waived or paid by the OWNER, if payment cannot be waived. Without limiting the foregoing, CONTRACTOR shall pay all fees, costs, and expenses in connection with the applications, processing, and securing of approvals or permits from all governmental authorities which have jurisdiction over all aspects of this work except City of Plantation permits and fees which shall be waived (except for so much of said City of Plantation fees as the OWNER is required to remit to other governmental agencies).

END OF DOCUMENT

[136]9001-14001

City of Plantation

INSURANCE REQUIREMENTS

Statement

Contractors shall not commence any work until they have obtained and satisfied the city's insurance requirements under written contract with the city and such insurance has been approved by the City of Plantation Risk Management Department. Contractors shall not allow any subcontractor to commence work until all insurance requirements have been so obtained and approved. All insurance policies shall be with Insurers qualified and doing business in the State of Florida. All insurance companies shall have a Financial Rating of no less than "B" and Class X respectively, in the latest edition of A.M. Best Rating Guide. The types and amounts of insurance shall not be less than the amounts specified in this agreement.

Insurance

The required insurance coverage's shall be written in accordance with the hazards and magnitude of the project, but in no circumstances a lesser coverage amount, nor more restrictive than the limits of liability and schedule of hazards described herein.

Contractors shall be responsible to purchase and maintain required insurance policies during the term of the contract agreement. If the Contractor fails to procure and maintain such insurance, the City of Plantation shall have the right, but not the obligation, to purchase and maintain said insurance for and in the name of the Contractor, and the Contractor will pay the premium cost thereof and shall furnish all necessary information to the city in order to make effective and maintain such insurance.

Additional Insured

Certificates of Insurance and insurance policies shall also be endorsed to name the City of Plantation "**Additional Insured**" on the Commercial General Liability with the following or similar endorsements providing equal or broader Additional Insured coverage, such as the basic CG2026 07 04 Additional Insured--Designated Person or Organization endorsement, or the CG2010 10 01 Additional Insured-Owners Lessees, or Contractors endorsement, or the CG2010 07 04 Owners, Lessees or Contractors endorsement, including the additional endorsement of CG2037 10 01-Additional Insured- Owners, Leases have Contractors Operations endorsement. Endorsements shall be required to provide back coverage for the contractors "**Your Work**" as defined in the insurance policy and liability arising out of the products & completed operations hazard.

City of Plantation

Commercial General Liability

Contractor will agree to maintain Commercial General Liability at a minimum limit of liability not less than **\$500,000** Each Occurrence, and **\$1,000,000** Annual Aggregate unless the particular contract calls for specific limits of insurance. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability. When a self-insured retention (SIR) or deductible exceeds **\$25,000**, the City reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement.

Business Automobile Liability

Contractor will agree to maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers Compensation & Employers Liability

The Workers Compensation and Employers' Liability insurance shall be in accordance with Florida State Statutes 440.

Umbrella Excess Liability

If required by contract will be no more restricted than the underlying insurance policies. City of Plantation must be added and endorsed separately as additional insured on umbrella policies.

Professional Liability

If required by contract will be a minimum of **\$100,000**.

Waiver of Subrogation

The Contractor will agree that each required policy will contain Waivers of Subrogation in favor the City of Plantation. Should an insurance policy condition **not** permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Contractor will agree to 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 shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should contractor enter into such an agreement on a pre-loss basis.

City of Plantation

Certificate(s) of Insurance

The Contractor will agree to provide City a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and certificates of insurance shall provide a minimum thirty (30) days to notify, when available by Contractors insurer. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. Certificates of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such certificates shall clearly state all of the coverage's required in this section.

INSURANCE

Commercial General Liability insurance will cover liability bodily injury and property damage. Exposures to be covered are premises, operations, products/completed operations, and contracts. Coverage must be written on an occurrence basis, with the following **examples** of insurance.

Schedule

Limits

Commercial General Liability	\$1,000,000 Each Occurrence
Blanket Contractual Liability	\$1,000,000 Each Occurrence
Independent Contractors	Premises-Operations
Products & Completed Operations	Personal /Advertising Injury
Blanket Contractual Liability	Independent Contractors
Automobile Liability	
Any auto including Hired & Non-owned	\$1,000,000 Combined Single Limit
Broad Form Property Damage	\$1,000,000 Each Occurrence
Blanket X,C,U Hazards	If required (Included)
Workers' Compensation	Florida 440 Statutory Coverage
Employers Liability	\$1,000,000 Each Accident
Disease Policy Limit	\$1,000,000

Bonds:

A surety bond maybe required equal to the value of the job to guarantee the work will be done per the specifications on a timely basis.

City of Plantation

Other Insurance Provisions:

- A. Violation of the terms of this agreement and its subparts shall constitute a breach of the written contract and so the city at its sole discretion, may cancel the contract and all rights, title and interest of the contractor shall thereupon cease and terminate.
- B. The city reserves the right to require or adjust any of the insurance coverage's it deems necessary depending upon the company, the project and the potential exposures.
- C. The city requires being named "**Additional Insured**" on all certificates of insurance. Certificates of Insurance can only be endorsed by an insurance agency or insurance company.
- D. No work is to be performed pursuant to a mutually agreed upon written contract between the City of Plantation and the Contractor. The city will have the right to amend such contract to conform to City Of Plantation guidelines for contract work.

THE UNDERSIGNED CONTRACTOR HAS READ THE FOREGOING REQUIREMENTS AND AGREES TO THE TERMS.

WITNESS

CONTRACTOR

DATE

CITY OF PLANTATION

[35]9001-14001

EVALUATION CRITERIA ITB

In evaluating Bids, OWNER will consider the following criteria of the Respondents;

- a. The ability, capacity and skill of the respondent to perform under terms of the bid documents;
- b. Whether the bidder can perform the contract or provide the materials or services promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- d. The quality of performance of previous contracts and the providing of materials or services, or both;
- e. The previous and existing compliance by the bidder with the laws and ordinances relating to the contract, or providing of materials or services, or both;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the materials or services, or both;
- g. The quality, availability and adaptability of supplies, equipment, or contractual services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of conditions attached to the bid; and
- j. Prior litigation experience.

as may be requested in the Bid form or prior to the Notice of Award. OWNER will also consider any applicable ordinance or statutory criteria applicable to the Project.

SCOPE OF SERVICES

PURPOSE AND INTENT

The sole purpose and intent of this Invitation to Bid is to establish a firm fixed term contract for the purchase and delivery of Sodium Hypochlorite in bulk and less than tanker loads to various locations throughout the City of Plantation for the Utilities Department.

TECHNICAL REQUIREMENTS (Hypochlorite Solution, Bleach)

Product specifications (as per AWWA Standard B-300-99 latest version)

- ☐ Trade name: Hypochlorite Solution, Bleach
- ☐ Chemical formula: NaOCl
- ☐ Specific gravity: at 20C -1.1 - 1.2
- ☐ Molecular weight: 74.5
- ☐ Appearance: Light-yellow to green clear liquid solution
- ☐ Solubility in water: Complete
- ☐ Freezing Temperature: minus 7C to minus 10C

STANDARDS

Hypochlorite supplied under this contract shall be tested and certified as meeting these specifications and those of the American National Standards Institute/National Sanitation Foundation Standard 60 (ANSI/NSF Standard 60), Drinking Water Treatment Chemicals Health Effects. It is the responsibility of the Contractor to inform the participating agency that NSF or UL certification has been revoked or lapsed within 24 hours of the time the supplier receives verbal or written notification. Loss of certification may constitute sufficient grounds for immediate termination of the contract between the participating agency and the Contractor.

Hypochlorite delivered under this contract shall have a minimum of 120 Grams per Liter (GPL) available chlorine (i.e., 12.0 Trade Percent).

Hypochlorite delivered under this contract shall have a minimum of 0.15 percent by weight sodium hydroxide and a maximum of 0.45 weight percent sodium hydroxide.

Hypochlorite delivered under this contract shall meet the following containment concentration limits:

- Iron < 0.3 mg/L
- Copper < 0.03 mg/L
- Nickel < 0.03 mg/L
- Chlorate < 1,500 mg/L
- Bromate < 20 mg/L
- Perchlorate < 20 mg/L
- Filter Test Time (1000 ml) < 3 minutes

Sampling and testing shall be in accordance with EPA and AWWA B300-04 standards and in accordance with the documents titled: "The Weight Percent Determination of Sodium Hypochlorite, Sodium Hydroxide, And Sodium Chlorate in Liquid Bleach" and "Suspended Solids Quality Test for Bleach Using Vacuum Filtration", distributed by Powell Fabrication and Manufacturing, Inc. and available at <http://www.powellfab.com>.

CONTRACTOR RESPONSIBILITIES:

Shipments shall bear warning labels as specified by USDOT regulations.

Successful bidder's vehicle shall be equipped with a 2" Cam Lock Filler Nozzle for product dispensing (unload).

The delivery site(s) is located within a well field zone. Proper handling and delivery procedures shall comply with the Department of Environmental Resources Management (ERM) requirements.

Product shall be delivered in thoroughly cleaned tank trucks. City of Plantation reserves the right to order in quantities less than a tanker load (LTL).

Delivery Reports:

A certified report from the manufacturer shall be submitted for each sodium hypochlorite delivery to the City. The report shall contain the following data:

- Date & Time of Manufacture
- Percent by weight of:
 1. Sodium Hypochlorite
 2. Available Chlorine
 3. Excess Sodium Hydroxide
- Specific Gravity (Referenced to a temperature)
- Suspended Solids Test Time

No delivers will be accepted by the City unless accompanied by said certified laboratory report for the specific batch of sodium hypochlorite delivered showing the above data and that it conforms to the required specifications.

Delivers shall be Monday – Friday, 7:00am – 5:00pm

Item No. 1- Tanker load is 5,000 gallons

Item No. 2- Tanker load is 5,000 gallons (Split between two City of Plantation locations)

CLEAN TANK GUARANTEE:

At any time during the performance of this Agreement, if the City has any sort of sludge or other impurity buildup in any of its sodium hypochlorite tanks, the Contractor shall clean out the tank at no charge to the City within seven (7) days, unless such timeframe is extended by the City. The cleanout should be done in such a manner so that it is done safely with no loss of disinfection to the affected plant and the contents disposed of in accordance with current regulations on disposal of hazardous wastes. The Contractor shall submit a procedure to the City for the approval prior to this work being completed. The determination of whether there is any such sludge or impurity buildup in the tanks will be at the sole discretion of the City. When the tank has been properly cleaned, the Contractor shall refill the tank with clean, fresh sodium hypochlorite at no cost to the City. Failure of the Contractor to clean out the tank and replace the sodium hypochlorite within seven (7) days after being served notice (or within any extension of this timeframe specified by the City) shall be cause for immediate termination of the sodium hypochlorite supply Agreement between the City and the Contractor.

DELIVERY LOCATIONS ARE AS FOLLOWS:

ITEM #1	ESTIMATED ANNUAL USAGE (per year)
Regional Wastewater Treatment Plant 6500 NW 11 Place Plantation, Florida 33313	82,000 gallons
ITEM #2	ESTIMATED ANNUAL USAGE (per year)
East Water Treatment Plant 500 NW 65 Ave Plantation, Florida 33317	85,000 gallons
Central Water Treatment 700 NW 91 Avenue Plantation, Florida 33324	95,000 gallons

Bid Form
CITY OF PLANTATION

Bid of Bidder

Address

To furnish and deliver all materials and to do and perform all work in accordance with the Contract Documents for the Project entitled:

PROJECT NAME: [Supply and Delivery of Sodium Hypochlorite]
ITB No. 016-16
City of Plantation

TO: City of Plantation
400 NW 73rd Avenue
Plantation, FL 33317

The Undersigned Bidder proposes and agrees if this bid is accepted, to enter an agreement with the OWNER to complete all work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation, those dealing with the disposition of Bid Security. This bid will remain open for thirty days after the day of Bid Opening. Bidder will sign the agreement and submit the contract security and other documents required by the Contract Documents within 15 days after the date of Owner's Notice to Award.

In submitting this bid, Bidder represents as more fully set forth in the Agreement, that:

- A. Bidder has examined copies of all the Contract Documents and of the following Addenda:
(if any addenda have been issued)

DATE:

--

ADDENDA NUMBER:

--

(receipt of all of which is hereby acknowledged) and also copies of the Advertisement or Notice to Contractors and the Instruction to Bidder.

- B. Bidder has examined the site and locality where the work is to be performed, the legal requirements Federal, State and Local Laws, Ordinances, Rules and Regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as Bidder deems necessary.

C. This bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreements or rules of any group, association, organization or corporation. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid; Bidder has not solicited or induced any person, firm, or a corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over OWNER.

D. BIDDER shall complete the Work for the following price. It is the OWNER'S intent to award a contract based upon the total base bid amount.

TOTAL BASE BID AMOUNT:

Item No.	Description	Unit	Estimated Quantity	Unit Price	Total Offer
1.	Sodium Hypochlorite (NaOCl, Bleach) as specified herein TANKER LOAD Manufacturer offered: _____	Gallon	82,000	\$ _____	\$ _____
2.	Sodium Hypochlorite (NaOCl, Bleach) as specified herein Tanker load is 5,000 gallons (Split between two of Plantation locations) Manufacturer offered: _____	Gallon	180,000	\$ _____	\$ _____

Bidder agrees that the Work will be completed within the time identified in the Agreement after the date when the Contract time commences to run as provided in Paragraph 2.3 of the General Conditions (Notice to Proceed).

Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

Communications concerning this Bid shall be addressed to the address of Respondent indicated below.

The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

The undersigned also agrees as follows:

First: to do any extra work not covered by the foregoing Schedule of Price which may be ordered by the OWNER, and to accept as full compensation therefore, such prices may be agreed upon in writing by the OWNER and the BIDDER pursuant to the applicable provisions of the General Conditions.

Second: Within fifteen days from the "Notice of Award", of this bid, to execute the Contract and to furnish to the OWNER a satisfactory Performance Bond in the approved City form, guaranteeing the faithful performance of the Work and payment of bills, the BIDDER to pay for said bond.

Third: To begin work on the date specified in the "Notice to Proceed". Accompanying this bid is a certified check, cashier's check or Bid Bond for 5% of Bid payable to the City of Plantation which is to be forfeited if, in the event that this Bid is accepted, the undersigned shall fail to execute the contract and furnish satisfactory Contract Security under the conditions and within the time specified in the Instructions to Bidders; otherwise, said certified check, cashier's check or Bid Bond is to be returned as provided herein.

SUBMITTED ON | | , 20 | |

SIGNATURE OF BIDDER: _____

TITLE (if any): | |

ADDRESS: | |

Incorporated under the laws of the State of Florida.

[46]9001-14001

Exhibit A
To Qualification Statement

LITIGATION HISTORY FORM

[ITB NO. 016-16]

NAME OF RESPONDENT:

Party:	Respondent is <u>Plaintiff</u> : Yes [] No [] Defendant: Yes [] No []
Case Name:	
Case Number:	
Date Filed:	
Name of Court or other Tribunal	
Type of Case:	Civil [] Administrative/Regulatory [] Criminal [] Bankruptcy []
Claim or Cause of Action and Brief Description of each Count:	
Brief description of the Subject Matter and Project Involved:	
Disposition of Case:	Pending [] Settled [] Dismissed [] (Attach copy of any applicable Judgment, Settlement Agreement and Satisfaction of Judgment.) Judgment Respondent's Favor [] Judgment Against Respondent [] If Judgment Against, is Judgment Satisfied? Yes [] No []
Opposing Counsel:	Name: Email: Phone Number:

[101]9001-14001

QUALIFICATION STATEMENT

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter (Attach additional sheets with appropriate reference, if necessary). You must respond to all questions. **FAILURE TO DISCLOSE OR PROVIDE THE REQUESTED INFORMATION BELOW MAY RESULT IN THE BIDDER'S BID BEING DEEMED NON-RESPONSIVE AND THE BIDDER AS NOT QUALIFIED FOR AWARD.**

SUBMITTED TO: City of Plantation

ADDRESS: 400 NW 73rd Avenue
Plantation, FL 33317

SUBMITTED BY: []

NAME: []

ADDRESS: []

TELEPHONE NO.: []

FAX NO.: []

EMAIL ADDRESS: []

1. State the true, exact, correct and complete name of the partnership, corporation, trade or fictitious name under which you do business and the address of the place of business.

The correct name of the Bidder is: []

The address of the principal place of business is: []

The business is a (Sole Proprietorship) [] (Partnership) [] (Corporation) []

2. If Bidder is a corporation, answer the following:

- a. Date of Incorporation: []
- b. State of Incorporation: []
- c. President's Name: []
- d. Vice President's Name: []
- e. Secretary's Name: []
- f. Treasurer's Name: []
- g. Name and address of Resident Agent: []

3. If Bidder is an individual or a partnership, answer the following:

- a. Date of organization: []
- b. Name, address and ownership units of all partners:
[]
- c. State whether general or limited partnership: []

4. If Bidder is other than an individual, corporation or partnership, describe the organization and

give the name and address of principals:

[]

5. If Bidder is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.
6. How many years has your organization been in business under its present business name: []
 - a. Under what other former names has your organization operated?
[]
7. Indicate registration, license numbers or certificate numbers for the business or professions that are the subject of this Proposal. Please attached certificate of competency and/or state registration. Please include the foregoing information for all parties to be assigned to the project.
[]
8. Have you personally inspected the site(s) of the proposed work? (Y) [] (N) []
9. Do you have a complete set of documents, including agenda? (Y) [] (N) []
10. Have you ever failed to complete any work awarded to you? If so, state when, where and why?
[]
11. Within the five (5) years, has any officer or partner of your organization ever been an officer or partner of another organization when it failed to complete a contract? If so, explain fully.
[]
12. State the names, telephone numbers and last known addresses of three (3) owners, individuals or representatives of owners with the most knowledge of work which you have performed or goods you have provided, and to which you refer (government owners are preferred as references).
[]
13. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).
[]
14. State of name of Surety Company, which will be providing the bonds if any bonds are required by the Instructions to Bidder, and name, and address of agent:
[]
15. Provide a list of similar projects, which have been completed within the past five (5) years, including project description, owner's names, addresses and phone numbers.
[]

16. Provide a list of work currently under contract.
- []
17. On Exhibit A, list all disputes, claims, mediations and litigation in which the bidding entity, a parent entity, an affiliate entity, a predecessor entity or other entities with which you were then associated or affiliated were involved in any contract disputes over the last five (5) years as of the solicitation response due date. If Bidder is a joint venture, the information provided should encompass the joint venture and each of the entities forming the joint venture. For said claim, identify with particularity the nature of such dispute, the names and addresses of the other parties to such disputes, and whether or how such disputes were resolved, including any mediation, arbitration or litigation involved and dollar awards. [Do not include disputes, claims, mediations and litigation that involve only garnishment, auto negligence, personal injury, or a proof of claim filed by Bidder]
- []
18. List all disputes, claims, mediations and litigation between the Owner and any of the responding entity's subcontractors/subconsultants over the last five (5) years as of the solicitation response due date.
- []
19. Has any governmental entity within the last five (5) years commenced proceedings to discipline any of the officers, partners, or principals of the Bidder, or sought to revoke a license held by the Bidder (or its qualifying agent)? If so, please describe in detail the proceedings and how the matter was resolved.
- []
20. Will you sublet any part of this work? If so, give details. (sub-contractor's name, address, phone number and contact)
- []
21. Provide a list of equipment available to be committed to perform the work contemplated under this contract.
- []
22. Please list any objections to the text of the Contract Documents in the area below or on separate sheets of paper attached hereto, if necessary.
- []
23. Please attach a copy of your latest financial statement.

THE BIDDER ACKNOWLEDGES AND UNDERSTANDS THAT THE INFORMATION CONTAINED IN RESPONSE TO THIS QUALIFICATIONS STATEMENT SHALL BE RELIED UPON BY OWNER 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 OWNER TO REJECT THE PROPOSAL, AND IF AFTER THE AWARD TO CANCEL AND TERMINATE THE AWARD AND/OR CONTRACT.

Signature

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____, who is personally known to me or who has produced _____
as identification and who did (did not) take an oath.

WITNESS my hand and official seal,

NOTARY PUBLIC

(NAME of Notary Public: Print,
Stamp or Type as Commissioned)

[97]9001-14001

CITY OF PLANTATION

**SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES,
ON PUBLIC ENTITY CRIMES**

TO BE RETURNED WITH BID

THIS MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER
AUTHORIZED TO ADMINISTER OATHS

1. This sworn statement is submitted with Bid, Proposal or Contract for [].
2. This sworn statement is submitted by [] (entity submitting sworn statement), whose business address is [] and its Federal Employer Identification Number (FEIN) is []. (If the entity has no FEIN, include the Social Security Number of the Individual signing this sworn statement: []).
3. My name is [] (please print name of individual signing), and my relationship to the entity named above is [].
4. I understand that a “public entity crime” as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services, any leases for real property, or any contract for the construction or repair of a public building or public work, to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that “convicted” or “conviction” as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court or record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
 - a) A predecessor or successor of a person convicted of a public entity crime; or
 - b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.
7. I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term

“person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

☐ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, and (Please indicate which additional statement applies.)

☐ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the Hearing Officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

☐ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

☐ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services.)

☐
(Signature)

☐
(Date)

STATE OF FLORIDA

COUNTY OF BROWARD COUNTY

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____, who, after first being sworn by me, affixed his/her signature in the space provided above on this _____ day of _____, 20__.

(Notary Public)

My Commission Expires: _____ (seal)

[28]9001-14001

COMPLIANCE UNDER SECTION 119.0701

FLORIDA STATUTES, ON PUBLIC RECORDS

TO BE RETURNED WITH BID

The Contractor hereby certifies that it shall comply with public records laws, specifically to:

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

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-797-2237, sslattery@plantation.org, 400 NW 73rd Avenue Plantation, FL 33317

As the person authorized to sign this statement, I certify that this Contractor agrees to comply with the above requirements.

Contractor: _____

By (sign): _____

Print Name: _____

STATE OF _____)
COUNTY OF _____)

I **HEREBY CERTIFY** that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____, known to be the persons described in or who has produced _____ as identification and who executed the foregoing instrument and acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20____.

Notary Public, State of _____

Sign: _____

Print: _____

My Commission Expires: _____

STATEMENT UNDER SECTION 287.087

FLORIDA STATUTES, ON DRUG-FREE WORKPLACE

TO BE RETURNED WITH BID

Preference must be given to CONTRACTORS submitting certification with their bid or proposal, certifying they have a drug-free workplace in accordance with the Florida Statutes, Section 287.087. This requirement affects all public entities of the State and became effective January 1, 1991

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, or replies that are equal with respect to price, quality and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply 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 the bids will be followed if none of the tied vendors have a drug-free workplace program. 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 action that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any convictions of, or plea of guilty or nolo contendere to, any violations 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 an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of the above measures.

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

Signature

Printed Name

Company Name

Date

[27]9001-14001

NON-COLLUSION CERTIFICATION

TO BE RETURNED WITH BID

By signing and submitting this bid, the Bidder certifies that this bid is made independently and free from collusion.

Bidder shall disclose below, to their best knowledge, any City of Plantation officer or employee, or any relative of any such officer or employee as defined in Section 112.3135(1) (c), Florida Statutes (2014), who is an officer of director or, or has a material interest in, the Bidder's business, who is in a position to influence this procurement. Any City of Plantation officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to indirectly own any of the total assets or capital stock of any business entity owned or operated by the Bidder, or if they otherwise stand to personally gain if the contract is awarded to this Bidder.

Failure to submit this executed statement as part of the bid shall make the bid nonresponsive and not eligible for award consideration. In the event the Bidder does not indicate any names, the City shall interpret this to mean that the Bidder has indicated that no such relationships exist. Failure of a Bidder to disclose any relationship described herein shall be reason for termination of bid or award, whichever is applicable, with no time to cure.

NAME

RELATIONSHIP

Witnesses:

Bidder

Typed name:

By:

Name:

Title:

Typed name:

STATE OF)
COUNTY OF)

I **HEREBY CERTIFY** that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____ - _____, known to be the persons described in or who has produced _____ as identification and who executed the foregoing instrument and acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20____.

Notary Public, State of _____

Sign: _____

Print: _____

My Commission Expires: _____

RESPONDENT'S CERTIFICATION

WHEN RESPONDENT IS A PARTNERSHIP

IN WITNESS WHEREOF, the Respondent hereto has executed this Proposal Form this _____ day of _____, 20__.

Printed Name of Partnership

By:

Signature of General or Managing Partner

Witness

Printed Name of Partner

Witness

Business Address

City/State/Zip

Business Phone Number

State of Registration

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ (Name), _____ (Title) of _____ (Name of Company) who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Commissioned)

RESPONDENT'S CERTIFICATION

WHEN RESPONDENT IS A CORPORATION

IN WITNESS WHEREOF, the Respondent hereto has executed this Proposal Form this _____ day of _____, 20__.

(CORPORATE SEAL)

ATTEST

By _____
Secretary

Printed Name of Corporation

Printed State of Incorporation

By: _____
Signature of President or other authorized officer

Printed Name of President or other authorized officer

Address of Corporation

City/State/Zip

Business Phone Number

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ (Name), _____ (Title) of _____ (Name of Company) on behalf of the corporation, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Commissioned)

RESPONDENT'S CERTIFICATION

WHEN RESPONDENT IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A FICTITIOUS OR TRADE NAME

IN WITNESS WHEREOF, the Respondent hereto has executed this Proposal Form this _____ day of _____, 20__.

Printed Name of Firm

By:

Signature of Owner

Printed Name of Individual

Business Address

City/State/Zip

Business Phone Number

Witness

Witness

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Commissioned)

RESPONDENT'S CERTIFICATION

WHEN RESPONDENT IS AN INDIVIDUAL

IN WITNESS WHEREOF, the Respondent hereto has executed this Proposal Form this _____ day of _____, 20__.

By: _____
Signature of Individual

Witness

Printed Name of Individual

Witness

Business Address

City/State/Zip

Business Phone Number

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Commissioned)

TO BE RETURNED WITH BID

Cooperation with the Broward County Office of Inspector General

The Broward County Office of Inspector General ("OIG") has the authority to review and investigate how governmental contracts are performed and how contractors and vendors (herein, "CONTRACTORS") are paid. To this end, CONTRACTOR agrees to cooperate with the OIG in the event the Contractor is contacted by the OIG. Such cooperation shall include, answering any questions that may be posed by the OIG, and allowing the OIG to review and copy any of CONTRACTOR's written material, contract documentation, and financial records that may relate to the formulation, execution, and performance of this Contract. The CONTRACTOR acknowledges and agrees that whatever work or effort is expended by CONTRACTOR in interfacing with the OIG is part of the administrative or overhead or base costs of the services provided by the CONTRACTOR to the CITY, and shall never be a basis for claiming extra or additional compensation under this Contract, or for requesting a change order.

The CONTRACTOR's failure to cooperate fully with the OIG as required by the preceding clause shall be a basis for the City claiming the CONTRACTOR is in default, and may, if not timely cured, allow the City to terminate this Contract for cause. Unless the CONTRACTOR is instructed otherwise in a specific written and notarized Order signed by the Broward County Inspector General, CONTRACTOR shall advise CITY, in writing and in the same manner as Contractor gives the City formal notice under this Contract, each instance, if ever, that the CONTRACTOR is contacted by the OIG, and shall supply the City with information necessary to allow the City to ensure that the Contractor is fully performing the requirements of this Paragraph.

Witnesses:

Name: _____

Name: _____

By: _____

Name: _____

Title: _____

STATE OF)
COUNTY OF)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____ - _____, known to be the persons described in or who has produced _____ as identification and who executed the foregoing instrument and acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20____.

Notary Public, State of _____

Sign: _____

Print: _____

My Commission Expires: _____

[64]9001-14001

Local Business Certification Form

The undersigned affirms as true, under penalties of perjury, as follows:

The undersigned, a principal or corporate officer of the business listed below, has read and is familiar with the provisions of City of Plantation Ordinance Number 2437, § 1 which codified Section 2-227 of the City Code.

Pursuant to Section 255.0991, for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of this competitive solicitation, Section 2-227 of the City Code **shall not** apply.

The undersigned, as such principal or corporate officer, further certifies to the best of his/her information and belief that such business is a Local Business as defined by the Code.

The undersigned claims qualification in the event that the Local Business Preference applies to this procurement and the business is determined to be a Qualified Local Business as defined by the Code.

Dated: _____

Signed: _____

Printed Name of Signor: _____

Title of Signor: _____

Name of Firm: _____

Sec. 2-227. - Local business preference.

(a)

Definitions. For purposes of this section, the following terms shall have the respective meanings as set forth in this subsection:

Business location means a permanent office or other use of property in which a vendor operates, conducts, engages in or carries on all or a portion of its business, provided that the mere use of a post office box shall not be sufficient to constitute a business location under this provision.

Local business means a vendor or contractor who has paid its local business tax to the City of Plantation at least six (6) months prior to bid or proposal opening date; does business in the city community by providing goods, services, or construction; and maintains a physical business address located within the jurisdictional limits of the city in an area zoned for the conduct of such business from which the vendor or contractor operates or performs business on a day-to-day basis. Post office boxes shall not be used for the purpose of establishing said physical address.

Qualified local business means a local business that satisfies the requirements under the bid or proposal guidelines to perform the services or goods requested.

Vendor means a sole proprietorship, partnership, corporation, limited partnership or limited liability corporation or other recognized business entity that offers to contract with the city for either goods or services.

(b)

Procedure; notice of option to match lowest response. The city shall give a preference to a qualified local business that responds to competitive procurement in the following manner:

(1)

If a qualified local business submits a response to one (1) of the city's competitive procurement processes set forth in [section 2-220\(b\)](#) (requests for sealed proposals) (but only where the procurement documents in a request for sealed proposals expressly indicates that the local business preference created by this section will be available), (d) (requests for competitive proposals), [2-220\(e\)](#) (sealed bids in response to an invitation to bid), and [2-220\(f\)](#) (design build projects which are procured using a competitive proposal process), or informal purchases in excess of the current amount of three thousand five hundred sixty-nine dollars (\$3,569.00), as referenced and indexed in [section 2-226\(b\)](#) and as may be increased or decreased by authorized adjustments, and the original response of the qualified local business is within five (5) percent of the low response, then the city shall give the qualified local business the opportunity to meet the price of the low response. The order of preference by which the qualified local business shall be given the opportunity to match the low response shall be from the lowest to the highest response, as long as the initial response was within five (5) percent of the low response.

(2)

The city shall give the qualified local business written notice of the opportunity to match the price of the low response within five (5) business days of determining the low response. There shall only be one (1) valid notice of an opportunity to match the price of the low response outstanding at any one (1) point in time. Notice shall be deemed received by the qualified local business by mailing or otherwise transmitting the notice to the address, email, facsimile or otherwise that was supplied by the qualified local business at the time of responding.

(3)

The qualified local business to whom a written notice has been mailed or otherwise transmitted must respond to the city in writing. If the qualified local business fails to file a response to the notice with the city within two (2) days of the posting or transmission of the notification of the

option to match the low response, then the failure to respond shall be deemed to be a denial of the opportunity to match the low response. Should the qualified local business choose to meet the price of the low response, then the city shall award the contract to the qualified local business. If no qualified local business accepts the option to match the low response, then the contract shall be offered to the lowest responder.

(c)

Disclosure. The requirements of the city's local policy shall be disclosed in all the city's competitive procurement processes to which this preference applies or informal purchases in excess of the current amount of three thousand five hundred sixty-nine dollars (\$3,569.00), as referenced and indexed in [section 2-226\(b\)](#) and as may be increased or decreased by authorized adjustments.

(d)

Exceptions. The procurement preference set forth in this section shall not apply to any of the following purchases or contracts:

(1)

Goods or services provided under a cooperative purchasing agreement or interlocal agreement;

(2)

Purchases or contracts which are funded, in whole or in part, by a governmental entity where the laws, regulations, or policies governing such funding prohibit or prevent the application of the preference;

(3)

Purchases made or contracts let under emergency or noncompetitive situations;

(4)

Purchases with an estimated cost of less than the amount stipulated for informal bids, as referenced and indexed in [section 2-226\(b\)](#) (which is currently three thousand five hundred sixty-nine dollars (\$3,569.00)) and as may be increased or decreased by authorized adjustments;

(5)

Purchases or contracts procured utilizing procurement processes set forth in [section 2-220\(b\)](#) (requests for sealed proposals) (except where the procurement documents in a request for sealed proposals expressly indicates that the local business preference created by this section will apply) (c), (requests for qualifications), and (g) (design build projects and professional services contracts which are competitively procured using a qualifications based procurement process); and,

(6)

Notwithstanding the above, any purchase using any of the available procurement processes in this Code wherein the procurement documents expressly indicate that the local business preference set forth in this section shall not be available.

(e)

The application of local preference to a particular purchase, contract, or category of contracts for which the city council is the awarding authority may be waived upon written justification and recommendation by the mayor and approval of the city council.

(f)

The preference established in this section does not prohibit the right of the city council or the mayor to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.

(g)

The response preference established in this section does not prohibit the city council, or mayor, from giving any other preference permitted by law in addition to the preference authorized in this section.

(Ord. No. 2437, § 1, 2-10-2010)

[96]9001-14001

AGREEMENT

This Agreement is dated as of the [____] day of [____], in the year 201[____], by and between:

CITY OF PLANTATION, FLORIDA
a municipal corporation
400 NW 73rd Ave
Plantation, Florida 33317
(hereinafter referred to as City)

AND

[Enter Contractor Name]
[Enter Contractor Address]
[Enter City, State and Zip]
(Hereinafter referred to as Contractor)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 – WORK

The CONTRACTOR shall complete all Work as specified or indicated in the Contract documents for the project entitled:

City of Plantation
[Supply and delivery of Sodium Hypochlorite]
[ITB No. 016-16]

and generally described as follows but not limited to: [The purchase and delivery of Sodium Hypochlorite in bulk and less than tanker loads to various locations throughout the City of Plantation for the Utilities Department.] as further defined in the Specification/Scope of Services

Article 2 – ENGINEER

The OWNER has engaged [N/A] who is hereafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contracts Documents in connection with completion of the work in accordance with the Contract Documents. [N/A]

Article 3 – CONTRACT TIME

The initial contract period shall be for [one (1) one year period], commencing [October 20, 2016]. In addition, the City reserves the right to renew the contract for [Four (4) additional one (1) year period.], under the same terms, conditions and specifications contingent upon Budget approval.

Or If a Construction Contract

~~The work will be substantially completed within [enter number of calendar days] calendar days and finally completed within [enter number of calendar days] calendar days after the date when the contract time commences (Notice to Proceed) to run as provided in the Contract Documents. Paragraph 19 of the Instructions to Respondents contains Liquidated Damages provision.~~

~~In the event the services are scheduled to end either by contract expiration or by termination by the City of Plantation (at the City's discretion), the contractor shall continue the services, if requested by the City, until new services can be completely operational. At no time shall this transitional period extend more than one hundred eighty (180) calendar days beyond the expiration date of the existing contract. The contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the City.~~

Article 4 – COMPENSATION/PAYMENTS

The OWNER shall pay to the CONTRACTOR for the performance of the Work \$[]. For portions of the Contract that are in the accepted proposal as being unit priced, the Contract Sum will be based upon the amounts determined for the total number of each of the units of work completed at the unit price stated. The City reserves the right to increase and decrease quantities, and the final payment shall be made for the actual number of units incorporated in or made necessary by the work covered by this contract.

The Contractor will bill the City at the completion of each job for services rendered of the work defined herein at the rates submitted in their proposal documents now made apart of this contract. Submit invoices to:

City of Plantation
Attn: [Chuck Flynn
[400 NW 73 Avenue
Plantation, FL [33317]

Invoices received from the Contractor pursuant to this Contract will be reviewed and approved by the City's representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Financial Services Department for payment. Invoices will generally be paid within thirty (30) days following the City representative's approval.

Final Invoice: In order for both parties herein to close their books and records, the Contractor will clearly state "final invoice" on the Contractor's final/last billing to the City. This certifies that all services have been properly performed and all charges and costs have been invoiced to the City. Since this account will thereupon be closed, any and other further charges, if not properly included on this final invoice, or which are in excess of the not to exceed amount, are waived by the Contractor.

Progress payments and retainage and final payment provisions are provided for in the Contract Documents. Generally, these documents call for monthly progress payments for approved Work completed less 10% retainage. The balance of the final contract sum shall be due to the CONTRACTOR from the within 21 days after Final Completion. The Florida Construction Contract Prompt Payment Law shall govern payments made pursuant to this Agreement. Any conflict shall be resolved consistent with the law.

Article 5 – CONTRACTOR’S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations, in addition to the representations made in the contract documents as referenced in Article 19.

- A. CONTRACTOR has familiarized themselves with the nature and extent of the Contract Documents, Work, locality and with all location conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- B. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Contract Documents.
- C. CONTRACTOR has made or caused to be made examinations, investigations, tests and studies of such reports and related data in addition to those reference to in Article 5 of the General Conditions as amended by Supplementary Conditions, if any, as they deem necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.
- D. CONTRACTOR has correlated the results of all such observations, examinations investigations, tests, reports and data with terms and conditions of the Contract Documents.

- E. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that the CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to the CONTRACTOR

Article 6 – RECORDS AND AUDIT

City reserves the right to audit the records of CONTRATOR relating to this Agreement any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR shall agree to submit to an audit by an independent certified public and review the records of CONTRACTOR at any and all times during normal business hours during the term of this Agreement.

CONTRACTOR agrees that it shall keep accurate and complete records with regard to all services as proposed hereunder. All original records related to the services provided under the terms of Agreement are the property of CITY and accordingly those records are subject to the Florida Public Records Law. CONTRACTOR shall not release any City records without written permission from City except as necessary and appropriate in the performance of the duties and responsibilities required to comply with terms of any Agreement between parties.

CONTRACTOR shall preserve and make available for inspection by CITY personnel, or by personnel duly authorized by CITY, computer data and other records related to the services provided under this Agreement. The records will be made available during normal business hours upon twenty-four hours notice by the CITY.

Article 7 – INDEPENDENT CONTRACTOR STATUS

CONTRACTOR and its employees, volunteers and agents shall be and remain as 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 the Agreement. This Agreement shall not in any way be constructed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

Article 8 – CONFLICT OF INTEREST

CONTRACTOR covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with CITY. CONTRACTOR further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONTRATOR or its employees, must be disclosed in writing to CITY.

CONTRACTOR is aware of the conflict of interest laws of the Municipal Code of the City of Plantation, Broward County and the State of Florida, Chapter 112, Florida Statutes (2014), as amended, agrees that it will fully comply in all respects with terms of said laws

CONTRACTOR warrants that it has not employed or retained any person employed by CITY to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by CITY any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of this privilege.

Article 9 - ASSIGNMENT

The Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of the CITY which consent cannot be unreasonably withheld.

Article 10 - COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Plantation and of any other public authority, which may be applicable to this Agreement.

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Article 11- VENUE

See Article 15 - Dispute Resolution of the General Conditions.

Article 12 - PERMITS, FEES AND NOTICES

CONTRACTOR shall use its best efforts to obtain the necessary permits as soon as possible after the Notice to Proceed is issued. Any delays in obtaining permits must be brought to the attention of the CITY.

Article 13 - INSOLVENCY

In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force effect.

Article 14 - ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any the covenant, term, condition or election but the same shall continue and remain in full force and effect.

Article 15 - SEVERABILITY

Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Article 16 - NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

During the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The CONTRACTOR will take affirmative action to ensure or national original. Such action much includes, but not be limited to, the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination, termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

Article 17 - CUMULATIVE REMEDIES

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 hereafter existing at law or in equity.

Article 18 - TERMINATION

Upon seven (7) calendar days written notice delivery by certified mail, return receipt requested, to the CONTRATOR, CITY may without cause and without prejudice to any other right or remedy, terminate the Agreement for the CITYS convenience whenever the CITY determines that such termination is in the best interest of the CITY. Where the Agreement is terminated for the convenience of the CITY the notice of termination to the CONTRATOR must state that the Agreement is terminated for the convenience of the CITY under the termination clause and the extent of termination. Upon receipt of the Notice of Termination for convenience, the CONTRACTOR shall promptly discontinue all work at the time and to the extent indicated on the Notice of Termination, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement and refrain from placing further orders and sub-contracts except as they may be necessary, and complete any continued portions of work.

Article 19 – CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR, are attached to this Agreement, made a part thereof and consist of the following:

- A. This Agreement
- B. Exhibits (if any)
- C. Notice of Award
- D. Supplementary Conditions, if any
- E. General Conditions
- F. Specifications bearing the project title
- G. Drawings bearing the project title *If necessary*
- H. Addenda numbers [] to [],
- I. Documentation and proposal submitted by CONTRACTOR prior to Notice of Award
- J. Any Written Amendments, Change Orders, or Work Change Directives duly delivered after execution of Agreement
- K. The Instructions to Respondents
- L. The Insurance Coverage's and Bonds required by the Contract Documents

These are no other Contract Documents than those listed above in the Article.

Article 20 – MISCELLANEOUS

- A. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meaning indicated in the General Conditions, or as amended in Supplementary Conditions
- B. The CONTRACTOR warrants that no elected official, officer, agent or employee of the CITY has financial interest directly or indirectly in this Contract or the compensation to be paid under it, and further, that no City employee who acts in the City of Plantation as a "purchasing agent" as defined by §112.312(20), Florida Statutes, nor any elected or appointed officer of the City of Plantation, nor any spouse or child of such purchasing agent employee or elected or appointed officer, is a partner, officer director, or

proprietor of the CONTRACTOR, and further, that no such City employee purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five (5) percent of the total assets or capital stock of the CONTRACTOR.

- C. The CONTRACTOR and OWNER designate the following persons who shall receive notices pursuant to the Contract Documents:

For the OWNER: The Honorable Diane Veltri Bendekovic, Mayor
City of Plantation
400 NW 73rd Avenue
Plantation, Florida 33317

With copy to: *[Chuck Flynn, Utilities Department Director]*
City of Plantation
[400 NW 73 Avenue]
Plantation, Florida 33317

&

With copy to City Clerk
City of Plantation
400 NW 73rd Avenue
Plantation, Florida 33317

For the ENGINEER *[N/A]*
Project Manager
[N/A]
[N/A]
[Enter City, State, Zip of]

For the CONTRACTOR: *[Enter business name of Contractor]*
[Enter address of Contactor]
[Enter City, State, Zip of Contractor]
[Enter name of representative of Contactor]

All notices and other communications required or permitted under this Agreement shall be in writing and given by:

hand delivery;

registered or certified mail, return receipt requested;

overnight courier; or

facsimile to:

or to such other address as any party may designate by notice complying with the terms of this section. Each such notice shall be deemed delivered:

on the date delivered if by personal delivery or overnight courier;

on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; and

on the date of transmission with confirmed answer back if by fax.

Section 21 in the event of conflict between this Agreement and terms and conditions in [ITB No. 016-16], the terms of this Agreement shall control.

IN WITNESS WHEREOF, THE CITY OF PLANTATION AND [ENTER CONTRACTOR'S LEGAL BUSINESS NAME] have signed this AGREEMENT(S). One counterpart each has been delivered to the CITY and CONTRACTOR

Signed, sealed and delivered in the presence of:

Attest: _____

_____, City Clerk

Witness:

Typed Name of Witness

Witness:

Typed Name of Witness

CITY OF PLANTATION

By: _____
Diane Veltri Bendekovic, Mayor

As to legal form: _____
Donald J. Lunny Jr.
City Attorney

As to Scope: _____
Administration Department

As to Contract Insurance Requirements:

_____ Department

Witness:

As to Procurement Requirements:

Typed Name of Witness

Department

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing Agreement was acknowledged before me this ____ of _____,
201[] by _____, Mayor and _____, City Clerk of the
City of Plantation, Florida, who are personally known to me or who has produced
_____ (type of identification) as identification and
did (did not) take an oath.

WITNESS my hand and official seal this _____ day of _____, 201[].

My commission expires:

My commission number is:

Printed Name of Notary

(Notary Seal)

Signed, Sealed in the presence of:

Witness:

Name of Contractor

By: _____
Signature by Authorized Agent

Typed Name of Witness

Witness:

Print Name of Authorized Agent

Title

Typed Name of Witness

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing Agreement was acknowledged before me this ____ of _____,

201[] by _____, _____, (Title)
of _____, who are personally known to me or who has
produced _____ (type of identification) as
identification and did (did not) take an oath.

WITNESS my hand and official seal this _____ day of _____, 201[].

Printed Name of Notary

My commission expires:
My commission number is:

(Notary seal)

[53]9001-14001

GENERAL CONDITIONS

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ARTICLE 1 DEFINITIONS

Wherever used in these General Conditions or in the other 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 Bid/Proposals which clarify, correct or change the Bid/Proposal Requirements or the Contract Documents.
- 1.2 Agreement: The written contract between Owner and Contractor covering the Work to be performed, and other Contract Documents that are attached to the Agreement or expressly made a part thereof as provided herein.
- 1.3 Application for Payment: The form accepted by INDEPENDENT PROFESSIONAL which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4 Asbestos: Any material that contains more than one percent (1%) asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5 Bid/Proposal: The offer or proposal of the Respondent submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 Bid/Proposal Documents: The advertisement or Invitation to Bid/Proposal, Instructions to Respondents, the Bid/Proposal Form, all other documents and forms provided by the City, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bid/Proposals).
- 1.7 Bid/Proposal Requirements: The advertisement or Invitation to Bid/Proposal, Instructions to Respondents, and the Bid/Proposal Form.
- 1.8 Bonds: The Public Construction Bond meeting the requirements of this Contract, or the Performance and Payment Bonds and other instruments of security which are approved by the City Attorney.
- 1.9 Calendar Day: Everyday shown on the calendar. The word "day" shall be mean "calendar day" unless it is preceded by the word "working" or "work".
- 1.10 Change Order: A document recommended by INDEPENDENT PROFESSIONAL, which is signed by Contractor and Owner and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement. One or more Change Order that cumulatively exceed \$25,000 must be presented to the City Council for consideration and approval. One or more Change Order that cumulatively are less than \$25,000 shall require only administrative consideration and approval. All Change Orders must be signed by the Mayor or the Chief Administrative Officer in order to be effective. Change Orders authorizing emergency work requested by Owner shall not need prior consideration or approval by the City Council in order to be effective; however, these Change Orders shall count towards the \$25,000 threshold amount.

- 1.11 City Legal Holiday: The following are holidays recognized annually by the City of Plantation Council as legal holidays and will be used in all Contract Documents as the only recognized holidays:

New Year's Day
Martin Luther King Day
President's Day
Memorial Day
Independence Day
Labor Day
Yom Kippur
Veteran's Day
Thanksgiving Day
The Day following Thanksgiving Day
Christmas Day

- 1.12 INDEPENDENT PROFESSIONAL: The person, firm or corporation named as such in the Agreement (herein and throughout the General Conditions, "INDEPENDENT PROFESSIONAL"). Depending upon the Project, the INDEPENDENT PROFESSIONAL may be an appropriately licensed City employee or may be an appropriately licensed consultant. The INDEPENDENT PROFESSIONAL for this Project shall be _____ [name of person or firm acting as INDEPENDENT PROFESSIONAL, if blank the name of the INDEPENDENT PROFESSIONAL will be provided prior to issuance of the first Notice to Proceed].

- 1.13 INDEPENDENT PROFESSIONAL'S Consultant: A person, firm or corporation having a contract to furnish services an independent professional associate or consultant with respect to the Project. The INDEPENDENT PROFESSIONAL'S Consultant is _____ [name of INDEPENDENT PROFESSIONAL'S, if blank the name of the INDEPENDENT PROFESSIONAL'S Consultant will be provided prior to issuance of first Notice to Proceed].

- 1.14 Claims and Disputes: A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the OWNER and CONTRACTOR arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

- 1.15 Compensable Delay: Delay beyond the control and without the fault or negligence of the CONTRACTOR resulting from OWNER caused changes in the Work or suspensions of the Work by OWNER, which is only compensable if expressly provided for elsewhere in the Contract Documents.

- 1.16 Contract Documents: The Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid/Proposal (including documentation accompanying the Bid/Proposal and any post Bid/Proposal documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, Supplementary Conditions if any, the Specifications and the Drawings as the same are more specifically identified in the Agreement, the Instructions to Respondents, together with all Written Amendments, Change

Orders, Work Change Directives, Field Orders and INDEPENDENT PROFESSIONAL'S written interpretations and clarifications issued pursuant to paragraphs 3.5., 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 5.26 and 5.27 and the reports and drawings referred to in paragraphs 4.2 are not Contract Documents.

- 1.17 Contract Price: The monies payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 10.9.1 in the case of Unit Price Work).
- 1.18 Contract Times: The number of calendar days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by INDEPENDENT PROFESSIONAL'S written recommendation of final payment in accordance with paragraph 13.13.
- 1.19 CONTRACTOR: The person, firm or corporation with whom Owner has entered into the Agreement (herein and throughout the General Conditions, "CONTRACTOR").
- 1.20 Defective: An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to INDEPENDENT PROFESSIONAL'S recommendation of final payment (unless responsibility for the protection thereof has been expressly assumed in writing by Owner at Substantial Completion in accordance with paragraph 13.8 or 13.10).
- 1.21 Drawings: The drawings which show the scope, extent and character of the Work to be furnished and performed by Contractor and which have been prepared or approved by INDEPENDENT PROFESSIONAL and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.
- 1.22 Effective Date of the Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.23 Excusable Delay: Any delay beyond the control and without the fault or negligence of the CONTRACTOR, the OWNER, or any other contractor caused by events or circumstances such as, but not limited to, acts of God or of the public enemy, acts of intervenors, acts of government other than the OWNER, fires, floods, epidemics, quarantine restrictions, freight embargoes, and hurricanes, tornadoes, or new sink holes (not induced by drilling operations). Labor disputes of CONTRACTOR'S or SUBCONTRACTOR'S or SUPPLIER'S labor forces, and average rainfall shall give rise only to inexcusable delays.
- 1.24 Field Order: A written order issued by INDEPENDENT PROFESSIONAL which orders minor changes in the Work in accordance with paragraph 8.5 but which does not involve, nor is intended to involve, a change in the Contract Price or Contract Times.
- 1.25 FINAL COMPLETION (ACCEPTANCE): The OWNER'S written acceptance of the Work or when the punch list is completed, whichever is later.

- 1.26 Float or Slack Time: The time available in the progress schedule during which an unexpected activity can be completed without delaying Substantial Completion or Final Completion of the Work.
- 1.27 General Requirements: All sections of the Specifications and drawings.
- 1.28 Hazardous Waste: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 1.29 Inexcusable Delay: Any delay caused either (i) by events or circumstances within the control of the CONTRACTOR, such as inadequate crewing, slow submittals, etc., which might have been avoided by the exercise of care, prudence, foresight, or diligence on the part of the CONTRACTOR, or (ii) by weather conditions (other than hurricanes and tornadoes) or labor disputes, and all other matters which are not deemed subject to “excusable delay”.
- 1.30 Initiation of Operation: The time after Substantial Completion when the OWNER initiates use of the entire Work, or portion of the Work, for the purposes for which it was planned, designed and built, thus commencing the one-year warranty and correction period for that portion of the Work where Initiation of Operation was issued.
- 1.31 Laws and Regulations: Laws or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies authorities and courts having jurisdiction.
- 1.32 Liens: Liens, charges, security interests or encumbrances upon real property or personal property.
- 1.33 Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.34 Non-prejudicial Delay: Any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time.
- 1.35 Notice of Award: The written notice by Owner to the apparent successful Respondent stating that upon compliance by the apparent successful Respondent with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.
- 1.36 Notice to Proceed: A written notice given by Owner to Contractor (with a copy to INDEPENDENT PROFESSIONAL) fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform Contractor’s obligations under the Contract Documents.
- 1.37 OWNER: The City of Plantation, a Florida municipal corporation (herein and throughout the Contract Documents, “OWNER” also referred to as “CITY”).
- 1.38 Partial Utilization: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, which use is formally accepted and authorized by the parties in writing.
- 1.39 PCBs: Polychlorinated biphenyls

- 1.40 Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- 1.41 Prejudicial Delay: Any excusable or compensable delay impacting the Work and exceeding the total float available in the progress schedule, thus preventing completion of the Work within the Contract Time unless the Work is accelerated.
- 1.42 Pre-operational Testing: All field inspections, installation checks, performance tests, and necessary corrections required of CONTRACTOR to demonstrate that individual components of the Work have been properly completed and do operate in accordance with their intended purposes.
- 1.43 Project: The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other contractors and by the OWNER'S own forces including persons or entities under separate contracts which may or may not be administered by the INDEPENDENT PROFESSIONAL.
- 1.44 Radioactive Material: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 1.45 Resident Project Representative: The authorized representative of INDEPENDENT PROFESSIONAL who may be assigned to the site or any part thereof.
- 1.46 Respondent: Respondent shall also mean proposer and bidder as applicable to the procurement method utilized by the Owner.
- 1.47 Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.48 Shop Drawings: All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 1.49 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.
- 1.50 Subcontractor: An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site (herein and throughout the General Conditions, "SUBCONTRACTOR").
- 1.51 Substantial Completion: That date, as certified in writing by the INDEPENDENT PROFESSIONAL and as finally determined by the OWNER in its sole discretion, the Work, or portion thereof, is at a level of completion in substantial compliance with Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the OWNER or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Occupancy must be issued for Substantial Completion to be achieved,

however, the issuance of a Certificate of Occupancy or the date thereof is not to be determinative of the achievement or date of Substantial Completion.

- 1.52 Supplementary Conditions: The part of the Contract Documents, which amends or supplements these General Conditions.
- 1.53 Supplier: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
- 1.54 Underground Facilities: 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 to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
- 1.55 Unit Price Work: Work to be paid for on the basis of unit prices.
- 1.56 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 Documents.
- 1.57 Work Change Directive: A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by Owner and recommended by INDEPENDENT PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 5.23. A Work Change Directive will not change the Contract Price or the Contract Times, 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 Times as provided in paragraph 9.6. Work Change Directives must be signed by the Mayor or the Chief Administrative Officer in order to be effective.
- 1.58 Working Day: A Calendar day, exclusive of Sundays and OWNER declared city legal holidays, on which weather and other conditions not under the control of the CONTRACTOR, will permit construction operations to proceed for the major part of the day on the principal item or items of work which would normally be in progress at that time. Working Days may include additional calendar days if permitted pursuant to Section 5.5 of the General Conditions.
- 1.59 Written Amendment: A written amendment of the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement. A Written Amendment must be signed by the Mayor or the Chief Administrative Officer in order to be effective.

ARTICLE 2 PRELIMINARY MATTERS

2.1 Delivery of Bonds

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required by the OWNER.

2.2 Copies of Documents

OWNER shall furnish to CONTRACTOR three copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Times; Notice to Proceed

The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Agreement, and shall not specify a time of commencement later than sixty (60) days after the Effective Date of the Agreement.

2.4 Starting the Work

CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

2.5 Before Starting Construction

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 INDEPENDENT PROFESSIONAL any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from INDEPENDENT PROFESSIONAL before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or INDEPENDENT PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.6 Preliminary Reports and Schedules

Within ten (10) working days or fifteen (15) calendar days after the Effective Date of the Agreement, whichever is later, CONTRACTOR shall submit to INDEPENDENT PROFESSIONAL for review:

- 2.6.1 A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
- 2.6.2 A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;
- 2.6.3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7 Certificates of Insurance

Before any Work at the site is started, CONTRACTOR and OWNER shall deliver to the other, with copies to each additional insured, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with the Contract Documents.

2.8 Pre-construction Conference

Within twenty (20) calendar days after the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, INDEPENDENT PROFESSIONAL, OWNER and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

2.9 Initially Acceptable Schedules

Unless otherwise provided in the Contract Documents, at least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, INDEPENDENT PROFESSIONAL and others as appropriate will be held to review for acceptability to INDEPENDENT PROFESSIONAL as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to INDEPENDENT PROFESSIONAL as provided below. The progress schedule must be acceptable to INDEPENDENT PROFESSIONAL as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on INDEPENDENT PROFESSIONAL responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR'S full responsibility therefor. CONTRACTOR'S schedule of Shop Drawing and Sample submissions must be acceptable to INDEPENDENT PROFESSIONAL as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR'S schedule of values must be acceptable to INDEPENDENT PROFESSIONAL as to form and substance so as to balance the performance of the Work with the progression of payment therefore and prevent a disparity between such performance and payments.

2.10 Contract Document Signing

The OWNER and CONTRACTOR as provided in the Agreement shall sign the Contract Documents. If either the OWNER or CONTRACTOR or both do not sign the entire Contract Document, the INDEPENDENT PROFESSIONAL shall identify such unsigned Documents, and have the party execute the same.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Entire Agreement

The Contract Documents comprise the entire Agreement between OWNER 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. If any portion of the Contract Documents is or appears to be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: the

"Agreement (Contract)", as amended from time to time; Supplementary Conditions (if any); General Conditions; Supplemental Instructions to Respondents; Instructions to Respondents; the Specifications; the Drawings; as between schedules and information given on Drawings, the schedules shall govern; as between figures given on Drawings and the sealed measurements, the figure shall govern; as between large-scale Drawings and small-scale Drawings, the larger scale shall govern.

3.2 Intent

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, 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 furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by INDEPENDENT PROFESSIONAL as provided hereafter.

3.3 Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

3.3.1 Reference to standards, 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 Bid/Proposals (or, on the Effective Date of the Agreement if there were no Bid/Proposals), except as may be otherwise specifically stated in the Contract Documents.

3.3.2 If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents, or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 5.5, CONTRACTOR shall report it to INDEPENDENT PROFESSIONAL in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 5.23) until an amendment or supplement to the Contract Document has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or INDEPENDENT PROFESSIONAL for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3 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 or 3.6, 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:

3.3.3.1 The provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

3.3.3.2 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).

3.3.4 No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or INDEPENDENT

PROFESSIONAL, or any of their SUBCONTRACTORS, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, INDEPENDENT PROFESSIONAL or any of INDEPENDENT PROFESSIONAL'S Consultants, 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 8.13 or any other provision of the Contract Documents.

3.4 Contract Document Terms

Whenever in the Contract Documents the terms "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 like effect or import are used to describe a requirement, direction, review or judgment of INDEPENDENT PROFESSIONAL as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to INDEPENDENT PROFESSIONAL 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 8.13 or any other provision of the Contract Documents.

3.5 Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1 A formal Written Amendment,
- 3.5.2 A Change Order (pursuant to paragraph 9.4), or
- 3.5.3 A Work Change Directive (pursuant to paragraph 9.1).

3.6 Contract Documents Supplements

In addition, 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:

- 3.6.1 A Field Order (pursuant to paragraph 8.5),
- 3.6.2 INDEPENDENT PROFESSIONAL'S approval of a Shop Drawing or sample (pursuant to paragraphs 5.26 and 5.27), or
- 3.6.3 INDEPENDENT PROFESSIONAL'S written interpretation or clarification (pursuant to paragraph 8.4).

3.7 Reuse of Documents

CONTRACTOR and any SUBCONTRACTOR or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of INDEPENDENT PROFESSIONAL or INDEPENDENT PROFESSIONAL'S Consultant, and (ii) shall not reuse any of Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and INDEPENDENT PROFESSIONAL and specific written verification or adoption by INDEPENDENT PROFESSIONAL.

3.8 Division of Work

Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawing shall not control the CONTRACTOR in dividing the Work among SUBCONTRACTORS or in establishing the extent of Work to be performed by any trade.

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

4.1 Availability of Land

OWNER 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. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER'S interest therein as necessary. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER'S furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 10 and 11. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment, or construction operations.

4.2 Subsurface and Physical Conditions

4.2.1 Reports and Drawings:

- 4.2.1.1 Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by INDEPENDENT PROFESSIONAL in preparing the Contract Documents. The following reports of explorations and tests of subsurface conditions at or contiguous to the site have been utilized by the INDEPENDENT PROFESSIONAL [List ☐ if none, write "None"]

;and

- 4.2.1.2 Physical Conditions: Those drawings of physical conditions in or relating to existing surface or sub- surface structures at or contiguous to the site (except Underground Facilities) that have been utilized by INDEPENDENT PROFESSIONAL in preparing the Contract Documents. 4.2.1.2 The following drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) have been utilized by the INDEPENDENT PROFESSIONAL [List ☐ if none, write "None"]:

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- 4.2.2 Limited Reliance by CONTRACTOR Authorized; Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. The following is the "Technical Data" in the information identified in Section 4.2.1.1 or 4.2.1.2 which the CONTRACTOR may limitedly rely upon as set forth in this Section 4.2 [List the Technical Data for CONTRACTOR'S reliance or write "None"]:
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Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, INDEPENDENT PROFESSIONAL or any of INDEPENDENT PROFESSIONAL'S Consultants with respect to:

- 4.2.2.1 The completeness of such reports and drawings for CONTRACTOR'S purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or
- 4.2.2.2 Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
- 4.2.2.3 Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.
- 4.2.3 Notice of Differing Subsurface or Physical Conditions: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site (except Underground Facilities) that is uncovered or revealed either:
- 4.2.3.1 Is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or
- 4.2.3.2 Differs materially and substantially from that shown or indicated in the Contract Documents, or
- 4.2.3.3 Is of an unusual nature, and differs materially and substantially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 5.23), notify OWNER and INDEPENDENT PROFESSIONAL in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- 4.2.4 INDEPENDENT PROFESSIONAL'S Review: INDEPENDENT PROFESSIONAL will promptly review the pertinent conditions, determine the necessity of OWNER'S obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of INDEPENDENT PROFESSIONAL'S findings and conclusions.
- 4.2.5 Possible Contract Documents Change: If INDEPENDENT PROFESSIONAL concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of

the categories in paragraph 4.2.3, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

- 4.2.6 Possible Price and Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes a material and substantial increase or decrease in CONTRACTOR'S cost of, or time required for performance of, the Work; subject, however, to the following:
- 4.2.6.1 Such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.3, inclusive;
 - 4.2.6.2 A change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;
 - 4.2.6.3 With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 8.10 and 10.9; and
 - 4.2.6.4 CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if:
 - 4.2.6.4.1 CONTRACTOR knew of the existence of such conditions or with the exercise of reasonable care should have known at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid/Proposal or becoming bound under a negotiated contract; or
 - 4.2.6.4.2 The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas allowed by the Bid/Proposal Requirements (e.g. the Instructions to Respondents) or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR'S making such final commitment; or
 - 4.2.6.4.3 CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 10 and 11. However, OWNER, INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

- 4.2.7 No claim of the CONTRACTOR under this *Paragraph* of the General Conditions shall be allowed unless 1) CONTRACTOR has given the notice required in *Paragraph 4.2.3*, and 2) within **THIRTY (30)** days after CONTRACTOR has given the written notice, CONTRACTOR submits to OWNER a detailed claim setting forth CONTRACTOR'S right to recover any additional costs and lost time as provided in Articles 10 and 11 of the General Conditions.

4.3 Physical Conditions - Underground Facilities:

- 4.3.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or INDEPENDENT PROFESSIONAL by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in Supplementary Conditions:
- 4.3.1.1 OWNER and INDEPENDENT PROFESSIONAL shall not be responsible for the accuracy or completeness of any such information or data; and,
 - 4.3.1.2 The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii)

coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 5.20 and repairing any damage thereto resulting from the Work.

- 4.3.2 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 5.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and INDEPENDENT PROFESSIONAL. INDEPENDENT PROFESSIONAL will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If INDEPENDENT PROFESSIONAL concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 9 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 5.20. CONTRACTOR shall be allowed an extension of the Contract Times to the extent that it is attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on the length of any such adjustment in Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 10 and 11. However, OWNER, INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.4 Reference Points

OWNER shall provide INDEPENDENT PROFESSIONAL surveys to establish reference points for construction, which in INDEPENDENT PROFESSIONAL'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to INDEPENDENT PROFESSIONAL'S 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 of relocation of such reference points by professionally qualified personnel.

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material

- 4.5.1 OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, SUBCONTRACTOR, Suppliers or anyone else for which CONTRACTOR is responsible.
- 4.5.2 CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 5.23), and (ii) notify OWNER and INDEPENDENT PROFESSIONAL (and thereafter confirm such notice in writing). OWNER shall promptly consult with INDEPENDENT PROFESSIONAL concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take

corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. CONTRACTOR shall be solely entitled to an extension of the Contract Times as a result of any uncovered or revealed asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 10 and 11.

4.5.3 If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 10 and 11. OWNER may have such deleted portion of the Work performed by OWNER'S own forces or others in accordance with Article 6.

4.5.4 The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 CONTRACTOR'S RESPONSIBILITIES

5.1 Supervision and Superintendence

CONTRACTOR shall supervise, inspect, conduct, and direct the Work competently and efficiently, and using CONTRACTOR'S best skill and attention, to perform the Work in accordance with 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 specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents. CONTRACTOR shall not, however, be relieved of his duty to report in writing any conflicts, error, ambiguity, or discrepancy, which is discovered during performance of the Work, as otherwise required by the Contract Documents.

5.2 CONTRACTOR'S Superintendent

CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and INDEPENDENT PROFESSIONAL by CONTRACTOR, except under extraordinary circumstances or as otherwise requested by OWNER. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

5.3 Labor, Materials and Equipment

CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit work during non-regular working hours or the performance of Work on Saturday, Sunday or any City legal holiday without OWNER'S written consent.

5.3.1 NORMAL WORK HOURS AND OVERTIME WORK HOURS

Maintenance work may be performed during hours other than regular working hours. Regular working hours shall not exceed TEN (10) hours per day, Monday through Saturday, commencing no earlier than 7:00 a.m. and ending no later than 8:00 p.m. Requests to work during other than regular working hours must be submitted to the OWNER (Administration Department) at least SEVENTY-TWO (72) hours in advance of the period proposed for such non-regular working hours and shall set forth the proposed schedule for overtime work to give OWNER (Administration Department) ample time to arrange for their personnel to be at the site of the Work. CONTRACTOR shall be responsible for the cost of the INDEPENDENT PROFESSIONAL'S Resident Project Representative, if one is assigned to the project, during periods of time that the CONTRACTOR is conducting overtime work.

5.3.2 HOURS OF NOISY BUSINESS OPERATIONS

The CONTRACTOR'S attention is directed to the fact that the noise generated by his construction equipment and operations must comply with all applicable Federal, State, and local environmental regulations including Section 16-2(2), City Code. The INDEPENDENT PROFESSIONAL may identify noise sensitive sites and require abatement measures be utilized.

5.4 Contractor's Responsibilities

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 completion of the Work.

5.4.1 The CONTRACTOR shall furnish all water for testing, flushing and construction. It may be available by connecting to the OWNER'S water system at a point approved by the OWNER. The OWNER shall charge the CONTRACTOR for water used in performing the above functions in accordance with the OWNER'S established rate schedule. There shall be installed in each and every connection to the OWNER'S water supply a back-flow preventer meeting the requirements of ANSI A40.6, latest revision at each and every connection. CONTRACTOR shall be required to meter all water used.

5.5 Quality Materials, Equipment, etc.

All materials and equipment shall be of good quality and new. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by INDEPENDENT PROFESSIONAL, 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 instructions of the applicable Supplier or manufacturer except as otherwise provided in the Contract Documents.

5.6 Progress Schedule

CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

5.6.1 CONTRACTOR shall submit to INDEPENDENT PROFESSIONAL for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

5.6.2 Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 11.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 11.

5.7 Substitutes and "Or-Equal" Items

5.7.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that "no like", equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment, or material or equipment of other Suppliers may be accepted by INDEPENDENT PROFESSIONAL under the following circumstances:

5.7.1.1 "Or-Equal": If in INDEPENDENT PROFESSIONAL'S sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by INDEPENDENT PROFESSIONAL as an "or equal" item, in which case review and approval of the proposed item may, in INDEPENDENT PROFESSIONAL'S sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

5.7.1.2 Substitute Items: If in INDEPENDENT PROFESSIONAL'S sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or equal" item under subparagraph 5.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow INDEPENDENT PROFESSIONAL to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the INDEPENDENT PROFESSIONAL will include the following as supplemented in the General Requirements or as INDEPENDENT PROFESSIONAL may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by INDEPENDENT PROFESSIONAL from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to INDEPENDENT PROFESSIONAL for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results

called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will 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 OWNER 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 delays or schedule impacts that will result directly or indirectly from reviews, acceptance and provisions of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by INDEPENDENT PROFESSIONAL in evaluating the proposed substitute. INDEPENDENT PROFESSIONAL may require CONTRACTOR to furnish additional data about the proposed substitute. In rendering a decision, OWNER, INDEPENDENT PROFESSIONAL and CONTRACTOR shall utilize any available float time in the schedule. In the event that substitute materials or equipment are accepted and are less costly than the originally specified materials or equipment, then the net difference in cost shall benefit the OWNER and an appropriate Change Order shall be executed.

5.7.1.3 CONTRACTOR'S Expense: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR'S expense.

5.7.2 Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to INDEPENDENT PROFESSIONAL. CONTRACTOR shall submit sufficient information to allow INDEPENDENT PROFESSIONAL, in INDEPENDENT PROFESSIONAL'S sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by INDEPENDENT PROFESSIONAL will be similar to that provided in subparagraph 5.7.1.2.

5.7.3 INDEPENDENT PROFESSIONAL'S Evaluation: INDEPENDENT PROFESSIONAL will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 5.7.1.2 and 5.7.2. INDEPENDENT PROFESSIONAL will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized without INDEPENDENT PROFESSIONAL'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. INDEPENDENT PROFESSIONAL will record time required by INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 5.7.1.2 and 5.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not INDEPENDENT PROFESSIONAL accepts a substitute item or "or equal" so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants for evaluating each such proposed substitute or "or equal" item and all costs resulting from any delays in the Work while the substitute or "or equal" was undergoing reviews. In addition any OWNER

expenses pertaining to the above-referenced items shall be reimbursed by CONTRACTOR. (e.g., legal expenses of any Contract Document revisions).

- 5.7.4 Equipment manufacturers should have a record of satisfactory operation for a specified period of time or deposits to guarantee replacement equipment will be available and may be used in the event of equipment failure. Submission of a Bond or deposit shall be permitted instead of a specified experience period. The period of time for which the Bond or deposit is required should not exceed the experience period specified. No experience restriction will be permitted which unnecessarily reduces competition or innovation.

5.8 Concerning Subcontractors, Suppliers and Others

- 5.8.1 CONTRACTOR shall not employ any SUBCONTRACTOR, Supplier or other person or organization (including those acceptable to OWNER and INDEPENDENT PROFESSIONAL as indicated in paragraph 5.8.2) whether initially or as a substitute, against whom OWNER or INDEPENDENT PROFESSIONAL may have reasonable objection. CONTRACTOR shall not be required to employ any SUBCONTRACTOR, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

A SUBCONTRACTOR or other person or organization identified in the CONTRACTOR'S Bid/Proposal and not objected to in writing by OWNER or INDEPENDENT PROFESSIONAL prior to the execution of the Agreement will be deemed acceptable to OWNER and INDEPENDENT PROFESSIONAL. All other SUBCONTRACTORS and persons shall be deemed to have been accepted if OWNER or INDEPENDENT PROFESSIONAL deliver no written objection thereto within **FORTY-FIVE (45)** Calendar Days after CONTRACTOR'S written identification of such SUBCONTRACTORS. However, if OWNER or INDEPENDENT PROFESSIONAL, before or after acceptance of a SUBCONTRACTOR, has reasonable objection to any SUBCONTRACTOR or other person whether identified in the Bid/Proposal or subsequently, CONTRACTOR shall submit an acceptable substitute without entitlement to any change on Contract Price. If OWNER or INDEPENDENT PROFESSIONAL demands the substitution of a SUBCONTRACTOR at any time without having reasonable objection to such SUBCONTRACTOR or other person, the CONTRACTOR shall comply and shall be entitled to change in Contract Price (by appropriate Change Order) for the difference in cost occasioned by such substitution. After acceptance by the OWNER or INDEPENDENT PROFESSIONAL of any particular SUBCONTRACTOR or other person, the CONTRACTOR shall not make any substitution without written approval of the OWNER, which request shall not be unreasonably withheld. No acceptance by OWNER or INDEPENDENT PROFESSIONAL of any such SUBCONTRACTOR, Supplier or other person or organization shall constitute a waiver of any right of OWNER or INDEPENDENT PROFESSIONAL to reject defective Work.

- 5.8.2 The CONTRACTOR shall identify the name and address of the person, firm, or business entity performing or supplying the following portions of the Work if CONTRACTOR intends to use SUBCONTRACTORS for such Work:

[List major portions of Work or critical aspects of Work where OWNER wishes a mandatory disclosure of SUBCONTRACTORS here]

5.9 Contractor's Responsibility for Payment to Subcontractors, etc.

- 5.9.1 CONTRACTOR shall be fully responsible to OWNER and INDEPENDENT PROFESSIONAL for all acts and omissions of the SUBCONTRACTORS, 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 for the benefit of any such SUBCONTRACTOR, Supplier or other person or organization any contractual relationship between OWNER or INDEPENDENT PROFESSIONAL and any such SUBCONTRACTOR, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or INDEPENDENT PROFESSIONAL to pay or to see to the payment of any moneys due any such SUBCONTRACTOR, Supplier or other person or organization.

- 5.9.2 CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of SUBCONTRACTORS, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all SUBCONTRACTORS, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the INDEPENDENT PROFESSIONAL through CONTRACTOR.

5.10 Subcontractor or Supplier Work Requirements and Responsibilities

The divisions and Sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among SUBCONTRACTORS or Suppliers or delineating the Work to be performed by any specific trade.

5.11 Agreement between CONTRACTOR and SUBCONTRACTOR

All work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier, which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and INDEPENDENT PROFESSIONAL.

5.12 Patent Fees and Royalties

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or INDEPENDENT PROFESSIONAL its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, INDEPENDENT PROFESSIONAL, INDEPENDENT PROFESSIONAL'S Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from 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 Document.

- 5.12.1 The following particular invention, design, process, product or device which is specified in the Contract Documents for use in the performance of the Work is to the actual knowledge of OWNER or INDEPENDENT PROFESSIONAL subject to intellectual property rights or use protections calling for the payment of any license fee or royalty to others:

[List all known here, or write "None" as may be applicable]

5.13 Permits

CONTRACTOR shall identify all governmental authorities and agencies having jurisdiction to approve the construction, and obtain all permits and approvals with such governmental authorities as have jurisdiction, and assist OWNER in consultations with appropriate governmental authorities and agencies in obtaining all required permits and approvals. Without limiting the foregoing, CONTRACTOR shall pay all fees, costs, and expenses in connection with the applications, processing, and securing approvals or permits from all governmental authorities which have jurisdiction over all aspects of this Work except City of Plantation permits and fees which shall be waived except for so much of said fees as the City is required to remit to other governmental agencies.

5.14 Laws and Regulations

CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor INDEPENDENT PROFESSIONAL shall be responsible for monitoring CONTRACTOR'S compliance with any Laws or Regulations.

If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR'S obligations under paragraph 3.3.2.

5.15 Taxes

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

5.16 Use of Premises

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably 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 owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or by litigation. For any losses or claim arising out of the use of premises, CONTRACTOR shall indemnify and hold harmless OWNER, INDEPENDENT PROFESSIONAL, INDEPENDENT PROFESSIONAL'S Consultant and anyone directly or indirectly employed by any of them pursuant to paragraph 5.31.

5.17 Clean Site Requirements

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, construction equipment and machinery, and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work.

CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents. All debris removal and site cleanup and restoration is included in the Scope of Work (debris removal shall be effected by the City's franchised solid waste contractor).

5.18 Structure Safety

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger any structure, nor shall CONTRACTOR subject any part of the Work or adjacent property or improvements on adjacent property to stresses or pressures that will endanger any of them.

5.19 Record Documents

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 8.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to INDEPENDENT PROFESSIONAL for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to INDEPENDENT PROFESSIONAL for OWNER. "As-built" drawings and a survey will also be delivered to OWNER.

5.20 Safety and Protection

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:

- 5.20.1 all persons on the Work site or who may be affected by the Work;
- 5.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- 5.20.3 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.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and 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 5.20.2 or 5.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR [except damage or loss attributable to inaccurate Technical Data described in Paragraph 4.2.2, or to the affirmative acts of OWNER or INDEPENDENT PROFESSIONAL or INDEPENDENT PROFESSIONAL'S Consultant (and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR'S duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and INDEPENDENT PROFESSIONAL has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 13.13 that the Work is acceptable (except as otherwise expressly provided in connection with Final Completion).

5.21 Safety Representative

CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

5.22 Hazard Communication Programs

CONTRACTOR shall be responsible for coordination any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among the parties or others at the work site in accordance with Laws or Regulations.

5.23 Emergencies

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 OWNER or INDEPENDENT PROFESSIONAL, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give INDEPENDENT PROFESSIONAL prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If INDEPENDENT PROFESSIONAL determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

5.24 Shop Drawings and Samples

5.24.1 CONTRACTOR shall submit Shop Drawings to INDEPENDENT PROFESSIONAL for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as INDEPENDENT PROFESSIONAL may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show INDEPENDENT PROFESSIONAL the materials and equipment CONTRACTOR proposes to provide and to enable INDEPENDENT PROFESSIONAL to review the information for the limited purposes required by paragraph 5.26.

5.24.2 CONTRACTOR shall also submit Samples to INDEPENDENT PROFESSIONAL for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as INDEPENDENT PROFESSIONAL may require to enable INDEPENDENT PROFESSIONAL to review the submittal for the limited purposes required by paragraph 5.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

5.25 Submittal Procedures

5.25.1 Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

- 5.25.1.1 all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,
- 5.25.1.2 all materials with respect to intended use, fabrication, shipping, handling, storage, assemble and installation pertaining to the performance of the Work , and
- 5.25.1.3 all information relative to CONTRACTOR'S sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

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

- 5.25.2 Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S obligations under the Contract Documents with respect to CONTRACTOR'S review and approval of that submittal.
- 5.25.3 At the time of each submission, CONTRACTOR shall give INDEPENDENT PROFESSIONAL specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to INDEPENDENT PROFESSIONAL for review and approval of each such variation.

5.26 Shop Drawing Approvals

INDEPENDENT PROFESSIONAL will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by INDEPENDENT PROFESSIONAL as required by paragraph 2.9. INDEPENDENT PROFESSIONAL'S review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. INDEPENDENT PROFESSIONAL'S review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by INDEPENDENT PROFESSIONAL, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by INDEPENDENT PROFESSIONAL on previous submittals.

5.27 CONTRACTOR'S Shop Drawings Responsibilities

INDEPENDENT PROFESSIONAL'S review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called INDEPENDENT PROFESSIONAL'S attention to each such variation at the time of submission as required by paragraph 5.25.3 and INDEPENDENT PROFESSIONAL has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by INDEPENDENT PROFESSIONAL relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 5.25.1.

5.28 CONTRACTOR'S Shop Drawings Expense

Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by INDEPENDENT PROFESSIONAL as required by paragraph 2.9, any related Work performed prior to INDEPENDENT PROFESSIONAL'S review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

5.29 Continuing the Work

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 14.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

5.30 CONTRACTOR'S General Warranty and Guarantee

5.30.1 CONTRACTOR warrants and guarantees to OWNER, INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants 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:

- 5.30.1.1 abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or
- 5.30.1.2 normal wear and tear under normal usage.

5.30.2 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:

- 5.30.2.1 observations by INDEPENDENT PROFESSIONAL;
- 5.30.2.2 recommendation of any progress or final payment by INDEPENDENT PROFESSIONAL;
- 5.30.2.3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
- 5.30.2.4 use or occupancy of the Work or any part thereof by OWNER;
- 5.30.2.5 any acceptance by OWNER or any failure to do so;
- 5.30.2.6 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by INDEPENDENT PROFESSIONAL pursuant to paragraph 13.13;
- 5.30.2.7 any inspection, test or approval by others; or
- 5.30.2.8 any correction of *defective* Work by OWNER

5.30.3 In addition to the warranty above that the Work will be in accordance with the Contract Documents and not defective, CONTRACTOR additionally guarantees that the Work shall remain free from defects in workmanship or materials for a period of ONE (1) year. This warranty is intended to supplement that provided in paragraphs 5.30 and 5.30.2 above. In the event of any claims under this express warranty, such claims will be presented according to the time periods specified by the applicable Florida Statute of Limitations.

5.30.4 CONTRACTOR acknowledges that the express warranties in the Contract Documents are not the sole warranties applicable to the Work, and in particular, states that all implied warranties pursuant to law are applicable including, but not limited to, implied warranties of merchantability and fitness for a particular purpose which will be applicable.

5.31 Indemnification

5.31.1 CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER'S Consultants, and its elected and appointed officers, the officers, directors, employees, agents and other consultants of each of them, from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement.

5.31.2 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 or for

the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

- 5.31.3** This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, including the Work itself, and including the loss of use resulting therefrom.
- 5.31.4** Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the OWNER that such amount is due, be made by CONTRACTOR prior to the OWNER being required to pay same, or in the alternative, the OWNER, at the OWNER'S option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse the OWNER for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the OWNER that such payment is due. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the OWNER, to defend any action against the OWNER that falls within the scope of this indemnity, or the OWNER, at the OWNER'S option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action and the reasonable costs and expenses of such attorney incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notices from the OWNER, fails to make any payment due hereunder to the OWNER, CONTRACTOR shall pay any reasonable attorney's fees or costs incurred by the OWNER in securing any such payment from CONTRACTOR.

5.32 *Claims against OWNER or INDEPENDENT PROFESSIONAL*

In any and all claims against OWNER or INDEPENDENT PROFESSIONAL or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 5.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

Notwithstanding the foregoing, any claim should be made by written notice by Contractor to the CITY REPRESENTATIVE and INDEPENDENT PROFESSIONAL within five (5) calendar days of commencement of the event giving rise to the claim. Thereafter, within twenty (20) calendar days of the termination of the event, written notice of extent of claim with supporting documentation must be notarized and submitted. All claims for changes to contract time and price shall be waived if not submitted in strict accordance with requirements of this Section.

5.32.1 False Claims

The Contractor must submit the Schedule of Values, as a condition precedent to submitting a claim against the City. The Schedule of Values shall contain a line item for allocation of overhead costs and must be prepared contemporaneously with the response, in anticipation of the response submitted for this project. "Claim" means any invoice, statement, request, demand, lawsuit, or action under contract or otherwise, for money, property, or services made to any employee, officer, or agent of the City, or to any contractor, grantee, or other recipient if any portion of the money, property, or services requested or demanded was issued from, or was provided by, the City. It is

expressly and specifically agreed that any and all claims shall be waived if not submitted in strict accordance with the requirements of this section.

5.32.2 No Damages for Delay

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against CITY by reason of any delays except as provided herein. CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from CITY for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for actual delays due solely to fraud, bad faith or active interference on the part of CITY or the INDEPENDENT PROFESSIONAL. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

5.33 Indemnification Limitation

The indemnification obligation of CONTRACTOR under paragraph 5.31 shall not extend to the liability of INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

5.34 Survival of Obligations

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

5.35 CONTRACTOR'S Representations

CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, the Work, the locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies, as it deems necessary for the performance of the Work at the Contract price, within the Contract time, and in accordance with other terms and conditions of the Contract Documents, and no additional examinations, investigations, tests, reports, or similar data are or will be required by CONTRACTOR for such purposes.

ARTICLE 6 OTHER WORK

6.1 Related Work at Site

OWNER may perform other work related to the Project at the site by OWNER'S own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim within fifteen (15) calendar days of the written

notice. The CONTRACTOR'S claim is limited only to an extension of Contract time and may only be made if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent therefor.

6.2 Utility Rights and Access

CONTRACTOR shall afford each other CONTRACTOR who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to 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 INDEPENDENT PROFESSIONAL and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

6.3 Contractor's Inspection of Other's Work

If the proper execution or results of any part of CONTRACTOR'S Work depends upon work performed by others under this Article 6, CONTRACTOR shall inspect such other work and promptly report to INDEPENDENT PROFESSIONAL in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR'S Work. CONTRACTOR'S failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in such other work.

6.4 Coordination

If OWNER contracts with others for the performance of other work on the Project at the site, the following will be supplied to the CONTRACTOR:

- 6.4.1 The person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
- 6.4.2 The specific matters to be covered by such authority and responsibility will be itemized; and
- 6.4.3 The extent of such authority and responsibilities will be provided.

Unless otherwise provided in Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

6.5 Street and Right of Way Repairs before Resurfacing

The OWNER'S Public Works Department prior to any resurfacing by the CONTRACTOR shall repair streets and shoulders. The CONTRACTOR shall coordinate with the OWNER'S Public Works Department for the repair of pot-holed or damaged pavement prior to resurfacing. The CONTRACTOR shall notify the OWNER'S Public Works Department approximately **SEVENTY-TWO (72)** hours in advance of any required repairs. CONTRACTOR shall be billed for the cost of these repairs.

6.6 Utility Structures

The CONTRACTOR shall coordinate the adjustment of any structures with the appropriate utility company except the OWNER'S Utilities Department. The CONTRACTOR shall be responsible to abide by the OWNER'S specifications to adjust the OWNER'S manholes and valve boxes.

6.7 Utilities Which may be Covered by Paving (If Applicable)

In the event a structure is overlooked for adjustment by a utility company prior to the daily scheduled asphalt application (if applicable), the CONTRACTOR shall apply the asphaltic concrete leveling course or wearing course over the existing structure which were not adjusted so as to provide a smooth level surface. It will be the CONTRACTOR'S responsibility to mark the overlooked locations that were covered with new asphalt with a painted red "X". The appropriate utility company, where necessary, will make the final adjustment, after the resurfacing has been completed.

The CONTRACTOR shall notify the INDEPENDENT PROFESSIONAL and the appropriate utility company of the above locations in writing.

6.8 Owner's Right to Clean Up

If a dispute arises among the CONTRACTOR, other subcontractors and the OWNER as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the OWNER may clean up and allocate its costs among those responsible as the Construction Manager, in consultation with the INDEPENDENT PROFESSIONAL, determine to be just.

ARTICLE 7 OWNER'S RESPONSIBILITIES

7.1 INDEPENDENT PROFESSIONAL as Liaison between Owner and Contractor

Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through INDEPENDENT PROFESSIONAL.

7.2 INDEPENDENT PROFESSIONAL Substitution

In case of termination of the employment of INDEPENDENT PROFESSIONAL, OWNER shall appoint a INDEPENDENT PROFESSIONAL against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former INDEPENDENT PROFESSIONAL.

7.3 Owner Provided Information and Payment

OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 13.4 and 13.13.

7.4 Land and Easement Provisions

OWNER'S duties in respect of providing lands and easements and providing INDEPENDENT PROFESSIONAL surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by INDEPENDENT PROFESSIONAL in preparing the Contract Documents.

7.5 Owner Liability and Property Insurance Responsibilities

7.5.1 OWNER is not required to purchase or maintain insurance and in the event the OWNER does not elect to purchase any insurance, such election shall not prejudice the OWNER in attempting to

collect any damages which may be appropriate from any responsible party which would have otherwise been subject to such insurance nor will such election not affect OWNER'S rights in the insurance purchased by CONTRACTOR.

- 7.5.2 OWNER typically maintains property insurance with a deductible amount of self-insured retention of \$100,000 on existing buildings only and not any portion of the Work in order to protect the interests of CONTRACTOR, SUBCONTRACTORS, INDEPENDENT PROFESSIONAL or others in the Work. The risk of loss within the deductible amount will be borne by CONTRACTOR if it, its SUBCONTRACTOR, or someone else for whom it is responsible causes any such loss. If any of these parties wish to purchase and maintain such insurance for this deductible amount, it will be at the purchaser's own expense. Owner is not required to maintain this coverage and Contractor should verify OWNER'S coverages prior to commencing work.
- 7.5.3 OWNER specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of §768.28, Florida Statutes.
- 7.5.4 If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided by OWNER, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not OWNER has procured such other insurance.
- 7.5.5 If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with this Contract on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within TEN (10) days after receipt of the certificates or other evidence requested. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If Contractor does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, Contractor shall notify the OWNER in writing of such failure to purchase within a reasonable time and prior to commencement of work, if possible. Without prejudice to any other right or remedy, OWNER may elect to obtain equivalent Bonds or insurance to protect the intended insurable interests at the expense of the Contractor, and a Change Order shall be issued to adjust the Contract Price accordingly.
- 7.5.6 If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all Work, such use or occupancy may be accomplished in accordance with Paragraph 14.10; provided that no such use or, occupancy shall commence before insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.
- 7.5.7 Violation of the terms of this paragraph and its subparts shall constitute a breach of the Contract and OWNER, at its sole discretion, may cancel the Contract and all rights, title and interest of the CONTRACTOR thereupon cease and terminate.

7.6 Change Orders

OWNER is obligated to execute Change Orders as indicated in paragraph 9.4.

7.7 Inspections

OWNER'S responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 12.4.

7.8 Work Termination or Suspension

In connection with OWNER'S right to stop Work or suspend Work, see paragraphs 12.10 and 14.1. Paragraph 14.2 deals with OWNER'S right to terminate services of CONTRACTOR under certain circumstances.

7.9 Control Over Work

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

7.10 Asbestos, PCBs, Hazardous Waste, etc.

OWNER'S responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

7.11 Financial Arrangements

If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER'S obligations under the Contract Documents, OWNER'S responsibility in respect thereof will be as set forth in Supplementary Conditions.

ARTICLE 8 INDEPENDENT PROFESSIONAL'S STATUS DURING CONSTRUCTION

8.1 Owner's Representative

INDEPENDENT PROFESSIONAL will be OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of INDEPENDENT PROFESSIONAL as OWNER'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and INDEPENDENT PROFESSIONAL.

8.2 Visits to Site

INDEPENDENT PROFESSIONAL will make visits to the site at intervals appropriate to the various stages of construction as INDEPENDENT PROFESSIONAL deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR'S executed Work. Based on information obtained during such visits and observations, INDEPENDENT PROFESSIONAL will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. INDEPENDENT PROFESSIONAL will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. INDEPENDENT PROFESSIONAL'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on site observations, INDEPENDENT PROFESSIONAL will keep OWNER informed of the progress of the Work and will endeavor to guard

OWNER against defective Work. INDEPENDENT PROFESSIONAL'S visits and on-site observations are subject to all the limitations on INDEPENDENT PROFESSIONAL'S authority and responsibility set forth in paragraph 8.13, and particularly, but without limitation, during or as a result of INDEPENDENT PROFESSIONAL'S on-site visits or observations of CONTRACTOR'S Work INDEPENDENT PROFESSIONAL will not supervise, direct, control or have authority over or be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

8.3 Project Representative

If OWNER and INDEPENDENT PROFESSIONAL agree, INDEPENDENT PROFESSIONAL will furnish a Resident Project Representative to assist INDEPENDENT PROFESSIONAL in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 8.13. If OWNER designates another representative or agent to represent OWNER at the site who is not INDEPENDENT PROFESSIONAL'S Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be the same as the OWNER unless other provided for in Supplementary Conditions.

8.4 Clarifications and Interpretations

INDEPENDENT PROFESSIONAL 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 INDEPENDENT PROFESSIONAL may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 10 or Article 11.

8.5 Authorized Variations in Work

INDEPENDENT PROFESSIONAL may authorize minor changes in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 10 or 11.

8.6 Rejecting Defective Work

INDEPENDENT PROFESSIONAL will have authority to disapprove or reject Work which INDEPENDENT PROFESSIONAL believes to be defective, or that INDEPENDENT PROFESSIONAL believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. INDEPENDENT PROFESSIONAL will also have authority to require special inspection or testing of the Work as provided in paragraph 12.9, whether or not the Work is fabricated, installed or completed.

8.7 INDEPENDENT PROFESSIONAL'S Authority Regarding Application for Shop Drawings and Samples

In connection with INDEPENDENT PROFESSIONAL'S authority as to Shop Drawings and Samples, see paragraphs 5.24 through 5.28 inclusive.

8.8 INDEPENDENT PROFESSIONAL'S Authority Regarding Application for Change Orders

In connection with INDEPENDENT PROFESSIONAL'S authority as to Change Orders, see Articles 9, 10 and 11.

8.9 INDEPENDENT PROFESSIONAL'S Authority Regarding Application for Payment

In connection with INDEPENDENT PROFESSIONAL'S authority as to Applications for Payment, see Article 13.

8.10 Determinations for Unit Prices

INDEPENDENT PROFESSIONAL will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by CONTRACTOR, and the written decisions of INDEPENDENT PROFESSIONAL on such matters will be final, binding on OWNER and CONTRACTOR and not subject to appeal.

8.11 Decisions on Disputes

INDEPENDENT PROFESSIONAL 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 Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to INDEPENDENT PROFESSIONAL in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to INDEPENDENT PROFESSIONAL and the other party to the Agreement 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 INDEPENDENT PROFESSIONAL and the other party within sixty (60) days after the start of such occurrence or event unless INDEPENDENT PROFESSIONAL allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to INDEPENDENT PROFESSIONAL and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless INDEPENDENT PROFESSIONAL allows additional time). INDEPENDENT PROFESSIONAL will render a formal decision in writing within thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. The INDEPENDENT PROFESSIONAL'S formal decision is entitled to a rebuttable presumption that the decision is correct and binding upon the OWNER and CONTRACTOR.

8.12 INDEPENDENT PROFESSIONAL as Interpreter or Judge

When functioning as interpreter and judge under Paragraph 8.11 INDEPENDENT PROFESSIONAL will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. INDEPENDENT PROFESSIONAL will render formal decisions within thirty (30) days of the last party's submittal. No action, either at law or at equity, shall be brought by CONTRACTOR in connection with such claim, dispute or other matter later than THIRTY

(30) days after the date on which INDEPENDENT PROFESSIONAL has rendered such written decision in respect thereof. Failure to bring an action within said THIRTY (30) day period shall result in INDEPENDENT PROFESSIONAL'S decision being final and binding upon CONTRACTOR. In no event may any such action be brought after the time at which instituting such proceedings would be otherwise barred by the applicable statute of limitations.

8.13 Limitations on INDEPENDENT PROFESSIONAL'S Authority and Responsibilities

- 8.13.1 Neither INDEPENDENT PROFESSIONAL'S authority or responsibility under this Article 8 or under any other provision of the Contract Documents nor any decision made by INDEPENDENT PROFESSIONAL in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by INDEPENDENT PROFESSIONAL shall create, impose or give rise to any duty owed by INDEPENDENT PROFESSIONAL to CONTRACTOR, any SUBCONTRACTOR, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.
- 8.13.2 INDEPENDENT PROFESSIONAL will not supervise, direct, control or have authority over or be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. INDEPENDENT PROFESSIONAL will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.
- 8.13.3 INDEPENDENT PROFESSIONAL will not be responsible for the acts or omissions of CONTRACTOR or of any SUBCONTRACTOR, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 8.13.4 INDEPENDENT PROFESSIONAL'S review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 13.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.
- 8.13.5 The limitations upon authority and responsibility set forth in this paragraph 8.13 shall also apply to INDEPENDENT PROFESSIONAL'S Consultant, Resident Project Representative and assistants.

ARTICLE 9 CHANGES IN THE WORK

9.1 Written Amendments, Change Orders

Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions 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, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Any Work, which is commenced without a Change Order, Written Amendment, or Work Directive being

approved, shall constitute a waiver of any claim of compensation for such Work. All Work Directives must be approved by OWNER'S Administration.

9.2 Disputed Change Orders

If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 10 or Article 11.

9.3 No Payment Increase

CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 5.23 or in the case of uncovering Work as provided in paragraph 12.9.

9.4 Change Order Recommendations

OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by INDEPENDENT PROFESSIONAL (or Written Amendments) covering:

- 9.4.1 Changes in the Work which are (i) ordered by OWNER pursuant to paragraph 9.1, (ii) required because of acceptance of defective Work under paragraph 12.13 or correcting defective Work under paragraph 12.14, or agreed to by the parties;
- 9.4.2 Changes in the Contract Price or Contract Times which are agreed to by the parties; and
- 9.4.3 Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by INDEPENDENT PROFESSIONAL pursuant to paragraph 8.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 5.29.

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

9.5 Quotations for Work Additions, Deletions or Revisions

At any time INDEPENDENT PROFESSIONAL may request a quotation from CONTRACTOR for a proposed change in the Work. Within TEN (10) Calendar Days after receipt of a request for a quotation for a proposed change, CONTRACTOR shall proceed to submit a written and detailed proposal for an increase or decrease in the Contract Price or Contract Time for the proposed change. INDEPENDENT PROFESSIONAL shall have TEN (10) Calendar Days after receipt of the detailed proposal to respond in writing. The proposal shall include an itemized estimate of all costs and time for performance that will result directly or indirectly from the proposed change. Unless otherwise directed, itemized estimates shall be in accordance with Articles 10 and 11 of the General Conditions, and in sufficient detail reasonably to permit an analysis by INDEPENDENT PROFESSIONAL of all material, labor, equipment, subcontracts, overhead costs and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed or impacted. Any amount claimed for Subcontracts shall be similarly supported. Itemized schedule adjustments shall be in sufficient detail to permit any analysis of impact. Notwithstanding the

request for quotation, CONTRACTOR shall carry on the Work and maintain the progress schedule. Delays in the submittal of the written and detailed proposal will be considered non-prejudicial delays.

9.6 Change in Time or Price for Work Additions, Deletions or Revisions

The adjustment in Contract Price, Contract Time or both stated in a Change Order shall comprise the total price, or time adjustment or both due or owned the CONTRACTOR for the Work or changes defined in the Change Order. By executing the Change Order, the CONTRACTOR acknowledges and agrees that the stipulated price, time adjustments or both include all costs, profits and delays for all work contained in the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, lost profits, delay, and cumulative impacts or ripple effect on all other non-affected work under this Contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in Contract Price or Contract Time as a result of increases or decreases in Contract amounts and time of performance caused directly and indirectly from the change, subject to the current scope of the entire Work as set forth in the Contract Documents. The Change Order constitutes an Agreement between OWNER and CONTRACTOR that the Change Order represents an equitable adjustment to the Contract, and that CONTRACTOR be waived all rights to file a claim including claims for extended overhead, delay, lost profits, additional costs or expenses, etc.

ARTICLE 10 CHANGE OF CONTRACT PRICE

10.1 Total Compensation

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 CONTRACTOR'S expense without change in the Contract Price.

10.2 Price Modifications

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 INDEPENDENT PROFESSIONAL promptly (but in no event later than **TWENTY (20)** Calendar 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 **FIFTY (50)** Calendar Days after such occurrence or event (unless in writing INDEPENDENT PROFESSIONAL allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event.

INDEPENDENT PROFESSIONAL in accordance with Paragraph 8.11 shall determine all claims for adjustment in the Contract Price if OWNER 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 10.2 or if asserted after Final Payment as defined in Paragraph 13.13.

10.3 Payment Adjustment Requirements

The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

- 10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 10.9.1 through 10.9.3 inclusive);

- 10.3.2 Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 10.6.2);
- 10.3.3 Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 10.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraph 10.6).

10.4 Cost of the Work

The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, 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 10.5.

- 10.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll cost 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 be limited to salaries and wages plus the cost of federal payroll taxes, state unemployment taxes and worker's compensation insurance premiums. Such employees shall include persons at the site, and superintendents and foremen at the site, but shall exclude all others. The expenses of performing the Work after regular working hours, Saturday, Sunday or recognized Declared City legal holidays (as described in 1.11), shall be included in the above only if such work is previously authorized in writing by the OWNER.
- 10.4.2 Cost of materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
- 10.4.3 Payments made by CONTRACTOR to the SUBCONTRACTORS for Work performed or furnished by SUBCONTRACTORS. If required by OWNER, CONTRACTOR shall obtain competitive Bid/Proposals from SUBCONTRACTORS acceptable to OWNER and CONTRACTOR and shall deliver such Bid/Proposals to OWNER who will then determine, with the advice of INDEPENDENT PROFESSIONAL, which Bid/Proposals, if any, will be accepted. If any subcontract provides that the SUBCONTRACTOR is to be paid on the basis of Cost of the Work Plus a fee, the SUBCONTRACTOR'S Cost of the Work and fee shall be determined in the same manner as CONTRACTOR'S Cost of the Work and fee as provided in paragraphs 10.4, 10.5, 10.6 and 10.7. All SUBCONTRACTORS shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 10.4.4 Costs of special consultants (limited to INDEPENDENT PROFESSIONALS, architects, testing laboratories, surveyors) employed for services specifically related to the Work.
- 10.4.5 Supplemental costs including the following:
- 10.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

- 10.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
- 10.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of INDEPENDENT PROFESSIONAL, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof -- all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- 10.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
- 10.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- 10.4.5.6 The cost of utilities, fuel and sanitary facilities at the site.
- 10.4.5.7 Cost of premiums for additional Bonds and insurance required because of changes in the Work.
- 10.4.5.8 Supplemental costs shall be limited to the lower of actual cost of the supplemental work or FIFTEEN PERCENT (15%) of the sum of the total costs for items 10.4.1, 10.4.2, 10.4.3, and 10.4.4.

10.5 Exception to Cost of the Work

The term Cost of the Work shall not include any of the following:

- 10.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), managers, INDEPENDENT PROFESSIONALS, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or not on site, all off-site personnel, and all personnel not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 10.4.1 or specifically covered by Paragraph 10.4.4 all of which shall be considered administrative costs covered by the CONTRACTOR'S fee.
- 10.5.2 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.
- 10.5.3 Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 10.5.4 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 10.4.5.7 above).
- 10.5.5 Fringe benefits costs such as Health and Retirement Benefits, bonuses, sick leave, vacation and holiday pay or any other fringe benefit except those specifically listed in 10.4.1.

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. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 Fee for Profit and Overhead

The CONTRACTOR'S fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

10.6.1 A mutually acceptable fixed fee; or 10.6.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

10.6.2 For costs incurred under paragraphs 10.4.1 and 10.4.2:

10.6.2.1 The CONTRACTOR'S fee shall be ten (10%) percent;

10.6.2.2 For costs incurred under paragraph 10.4.3 the CONTRACTOR'S fee shall be five (5%) percent;

10.6.2.3 Where one or more tiers of subcontracts are on the basis of the Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 10.4.1, 10.4.2, 10.4.3 and 10.6.2 is that the SUBCONTRACTOR who actually performs or furnishes the Work, at whatever tier, will be paid a fee of TEN PERCENT (10%) of the costs incurred by such SUBCONTRACTOR under Paragraphs 10.4.1 and 10.4.2 and that any higher tier SUBCONTRACTOR and CONTRACTOR will each be paid a fee of FIVE PERCENT (5%) of the amount paid to the next lower tier SUBCONTRACTOR;

10.6.2.4 No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;

10.6.2.5 The amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR'S fee by an amount equal to five (5%) percent of such net decrease; and

10.6.2.6 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 10.6.2.1 through 10.6.2.5, inclusive.

10.7 Financial Record Keeping

Whenever the cost of any Work is to be determined pursuant to paragraph 10.4 and 10.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to INDEPENDENT PROFESSIONAL an itemized cost breakdown together with supporting data.

10.8 Cash Allowances

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 furnished and performed for such sums as may be acceptable to OWNER and INDEPENDENT PROFESSIONAL. CONTRACTOR agrees that:

10.8.1 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

10.8.2 CONTRACTOR'S cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

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

10.9 Unit Price Work

- 10.9.1 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 price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bid/Proposals and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by INDEPENDENT PROFESSIONAL in accordance with paragraph 8.10.
- 10.9.2 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.
- 10.9.3 OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 10 if:
- 10.9.3.1 The quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and there is no corresponding adjustment with respect to any other item of work; or
 - 10.9.3.2 OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase; and
 - 10.9.3.3 The quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; by at least **FIFTEEN PERCENT (15%)** of such item's Bid/Proposal estimated quantity.

ARTICLE 11 CHANGE OF CONTRACT TIMES

11.1 Time Change

The Contract Time may only be changed by a Change Order or written amendment. Any claim for an extension in the Contract Time shall be based on written notice delivered to the OWNER and INDEPENDENT PROFESSIONAL within **TWENTY (20)** Calendar Days from detection or the beginning of any event or circumstance giving rise to excusable or compensable delay and setting forth the general nature of the cause of the delay. Within **FIFTY (50)** Calendar Days of any such detection or beginning of delay, CONTRACTOR shall provide the analysis and documentation required to ascertain the facts. No claim by CONTRACTOR under this provision shall be allowed unless CONTRACTOR has given the notice and the analysis and documentation required in this *Paragraph*, or if asserted after Final Payment.

11.2 Contract Limits

All time limits stated in the Contract Documents are of the essence of the Agreement.

11.3 Time Extensions

Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 11.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 6, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a SUBCONTRACTOR or Supplier shall be deemed to be delays within the control of CONTRACTOR. No forfeiture due to delay shall be made because of any excusable and prejudicial delays in the completion of the entire Work or a specified part thereof. Any such delays shall not entitle the CONTRACTOR to any additional compensation. The sole remedy of the CONTRACTOR shall be an extension of Contract Time pursuant to this Paragraph of these General Conditions in any amount equal to the number of days of delay as determined by the OWNER.

11.4 Other Time Extensions

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 OWNER 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 OWNER be liable to CONTRACTOR, any SUBCONTRACTOR, and Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (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 or neglect by utility owners or other contractors performing other work as contemplated by Article 6. No extension of Contract Time or increases in Contract Price shall be granted for non-prejudicial delays of any type or for inexcusable delays, unless otherwise agreed to by OWNER in its sole discretion.

11.5 No Recovery for Early Completion or Delay

If the CONTRACTOR submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the OWNER shall not be liable to the CONTRACTOR for any costs incurred, lost profits, extended overhead, expenses, or other damages of any kind because of delay or hindrance, regardless of whether such delay or hindrance was caused by the OWNER or by its agents, should the CONTRACTOR be unable to complete the Work before such milestone or completion date.

CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from OWNER for lost profits, direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances or delays due solely to fraud, bad faith, or active malicious interference on the part of City. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for excusable delay.

ARTICLE 12 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Notice of Defects

Prompt notice of all defective Work of which OWNER or INDEPENDENT PROFESSIONAL have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in this Article 12.

12.2 Access to Work

OWNER, INDEPENDENT PROFESSIONAL, INDEPENDENT PROFESSIONAL'S Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR'S site safety procedures and programs so that they may comply therewith as applicable.

12.3 Notice of Required Inspections

CONTRACTOR shall give INDEPENDENT PROFESSIONAL at least 24 hour notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. The CONTRACTOR shall endeavor to schedule his work during the standard 8:00 a.m. to 4:30 p.m., FIVE (5) days a week that requires an OWNER Resident Project Representative (RPR) or City's Building Inspectors to be present at the Project Site for whatever reason. This should not prevent the CONTRACTOR from proceeding with the Work that does not require constant or immediate review by the RPR or City's Building Inspectors.

12.4 Payment for Tests and Inspections

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

12.4.1 For inspections, tests or approvals covered by paragraph 12.5 below;

12.4.2 That costs incurred in connection with tests or inspections conducted pursuant to paragraph 12.9 below shall be paid as provided in said paragraph 12.9; and

12.4.3 As otherwise specifically provided in the Contract Documents.

12.5 Inspection Coordination and Costs

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish INDEPENDENT PROFESSIONAL the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER'S and INDEPENDENT PROFESSIONAL'S acceptance of materials or equipment to be

incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work.

12.6 Inspection of Covered Work

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

12.7 Payment of Uncovering Covered Work

Uncovering Work as provided in paragraph 12.6 shall be at CONTRACTOR'S expense unless CONTRACTOR has given INDEPENDENT PROFESSIONAL timely notice of CONTRACTOR'S intention to cover the same and INDEPENDENT PROFESSIONAL has not acted with reasonable promptness in response to such notice.

12.8 Uncovering Work

If any Work is covered contrary to the written request of INDEPENDENT PROFESSIONAL, it must, if requested by INDEPENDENT PROFESSIONAL, be uncovered for INDEPENDENT PROFESSIONAL'S observation and replaced at CONTRACTOR'S expense.

12.9 INDEPENDENT PROFESSIONAL'S Authority to Uncover Covered Work

If INDEPENDENT PROFESSIONAL considers it necessary or advisable that covered Work be observed by INDEPENDENT PROFESSIONAL or inspected or tested by others, CONTRACTOR, at INDEPENDENT PROFESSIONAL'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as INDEPENDENT PROFESSIONAL may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER 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 10. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 10 and 11.

12.10 Owner May Stop the Work

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, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

12.11 Correction or Removal of Defective Work

If required by INDEPENDENT PROFESSIONAL, 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 INDEPENDENT PROFESSIONAL, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

12.11.1 The CONTRACTOR shall not be entitled to an extension of the Contract Time for correcting or removing defective Work.

12.12. Correction Period

12.12.1 If within **ONE (1)** year 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 or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective 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, OWNER 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 INDEPENDENT PROFESSIONALS, architects, attorneys and other professionals) will be paid by CONTRACTOR.

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

12.12.3 Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 12.12, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

12.13 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to INDEPENDENT PROFESSIONAL'S recommendation of final payment, also INDEPENDENT PROFESSIONAL) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER'S evaluation of and determination to accept such defective Work (such costs to be approved by INDEPENDENT PROFESSIONAL as to reasonableness). If any such acceptance occurs prior to INDEPENDENT PROFESSIONAL'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 OWNER shall be entitled to an appropriate decrease in Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 10. If the acceptance occurs after such recommendation an appropriate amount will be paid by CONTRACTOR to OWNER.

12.14 Owner May Correct Defective Work

If CONTRACTOR fails within a reasonable time after written notice from INDEPENDENT PROFESSIONAL to correct defective Work or to remove and replace rejected Work as required by INDEPENDENT PROFESSIONAL in accordance with paragraph 12.11, 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, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, 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 OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees, OWNER'S other contractors and INDEPENDENT PROFESSIONAL and INDEPENDENT PROFESSIONAL'S Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 10. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

12.15 CONTRACTOR'S Obligation to Contract Documents

Neither observation by INDEPENDENT PROFESSIONAL, nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the Contract Documents. The fact that the OWNER is a municipal corporation, and has Building, Utilities, and Fire Departments which will conduct building inspections for general compliance with the applicable construction, fire, and utilities laws, shall not in any way act as an estoppel to, or a waiver of the OWNER'S right to require construction in accordance with the Contract Documents or construction in accordance with applicable building, fire, and utilities codes.

ARTICLE 13 PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values

The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to INDEPENDENT PROFESSIONAL. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Application for Progress Payment

At least twenty (20) days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to INDEPENDENT PROFESSIONAL for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

13.2.1 MONTHLY PROGRESS STATUS REPORTS

Each monthly application for progress payment shall incorporate the corresponding "Monthly Progress Status Report".

13.2.2 SECTION 255.052

The parties hereto agree that Section 255.052, Florida Statutes, does not apply to this Agreement, or to any underlying agreements and obligations to which this Agreement pertains.

13.3 Contractor's Warranty of Title

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 OWNER no later than the time of payment free and clear of all Liens.

13.3.1 MECHANICS LIENS

The CONTRACTOR covenants and agrees that no mechanics' liens, equitable liens, construction liens asserted under the Construction Lien Law, Chapter 255, Florida Statutes, or other liens against public funds or property (herein "mechanics' liens") will be permitted to arise, be filed or maintained against the OWNER, the Project or any part of it, any interest in it or any improvements on it, or any real or personal property owner by the OWNER, against any monies due or to become due from the OWNER to the CONTRACTOR, for or on account of any work, labor, services, materials, equipment or other items performed or furnished for or in connection with the Project, and the CONTRACTOR further agrees to indemnify the OWNER for any costs, charges, expenses, losses, or damages OWNER may incur as a result of any asserted mechanics' lien. CONTRACTOR agrees to cause any of the foregoing liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within thirty (30) days from the date of the filing, and upon the CONTRACTOR'S failure to do so the OWNER shall have the right, in addition to all other rights and remedies provided under this Contract or by law, to cause the liens or claims to be satisfied, removed or discharged by whatever means the OWNER chooses, at the entire cost and expense of the CONTRACTOR, the expense to include legal fees and costs and all expenses. Real property owned by a Florida municipal corporation is not subject to liens, and nothing in this paragraph shall waive the OWNER'S right to assert that its property is immune from mechanics' liens, or to waive other defenses or immunities that may be enjoyed by the City of Plantation.

13.4 Review of Applications for Progress Payment

INDEPENDENT PROFESSIONAL will, within TEN (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing INDEPENDENT PROFESSIONAL'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. TWENTY-ONE (21) days after presentation of the Application for Payment to OWNER with INDEPENDENT PROFESSIONAL'S recommendation and the approval of the application by the Administration or the City governing body (the latter by its Resolution approving the weekly bill list), the amount recommended will (subject to the provisions of the last sentence of *Paragraph 13.7*) become due and when due will be paid by OWNER to CONTRACTOR.

Prior to Substantial Completion progress payments will be in an amount equal to: **NINETY PERCENT (90%)** of the Work completed. (Major items of equipment and non-perishable materials delivered and suitably stored may be included if such items have been specified in the schedule of values provided for in *Paragraph 13.11*), and the maximum payable percentage shall be **FORTY PERCENT (40%)** for uninstalled material which is stored on-site.

13.5 INDEPENDENT PROFESSIONAL'S Recommendation

INDEPENDENT PROFESSIONAL'S recommendation of any payment requested in an Application for Payment will constitute a representation by INDEPENDENT PROFESSIONAL to OWNER, based on INDEPENDENT PROFESSIONAL'S on-site observations of the executed Work as an experienced and qualified design professional and on INDEPENDENT PROFESSIONAL'S review of the Application for

Payment and the accompanying data and schedules that to the best of INDEPENDENT PROFESSIONAL'S knowledge, information and belief:

13.5.1 the Work has progressed to the point indicated,

13.5.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 8.10, and to any other qualifications stated in the recommendation), and the conditions precedent to CONTRACTOR'S being entitled to such payment appear to have been fulfilled in so far as it is INDEPENDENT PROFESSIONAL'S responsibility to observe the Work.

However, by recommending any such payment INDEPENDENT PROFESSIONAL will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to INDEPENDENT PROFESSIONAL in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

13.6 INDEPENDENT PROFESSIONAL'S Exception for Responsibility of Contractor's Work

INDEPENDENT PROFESSIONAL'S recommendation of any payment, including final payment, shall not mean that INDEPENDENT PROFESSIONAL is responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

13.7 Payment Rejection

INDEPENDENT PROFESSIONAL may refuse to recommend the whole or any part of any payment if, in INDEPENDENT PROFESSIONAL'S opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 13.5. INDEPENDENT PROFESSIONAL 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 INDEPENDENT PROFESSIONAL'S opinion to protect OWNER from loss because:

13.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,

13.7.2 the Contract Price has been reduced by Written Amendment or Change Order,

13.7.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 12.14, or

13.7.4 INDEPENDENT PROFESSIONAL has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1 through 14.2.4, inclusive.

OWNER may refuse to make payment of the full amount recommended by INDEPENDENT PROFESSIONAL because:

13.7.5 Claims have been made against OWNER on account of CONTRACTOR'S performance or furnishing of the Work,

13.7.6 Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens.

13.7.7 There are other items entitling OWNER to a set-off against the amount recommended, or

13.7.8 OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 13.7.1 through 13.7.3 or paragraphs 14.2.1. through 14.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to INDEPENDENT PROFESSIONAL) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER'S satisfaction the reasons for such action.

13.8 Substantial Completion

When CONTRACTOR considers the entire Work ready for its intended use and meets the definition of Substantial Completion as provided in the Contract Documents, CONTRACTOR shall notify OWNER and INDEPENDENT PROFESSIONAL in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that INDEPENDENT PROFESSIONAL issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and INDEPENDENT PROFESSIONAL shall make an inspection of the Work to determine the status of completion. If INDEPENDENT PROFESSIONAL does not consider the Work substantially complete, INDEPENDENT PROFESSIONAL will notify CONTRACTOR in writing giving the reasons therefor. If INDEPENDENT PROFESSIONAL considers the Work substantially complete, INDEPENDENT PROFESSIONAL will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have fifteen (15) working days after receipt of the tentative certificate during which to make written objection to INDEPENDENT PROFESSIONAL as to any provisions of the certificate or attached list. If, after considering such objections, INDEPENDENT PROFESSIONAL concludes that the Work is not substantially complete, INDEPENDENT PROFESSIONAL will within thirty (30) working days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER'S objections, INDEPENDENT PROFESSIONAL considers the Work substantially complete, INDEPENDENT PROFESSIONAL will within said thirty (30) working days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as INDEPENDENT PROFESSIONAL believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion INDEPENDENT PROFESSIONAL will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform INDEPENDENT PROFESSIONAL in writing prior to INDEPENDENT PROFESSIONAL'S issuing the definitive certificate of Substantial Completion, INDEPENDENT PROFESSIONAL'S aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

13.9 Contractor's Access After Substantial Completion

OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

13.10 Partial Utilization

Use by OWNER at OWNER'S option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, INDEPENDENT PROFESSIONAL and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

13.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use. If CONTRACTOR agrees that such part of the Work is ready for intended use, CONTRACTOR will certify to OWNER and INDEPENDENT PROFESSIONAL that such part of the Work is so ready and request INDEPENDENT PROFESSIONAL to issue a certificate of Partial Utilization for that part of the Work. CONTRACTOR at any time may notify OWNER and INDEPENDENT PROFESSIONAL in writing that CONTRACTOR considers any such part of the Work ready for its intended use and request INDEPENDENT PROFESSIONAL to issue a certificate of Partial Utilization for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and INDEPENDENT PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion. If INDEPENDENT PROFESSIONAL does not consider that part of the Work to be ready for its intended use, INDEPENDENT PROFESSIONAL will notify OWNER and CONTRACTOR in writing giving the reasons therefor.

13.10.2 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the property insurance requirements.

OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although Final Completion has not been accomplished. A copy of such request will be sent to INDEPENDENT PROFESSIONAL and within a reasonable time thereafter OWNER, CONTRACTOR and INDEPENDENT PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and INDEPENDENT PROFESSIONAL that such part of the work is not ready for separation by OWNER, INDEPENDENT PROFESSIONAL will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER 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 OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed INDEPENDENT PROFESSIONAL). During such operation and prior to Final Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

13.11 Final Inspection

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, INDEPENDENT PROFESSIONAL will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.12 Final Application for Payment

After CONTRACTOR has completed all such corrections to the satisfaction of INDEPENDENT PROFESSIONAL and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the insurance requirements, marked-up record documents (as provided in paragraph 5.19), surveys, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of required insurance, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipt or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER'S property might in any way be responsible, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien. All documents submitted for Final Payment including all waivers and releases shall have such provisions and language as is reasonably requested by the OWNER or its legal counsel.

13.12.1 Notwithstanding any other provision of these Contract Documents to the contrary, OWNER and INDEPENDENT PROFESSIONAL are under no duty or obligation whatsoever to any SUBCONTRACTOR, laborer or other party to ensure that payments due and owing by the CONTRACTOR to any of them are or will be made. Such parties shall rely only on the CONTRACTOR'S Surety Bonds for remedy of nonpayment by the CONTRACTOR.

13.13 Final Payment and Acceptance

If, the basis of INDEPENDENT PROFESSIONAL'S observation of the Work during construction and final inspection, and INDEPENDENT PROFESSIONAL'S review of the final Application for Payment and accompanying documentation – all as required by the Contract Documents, INDEPENDENT PROFESSIONAL is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, and that the Work has reached Final Completion, as such term is defined in the Contract Documents, INDEPENDENT PROFESSIONAL will, within FIFTEEN (15) days after receipt of the final Application for Payment, indicate in writing INDEPENDENT PROFESSIONAL'S recommendation of payment and present the Application to OWNER for payment. Thereupon INDEPENDENT PROFESSIONAL will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of *Paragraph 13.15*. Otherwise, INDEPENDENT PROFESSIONAL will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

Upon Final Completion and acceptance of the Work, OWNER shall pay the remainder of the Contract Price within TWENTY-ONE (21) Calendar Days of the recommendation of the INDEPENDENT PROFESSIONAL. A Final Receipt on a form acceptable to the OWNER will be required at the time of final payment with appropriate releases of the CONTRACTOR, SUBCONTRACTOR and suppliers.

13.14 Waiver of Claims

The making and acceptance of final payment will constitute:

13.14.1 A waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 13.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, CONTRACTOR'S continuing obligations under the Contract Documents; and

13.14.2 A waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

13.15 Acceptance of Work

CONTRACTOR'S obligations to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by INDEPENDENT PROFESSIONAL, nor the issuance of a certificate of Substantial Completion or Final Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use of occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by INDEPENDENT PROFESSIONAL pursuant to *Paragraph 13.13*, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

ARTICLE 14 SUSPENSION OF WORK AND TERMINATION

14.1 Owner May Suspend Work

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and INDEPENDENT PROFESSIONAL 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 only an extension of the Contract Times, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 10 and 11.

14.1.1 NO TIME EXTENSION OR PRICE CHANGE DUE TO CONTRACTOR DEFAULT

Notwithstanding Paragraph 14.1, if the OWNER stops Work under Paragraph 12.10 or suspends the CONTRACTOR'S services under Paragraph 12.14, or suspends the Work or any portion thereof because of the CONTRACTOR'S failure to prosecute the Work or breach of the Contract Documents, the CONTRACTOR shall be entitled to no extension of Contract Time or increase in Contract price.

14.2 Owner May Terminate

Upon the occurrence of any one or more of the following events:

- 14.2.1 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 2.9 as adjusted from time to time pursuant to paragraph 5.6);
- 14.2.2 If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
- 14.2.3 If CONTRACTOR disregards the authority of INDEPENDENT PROFESSIONAL; or
- 14.2.4 If CONTRACTOR otherwise violates in any way any provisions of the Contract Documents;
- 14.2.5 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code, as now or hereafter in effect, or if CONTRACTOR takes an 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;

- 14.2.6 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;
- 14.2.7 If CONTRACTOR makes a general assignment for the benefit of creditors;
- 14.2.8 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 or the purpose of enforcing a Lien against such property or for the purpose of general administration or such property for the benefit of CONTRACTOR'S creditors;

OWNER may, after giving CONTRACTOR (and the surety, if any,) seven (7) days written notice 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 all of 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 OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by INDEPENDENT PROFESSIONAL as to their reasonableness and when so approved by INDEPENDENT PROFESSIONAL incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

14.3 Liability of Contractor if Terminated

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

14.4 Termination

Upon seven (7) days written notice to CONTRACTOR and INDEPENDENT PROFESSIONAL, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

- 14.4.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
- 14.4.2 for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- 14.4.3 for all claims, costs, losses and damage incurred in settlement of terminated contracts with SUBCONTRACTORS, Suppliers and others; and

14.4.4 for reasonable expenses directly attributable to termination;

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

If OWNER'S termination for cause is determined inappropriate or unjustified by a court of competent jurisdiction, the Contract will be deemed to have been terminated for convenience and the CONTRACTOR shall be compensated solely in accordance with this paragraph.

14.5 Contractor May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or INDEPENDENT PROFESSIONAL fails to act on any Application for Payment within thirty (30) days after it is submitted, or OWNER fails for thirty (30) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to OWNER and INDEPENDENT PROFESSIONAL, and provided OWNER or INDEPENDENT PROFESSIONAL do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 14.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if INDEPENDENT PROFESSIONAL has failed to act on an Application for Payment within thirty (30) days after it is submitted, or OWNER has failed for thirty (30) days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven (7) days written notice to OWNER and INDEPENDENT PROFESSIONAL stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 14.5 are not intended to preclude CONTRACTOR from making claim under Articles 10 and 11 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR'S stopping Work as permitted by this paragraph.

ARTICLE 15 DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedures, if any, shall be as set forth in Exhibit GC-A. "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, all claims, counterclaims, disputes, and other matters in question between OWNER and CONTRACTOR arising out of, relating to, or pertaining to this Contract, or the breach thereof, or the services provided herein, or the standard of performance herein required, shall be determined by litigation in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this agreement or the transactions contemplated hereby.

In the event of litigation in order to enforce this Contract, or which arises out of, pertains to, or relates to this Contract, or the breach thereof, or the services provided herein, or the standard of performance herein required, the prevailing party shall be entitled to a reasonable attorney's fee. Notwithstanding the foregoing sentence, the maximum attorney's fees which one party can recover from the other will not exceed \$_____ (\$25,000 unless otherwise filled in).

ARTICLE 16 MISCELLANEOUS

16.1 Giving Notice

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.

16.2 Computation of Time

16.2.1 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 city legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.2.2 A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

16.3 Notice of Claim

Should OWNER 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 16.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

16.4 Cumulative Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the OWNER, and, without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to the OWNER which are otherwise 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 it applies.

16.5 Format Of Documents, Forms, Etc.

The INDEPENDENT PROFESSIONAL shall determine the form of all submittals, notices, Change Orders and other documents permitted or required to be used or transmitted under the Contract Documents. The forms for Notice of Award, Notice to Proceed, Work Directive Change, Change Order, Field Order, Application for Payment, Certificate of Substantial Completion and Final Receipt which the INDEPENDENT PROFESSIONAL expects to use shall be subject to approval by City's Administration.

16.6 Fiscal Year Expenditure Limits

The City, during any fiscal year, shall not expend money, incur any liability, or enter into any Contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as amended, surpluses carried over to the present fiscal year, and reserves which are available for expenditure during such fiscal year. Any Contract, verbal or written, made in violation of this subsection is at the OWNER'S option null and void and in no event can money may be paid on such contract in excess of what is available for expendable for expenditures in any given fiscal year. Nothing herein contained shall prevent the making

of Contracts for periods exceeding **ONE (1)** year, but any Contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

16.7 Development Approval Or Rejection

The making of this Agreement does not constitute an abrogation of the City's governmental land development regulatory power, and the CONTRACTOR'S performance is contingent upon all such development approvals being obtained. Should the City of Plantation or another governmental authority or agency with jurisdiction not approve any required application for development approval prerequisite to the granting of a building permit, this Agreement shall become automatically null and void as if same never existed and so as to not be the basis in any respect for a damage claim as a result of such denied development order.

16.8 Material Interest

Contractor warrants that no elected official, officer, agent or employee of the City has a financial interest directly or indirectly in this Contract or the compensation to be paid under it. No City employee who acts in the City of Plantation as a "purchasing agent" as defined by §112.312(20), Florida Statutes, nor any elected or appointed officer of the City of Plantation, nor any spouse or child of such purchasing agent, nor any employee or elected or appointed officer, is a partner, officer, director, or proprietor of the CONTRACTOR'S business, and further, no such City employee purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR'S business. Material interest means direct or indirect ownership of more than **FIVE PERCENT (5%)** of the total assets or capital stock of the CONTRACTOR'S company.

16.9 Convicted Vendor List

A person or affiliate as defined §287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Department of Management Services following a conviction for a public entity crime, may not submit a Bid/Proposal on a contract to provide any goods or services to the City of Plantation, may not submit a Bid/Proposal on a contract with the City of Plantation for the construction or repair of any public building or public work, may not submit Bid/Proposals on leases of real property with the City of Plantation, may not be awarded to perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City of Plantation in an amount set forth in §287.017, Florida Statutes, for Category Two for a period of **THIRTY-SIX (36)** months from the date of being placed on the convicted vendor list.

16.10 Covenants, Agreements And Obligations Of Involved Parties

OWNER and CONTRACTOR each binds themselves, their partners, successors, and legal representatives to the other party thereto, their partners, successors, and legal representatives to all of the covenants, agreements and obligations contained in the Contract Documents.

16.11 Severability Of Contract

Should any section, paragraph, sentence, clause, phrase, or other part of this Contract be declared by a Court of competent jurisdiction to be invalid or void, such decision shall not affect the validity of this Contract as a whole or any part thereof other than the part so declared invalid or void. Also, the non-enforcement of any provision by either party with respect to any matter shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision of the remainder of this Agreement or as to similar matters or the same type of matter in the future.

16.12 No Assignments Without Consent

No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound by the assignment; 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.

16.13 Giving Notice

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 hand delivered at or sent by registered or certified return receipt mail, postage prepaid, to the last business address known to the giver of the notice.

16.14 Notices To Owner

Correspondence to the OWNER shall be addressed to the Mayor with a copy to the Administrative Chief Administrative Officer, City of Plantation, 400 NW 73rd Avenue, Plantation, FL 33317. All matters regarding possible litigation, an additional copy shall be sent to the City Attorney at the address noted herein. CONTRACTOR shall at all times notify OWNER of the current business address of the CONTRACTOR.

16.15 Rule Of Construction

Contractor acknowledges that it has been given a sufficient full and fair opportunity to consult with legal counsel of its choice concerning this Contract Document. The Contract Documents shall be construed without regard to any presumption or other rule of law requiring construction against the party causing the Contract Documents to be drafted.

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