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**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-83**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTRACT WITH CONQUEST ENGINEERING GROUP COMPANY, FOR CONSTRUCTION OF LAPALMA ACCESS ROAD AND UTILITIES IN AN AMOUNT NOT TO EXCEED \$199,674.00; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (The City) published an Invitation To Bid (ITB), for LaPalma access road and utilities project (The Project) opening on June 25, 2009; and

WHEREAS, eleven bids were received, and the low bidder was Conquest Engineering Group Company (Conquest Engineering); and

WHEREAS, staff recommends award of the contract to Conquest Engineering in an amount not to exceed \$199,674. The engineer's estimate for this project was \$312,955.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves the contract between Conquest Engineering Group Company and the City of Marathon, a copy of which is attached hereto as Exhibit "A", for the Construction of LaPalma access road and utilities in an amount not to exceed \$199,674.00, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 3. The City Manager or his designee is authorized to execute the Agreement on behalf of the City.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 14th day of July, 2009.

THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



Jimmy Morales, City Attorney



EB-0006656

"Excellence in Engineering"

5800 Overseas Highway, Suite 36
Marathon, Florida 33050
(305) 289-4161 ph
(305) 289-4162 fax

June 29, 2009

Susie Thomas, Project Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

Re: Recommendation of Award
La Palma Access Road and Utilities Project
WEC Project 08100.002

Ms. Thomas:

Bids for the above referenced project were received at the Marathon City Office until 2:00 P.M. on June 25, 2009, opened publicly, and read aloud at the Marathon City Hall in Marathon, Florida.

Weiler Engineering has reviewed the bids to formulate an opinion of the contractors' responsiveness with respect to the scopes of work advertised. This was accomplished by comparing the bids with the Engineer's construction cost estimate as on the following page.

Upon conducting reviews and evaluations of the bids, we found that most of the bids were responsive and consistent in all material aspects with the terms of the invitations. The only bidder who omitted items was the highest bidder, B&L Beneway, who did not include the certification regarding lobbying or the certification regarding non-collusion. The rest of the firms were considered responsive.

Conquest Engineering Group with a bid of \$199,674.00 was the low bidder. Based upon our previous reference checks from the Marathon Area 3 Sewer and Stormwater Collection System Project recently awarded to Conquest and our review of the Contractors' Qualification Statements, it is our opinion that the low bidder: Conquest Engineering Group is responsive. Conquest has shown the capabilities to satisfactorily construct projects of this type and magnitude within the contract time frames. Weiler Engineering recommends award of the La Palma Access Road and Utilities Project construction contract to Conquest Engineering Group.

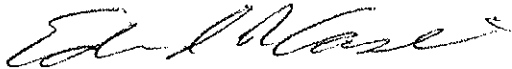
Ms. Susie Thomas
Recommendation of Award Letter – La Palma Access Road and Utility Project
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Weiler Engineering recommends that the City of Marathon consult with their financial advisor and legal counsel for their respective input and recommendations regarding these bids, as well as any other criteria that they may feel are appropriate in making a final determination of awards.

Please contact us if you need further information or have questions regarding our evaluation.

Sincerely,

The Weiler Engineering Corporation



Edward R. Castle, P.E.
Vice President, Director of Wastewater

City of Marathon La Palma Access Road and Utility Project

Bid Summary & Documents Checklist

Bidder	Rank	Bid Amount	Bid Form	Qualification Statement	Bid Bond	OSHA Conformance	Trench Safety	Evidence of Insurability	License	41 CFR Compliance	Cert. of Non-Seg	Cert. Re. Debarment	Cert. Re. Lobbying	Cert. of Non-Collusion	Buy America Cert.	Addenda
Engineer's Estimate		\$312,955.26														
Conquest Engineering Group Company	1	\$199,674.00	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Budget Construction Co., Inc.	2	\$215,000.00	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
The Redland Company, Inc.	3	\$222,093.75	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
A&A Fonte, Inc.	4	\$229,711.70	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Pabon Engineering, Inc.	5	\$245,238.00	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Central Florida Equipment Rentals, Inc.	6	\$255,829.35	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Charlie Toppino & Sons, Inc.	7	\$266,401.83	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
BAT Construction Group, LLC	8	\$294,268.55	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Atlantic Civil, Inc.	9	\$329,200.27	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
B&L Beneway Inc.	10	\$342,570.00	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y

CONSTRUCTION CONTRACT
CITY OF MARATHON

Project Name: La Palma Access Road

Owner: CITY OF MARATHON, FLORIDA

Contractor: CONQUEST ENGINEERING GROUP COMPANY

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CONSTRUCTION CONTRACT
CITY OF MARATHON

THIS CONSTRUCTION CONTRACT is by and between:

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: Clyde Burnett, City Manager
Telephone Number: (305) 289-4130
Telecopy Number: (305) 289-4123
E-mail: burnettc@ci.marathon.fl.us

("City"); and
Conquest Engineering Group Company
8491 N.W. 17th Street Suite L-111
Miami, FL 33126
Telephone Number: (305) 599-2370
Telecopy Number: (305) 599-2206
E-mail: _____

("Contractor").

Recitals

A. City is the owner of that certain real property located in Monroe County, City of Marathon, Florida, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Site**").

1.1.1.1 City desires to contract with Contractor to construct upon the Site, and Contractor desires to construct upon the Site, the following described improvements (the "**Project**") consisting of 1. Approximately 500 linear feet of vacuum sewer piping, water piping, and associated fittings, appurtenances, wells and drainage structures as shown on the plans; and 2. Approximately 500 linear feet of a 20-ft wide new paved roadway.

B. Now, therefore, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

Terms

1. DEFINITIONS, TERMINOLOGY

1.1 Definition. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof:

1.1.1 Agreement. This written instrument which is evidence of the agreement between City and Contractor covering the Work.

1.1.2 Allowances. Allowances as described in Subsection 4.1.5 herein.

1.1.3 Architect. N/A.

1.1.4 Bond. A Payment and Performance Bond in the form attached hereto as Exhibit B assuring Contractor's payment and performance which meets the requirements set forth in Florida Statutes, Section 713.23 issued by a surety acceptable to City in its reasonable discretion, which shall include claims for delay in performance.

1.1.5 Change Order. A document in the form attached hereto as Exhibit C which is signed by Contractor and City and authorizes an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Contract Times, issued on or after the Effective Date of this Agreement.

1.1.6 City. The Person with whom Contractor has entered into this Agreement and for whom the Work is to be performed.

1.1.7 City's Representative. The authorized representative of City who from time to time may be designated as the developer of the Project. The initial City's Representative is Susie Thomas.

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

1.1.9 Commencement Date. The date that Work is to be commenced and provided in the Notice to Commence.

1.1.10 Construction Schedule. The Construction Schedule as defined in Section 3.3 hereto.

1.1.11 Contract. The entire and integrated written agreement evidenced by the Contract Documents between City and Contractor concerning the Work. The Agreement supersedes prior negotiations, representations, or agreements, whether written or oral.

1.1.12 Contract Documents. This Agreement and the exhibits hereto, along with any drawings, plans and specifications, bid forms (including all documentation accompanying any bid), post-bid documentation, notice of award, notice to proceed, certificates of insurance, payment and performance bonds, permits and any additional documents which are required to be submitted under this Agreement and in connection with the Project, including all changes, modifications, amendments and supplements issued on or after the Effective Date of this Agreement.

1.1.13 Contract Times. The number of days or the dates stated in the Construction Schedule to: (i) achieve Substantial Completion for each stage of the Work; and (ii) achieve Final Completion of the Work.

1.1.14 Contractor. The person with whom City has entered into this Agreement.

1.1.15 Contractor's Fee. The amount payable to Contractor pursuant to Subsection 4.1.1.2.

1.1.16 Contractor's Representatives. The superintendent, project manager and other authorized representatives of Contractor who have been assigned to the Project.

1.1.17 Cost of the Work. Shall have the meaning given it in Section 4.2 hereof.

1.1.18 Defective. Unsatisfactory, faulty, or deficient Work in that it does not conform to the Contract Documents or does not meet the requirements of laws or regulations any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Final Completion (unless caused by City).

1.1.19 Delay. A postponement in the performance of the Work.

1.1.20 Effective Date. The date on which this Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.1.21 Engineer. The individual or firm designated by City to be City's Representative for engineering related matters during construction of the Project, if an Engineer is required.

1.1.22 Field Order. A written order issued by City which requires minor changes in the Work but which does not involve a change in the Guaranteed Maximum Price or the Contract Times.

1.1.23 Final Completion. The point at which, subsequent to Substantial Completion, all Work, or a phase of the Work if the Work has been directed in phases, required

under the Contract Documents has been fully and properly completed, including, but not limited to, punch list items, issuance of certificates of final occupancy or use, issuance by all Governmental Authorities of all required final approval, permits, and licenses required, delivery of record drawings, electronic files, and manuals to City.

1.1.24 Governmental Authorities. The United States of America, the State of Florida, the county and city, if any, wherein the Site is located, any political subdivision thereof, and any other agency, authority, or court having jurisdiction over the Project.

1.1.25 Governmental Requirements. Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all Governmental Authorities.

1.1.26 Guaranteed Maximum Price. The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in this Agreement.

1.1.27 Hazardous Substance. Includes, but shall not be limited to, any element, constituent, chemical, substance, compound, or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980, The Resource Conservation and Recovery Act, The Toxic Substances Control Act, The Clean Water Act, The Clean Air Act, and The Marine Protection Research and Sanctuaries Act, The Occupational Safety and Health Act, The Superfund Amendments and Reauthorization Act of 1986, Chapters 161, 253, 373, 376 and 403, Florida Statutes, the rules and regulations of the Florida Department of Environmental Protection, or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws. It is the Contractor's responsibility to comply with all Governmental Requirements related to Hazardous Substances during the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

1.1.28 Notice to Commence. A written notice given by City to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

1.1.29 Partial Utilization. Use by City of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose).

1.1.30 Person. An individual, firm, association, joint venture, partnership, trust, business trust, syndicate, fiduciary, corporation, and all other groups or combinations.

1.1.31 Plans. That part of the Contract Documents prepared or approved by Architect which graphically shows the scope, extent, and character of the Work to be performed by Contractor and that part of the Contract Documents consisting of written technical descriptions of materials, equipment systems, standards, and workmanship as applied to the Work and certain administrative details applicable hereto, copies of which have been signed and

exchanged by and between the parties hereto as same may from time to time be amended as provided by this Agreement.

1.1.32 Project. The total construction of which the Work upon the Site is to be performed under the Contract Documents.

1.1.33 Requisition. An itemized application for payment which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.34 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.

1.1.35 Schedule of Values. The Schedule of Values as described in Article 5 herein.

1.1.36 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.

1.1.37 Subcontract. A contract between Contractor and a Subcontractor which has been approved by City for performance of a part of the Work.

1.1.38 Subcontractor. An individual or entity having a direct contract with Contractor or with any other Subcontractor which has been approved by City for the performance of a part of the Work at the Site, including without limitation, a Supplier.

1.1.39 Substantial Completion. The time at which the Work (or a specified part thereof) has progressed to the point where the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, all licenses, permits and approvals have been issued by all Governmental Authorities, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended and the requirements of Section 5.8 have been satisfied. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.1.40 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.

1.1.41 Unavoidable Delay. A Delay which is beyond the control and without the fault or negligence of Contractor and which by the exercise of reasonable diligence Contractor is unable to prevent or provide against, including labor disputes (other than disputes limited to the work force of, or provided by, Contractor or its Subcontractors), fire, unusual delay in deliveries not reasonably anticipatable or unavoidable casualties.

1.1.42 Work. The entire completed construction and furnishing of the Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and the furnishing and installing of all fixtures and equipment, all as required by the Contract Documents, provided however, that the scope and extent of the Work may be expanded or contracted pursuant to the terms of this Agreement.

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

2. WORK

2.1 Subject to the terms and conditions of this Agreement, including the Recitals which are hereby made a part hereof, Contractor agrees to complete the Work. Contractor accepts the relation of trust and confidence established between Contractor and City by this Agreement.

2.2 The Work may be expanded or contracted by a Field Order or a Change Order. City, without invalidating this Agreement, may alter, revise, correct, add to or deduct from the Work by written Field Order or Change Order duly executed by City's Representative. Appropriate adjustments to the Guaranteed Maximum Price and Contract Time may be made in accordance with the procedures set forth in this Agreement.

2.3 All changes resulting from the mistakes, errors or omissions or Defective or non-conforming Work of Contractor or its employees, agents, Subcontractors, independent contractors or any other person engaged by it shall be performed or paid for by Contractor at no charge to City.

2.4 Contractor shall obtain before the issuance of the Notice to Commence and thereafter at all times during the performance of the Work maintain a Bond for the Work in an amount equal to one hundred percent (100%) of the Guaranteed Maximum Price in a form satisfactory to City.

2.4.1 The surety providing the Bond must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Department of Treasury, Circular 570).

2.4.2 The cost of the premiums for the Bond is included in the Guaranteed Maximum Price.

2.4.3 Within ten (10) days of issuance of the Bond, Contractor shall record the Bond in the Public Records of Monroe County.

2.4.4 Prior to performing any portion of the Work, Contractor shall deliver to City the Bond required to be provided by Contractor.

2.4.5 If notice of any change affecting the general scope of the Work, the Guaranteed Maximum Price, or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Contractor's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.

2.5 Contractor agrees to the Partial Utilization by City and its separate contractors of any completed or partially completed portion of the Work at any stage of construction regardless of whether the Contract Time has expired. In the event of Partial Utilization:

2.5.1 Contractor shall promptly secure endorsement from its insurance carrier(s), consent from its surety(ies), if any, and consent from Governmental Authorities permitting Partial Utilization.

2.5.2 Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the Project may be put into operation and use.

2.5.3 If City elects to exercise its right of Partial Utilization, City will give Contractor advance written notice of its election to take the portion or portions involved, and immediately prior to Partial Utilization, City, and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

2.5.4 Partial Utilization shall not: (1) constitute final acceptance of any Work (2) relieve Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Contractor shall not be liable for ordinary wear and tear resulting from such Partial Utilization.

3. TIME

3.1 Contractor shall commence the Work within fifteen (15) days after the receipt of a Notice to Commence from City. Contractor shall diligently prosecute the Work, in accordance with the Construction Schedule; provided, however, the Work shall not commence until:

3.1.1 the building permit for the Work has been issued;

3.1.2 Contractor has complied with the provisions of Section 2.4 pertaining to the Bond; and

3.2 Contractor shall achieve Substantial Completion of each stage of the Work and Final Completion of the entire Work on or before the time specified in the Construction Schedule. Time herein is of the essence.

3.3 Within the ten (10) days following the date hereof, Contractor shall prepare and deliver to City a construction schedule (the "Construction Schedule") which shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original Construction Schedule. If any schedule submitted by Contractor sets forth a date for completion for the Work or any phase of the Work beyond the date(s) established in the Construction Schedule (as the same may be extended as provided in the Contract Documents), Contractor shall submit to City for its review and approval a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. Overtime costs are to be assumed by Contractor unless authorized in writing by City.

3.4 Contractor and City recognize that City will suffer financial loss if the Work is not completed within the times specified in the Construction Schedule hereto, plus any extensions thereof allowed in accordance with the Contract Documents. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for Delay (but not as a penalty), Contractor shall pay City \$500.00 for each day, per stage of the Work, or sub-stage of the Work, that expires after the time specified in the Construction Schedule until the Work is finally complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by City, Contractor shall pay City \$500.00 for each day, per stage of the Work, or sub-stage of the Work, that expires after the time specified in the Construction Schedule for completion and Final Completion.

3.5 Requests for extensions of construction time due to adverse weather conditions shall include U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the nearest reporting station. The 10-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which Contractor would normally expect to encounter. If the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

4. GUARANTEED MAXIMUM PRICE

4.1 Guaranteed Maximum Price. Subject to additions and deductions which may be made only in accordance with the Contract Documents, Contractor represents, warrants and guarantees to City that the total maximum cost to be paid by City for Contractor's complete performance under the Contract Documents, including, without limitation, Final Completion of all Work, all services of Contractor under the Contract, and all fees, compensation and reimbursements to Contractor, shall not exceed the total amount of One hundred ninety-nine thousand six hundred seventy-four Dollars (\$199,674) ("Guaranteed Maximum Price"). Costs

which would cause the Guaranteed Maximum Price (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by Contractor without reimbursement by City.

4.1.1 Guaranteed Maximum Price Components. The Guaranteed Maximum Price is comprised of the maximum amount payable by City for:

4.1.1.1 the Cost of the Work listed in Section 4.2 hereof for full and complete performance of the Work in strict accordance with Contract Documents, and

4.1.1.2 a fixed fee to Contractor in the amount of \$N/A ("Contractor's Fee").

Contractor's Fee shall be Contractor's sole and exclusive compensation for all costs described as Non-Allowable Costs of the Work in Section 4.3 hereof and is inclusive of all off-Site overhead and profit arising out of or relating to Contractor's Work.

4.1.2 Cost Overruns. Subject to additions or deductions which may be made in accordance with the Contract Documents, Contractor shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and relating to the Work, without entitlement to reimbursement from City. Contractor is not entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in this Article 4.

4.1.3 Inferable Work. Contractor agrees that the Guaranteed Maximum Price includes compensation for Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, or consistent therewith, and such Work shall be performed by Contractor without any increase in the Guaranteed Maximum Price.

4.1.4 Contractor Contingency. The Guaranteed Maximum Price includes a Contractor Contingency in the amount of \$ N/A ("Contractor Contingency"). Subject to the terms of the Contract Documents, Contractor shall be entitled to allocate from and apply against Contractor Contingency Costs of the Work for the following, and no other, purposes relating to the Work: (a) implementation of any recovery plan, (b) cost overruns, (c) minor changes in the Work, (d) warranty costs prior to Final Completion, (e) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the Guaranteed Maximum Price (pursuant to Subsection 4.1.1 of this Agreement), (f) any purpose expressly authorized in this Agreement, and (g) concealed conditions; provided, however, that Contractor may not apply, use or allocate from Contractor Contingency any amounts for any of the foregoing purposes that are the result of, relate to or arise from any material breach or material failure to perform by, Contractor, any Subcontractor or Supplier (except as necessary to replace any Subcontractor or Supplier because of the bankruptcy or failure to perform of such Subcontractor or Supplier), or any party for which any of them are liable or responsible at law or under the Contract Documents or for any Non-Allowable Costs of the Work. Each allocation of Contractor Contingency by Contractor shall be reflected (with a narrative explanation) on the respective Requisition for the period during which Contractor makes such allocation and

application. Any portion of Contractor Contingency remaining unallocated at Final Completion shall be a credit against and reduce the Guaranteed Maximum Price.

4.1.5 Allowances. The Guaranteed Maximum Price includes specific allowance amounts (the "Allowance Amounts") for certain items including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation (the "Allowance Items"). Contractor agrees that the Allowance Amounts represent all Costs of the Work of the Allowance Items.

4.1.6 Change Orders. Additions to the Work made by reason of a Change Order issued through no fault of Contractor or any Subcontractor shall be charged to and paid by City as an increase to the Guaranteed Maximum Price in the amount equal to the direct cost paid by Contractor for said additional labor and materials without an increase in Contractor's Fee or General Conditions Cost (except for an increase in the bond premium, if any). Further, Contractor shall provide in each Subcontract that the Subcontractor shall likewise provide the additional labor and materials at its direct cost without any increase in its fee or general conditions cost (except for an increase in its bond premium, if any).

4.2 Cost of the Work. "Cost of the Work" means those elements of costs described in this Section 4.2 up to the Guaranteed Maximum Price (less Contractor's fee and subject to change only as provided in this Agreement) which are chargeable to City and payable to Contractor when reasonably, actually and necessarily incurred by Contractor during proper performance of the Work, without mark-up or add on of any kind by or at the request of Contractor. Such costs shall be actual costs paid by Contractor less all discounts, rebates and salvages taken by Contractor. All amounts paid or payable as Costs of the Work shall be subject to verification by audit pursuant to this Agreement. Contractor covenants and agrees to use its best efforts to achieve the lowest price or cost reasonably available and consistent with the Contract Documents, for all Cost of the Work items. Costs of the Work shall be strictly limited to and include only the following items:

4.2.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall not be included in the above unless authorized in writing by City.

4.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and supplier's field services required in connection therewith. All trade discounts, cash, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they may be obtained.

4.2.3 Supplemental costs including the following:

4.2.3.1 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities and utilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work.

4.2.3.2 Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by City with the advice of the City's Representative, with the recommendation of Architect or Engineer, and the costs, of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

4.2.3.3 Sales, consumer, use or similar taxes related to the Work and for which Contractor is liable, imposed by laws and regulations.

4.2.3.4 Royalty payments and fees for permits and licenses.

4.2.3.5 The cost of utilities, fuel and sanitary facilities at the Site.

4.2.3.6 Expenses such as telegrams, long distance telephone calls, copiers, telephone service at the Site, or expressage used in connection with the Work.

4.2.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

4.3 Non-Allowable Cost. "Non-Allowable Cost" means the direct and indirect costs described in this Section 4.3 and all similar costs and all other costs not included within Costs of the Work, which are paid or incurred by Contractor during performance of the Work. All such Non-Allowable Costs are included in Contractor's Fee set forth in Subsection 4.1.1 above, regardless of whether they exceed the amount of such Contractor's Fee. Contractor shall not be entitled to receive any additional reimbursement for Non-Allowable Costs of the Work, including without limitation, any of the types of cost items described as follows:

4.3.1 Costs in excess of the Guaranteed Maximum Price;

4.3.2 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, surveyors, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in Contractor's principal or a branch office for general administration of the Work and not specifically agreed upon, all of which are to be considered administrative costs covered by Contractor's fee.

4.3.3 Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

4.3.4 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4.3.5 Costs due to the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

4.3.6 Costs of repairing Defective or non-conforming Work or Work damaged by Contractor, Subcontractors, sub-subcontractors, materialmen, anyone directly or indirectly employed by any of them, or for those acts or omissions any of them are responsible or liable at law or under the Contract Documents;

4.3.7 Costs incurred by Contractor in satisfying its indemnification obligations pursuant to this Agreement or any other Contractor indemnification provision of the Contract Documents;

4.3.8 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 4.2.

4.4 Contractor's Responsibility For Taxes. Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions of each, which are legally required at any time during Contractor's performance of the Work.

4.5 Discounts, Rebates and Refunds. All cash discounts (so long as City has made payment to Contractor to the extent advance or timely payment is necessary to obtain such cash discount), trade discounts, rebates and refunds obtained by Contractor during the course of the Work, and all amounts received from sales of surplus materials and equipment, shall accrue to City. Contractor shall take all necessary steps to obtain, secure and pass on such credits to City and all such discounts, rebates and refunds shall be fully reflected in Contractor's monthly applications for progress payment submitted pursuant to Article 5 of this Agreement. Title to all materials, tools, and equipment paid for by City shall be vested in City. At the completion of the Work and when no longer required, such tools, equipment and materials as remain shall belong to City and be, as City may direct (a) sold at the direction of City and all sums and allowances realized credited against the Cost of the Work for all purposes under this Agreement or (b) delivered to City, all as City shall direct.

4.6 No Duplication. Notwithstanding the breakdown or categorization of any costs in this Article 4 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

4.7 Claims. Any Claim by Contractor for an addition to Guaranteed Maximum Price or the Contract Time shall be made pursuant and subject to the terms and conditions of this Section 4.7:

4.7.1 The Claim must be in writing and delivered to City within ten (10) days after Contractor knew or reasonably should have known of the condition or act upon which the Claim is made, and if based upon an unknown or concealed Site condition, Contractor shall not change such condition until ten (10) days after City has received said Claim.

4.7.2 The Claim must state the factual basis upon which the Claim is made, the date that Contractor first knew of the circumstances resulting in the Claim and the cost and time consequences of the condition or act resulting in the Claim.

4.7.3 The Claim shall only be approved to the extent that Contractor establishes that Contractor incurred additional direct costs or additional time solely as a result of such condition or act.

4.7.4 No Claim by Contractor for an addition to the Guaranteed Maximum Price which is based upon Contractor providing labor or material that it was not obligated to provide pursuant to the Contract Documents shall be permitted unless Contractor has provided written notice to City prior to providing said additional labor or materials.

4.7.5 If a Claim is based upon an Unavoidable Delay, Contractor's sole remedy shall be an extension of Contract Time for such reasonable time as is required by such Delay. If the Claim is based upon a Delay caused by City, Contractor shall be paid any additional Cost of the Work caused by such Delay in addition to an extension of time. If the Delay is caused in whole or in part by any act, neglect, or authorization of Contractor, Subcontractor, Sub-subcontractor or any employee of any of them, there shall be no increase in the Contract Time or the Guaranteed Maximum Price.

4.7.6 Any Claim by Contractor which is not made in strict compliance with this Section 4.7 shall be deemed to have been waived by Contractor.

4.7.7 City shall have a reasonable time after receipt of a Claim within which to determine whether it shall be granted and, if granted, shall be affected by a Change Order. Contractor shall not have a right to stop the Work pending the resolution of a dispute over whether the Claim should be approved.

4.7.8 The acceptance of final payment shall constitute a waiver of all claims by Contractor against City other than those previously made in writing and still unsettled as of the date of final payment.

5. PAYMENT

5.1 Schedule of Values. Schedule of Values is attached as Exhibit D. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as City may require. This schedule, unless objected to by City shall be used as a basis for reviewing Contractor's Requisition. The Schedule of Values shall be used only as basis for progress payments and shall not be considered as a basis for reducing or increasing the Guaranteed Maximum Price.

5.2 Partial Payment Amounts. In accordance with the procedures set forth below in this Article 5, Contractor shall be entitled to partial payment of the Guaranteed Maximum Price for the portions of the Work completed and acceptable to City, Architect or Engineer and not more frequently than monthly in an amount equal to:

5.2.1 The lesser of (i) the value, as determined in accordance with the Schedule of Values, or (ii) the amounts paid by Contractor for such portions of the Work.

5.2.2 Each payment (including but not limited to payments for Change Orders) shall be subject to a retainage of ten percent (10%) (the "Retainage") which shall be released upon Final Completion.

5.2.3 Partial payments shall constitute advances against the Guaranteed Maximum Price until final payment is made and accepted. No partial payment made nor approval of a partial payment, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

5.3 Applications for Progress Payments. Contractor may make applications for periodic progress payments by submitting to City before the twenty-fifth (25th) day of each month (but not more often than once a month) a Requisition for those items properly payable hereunder.

5.3.1 Each Requisition shall be submitted on City's customary forms.

5.3.2 Requisitions shall show the percentage completion of each portion of the Work as of the end of the period covered by the Requisition. Contractor will also furnish such other supporting evidence as may be requested by City to establish the cost or value of the improvements and equipment for which each payment is to be and has been made.

5.3.3 City, within ten (10) business days after receipt of the Requisition, will remit to finance for such amount (if any) as City determines to be properly due, or to state in writing the reasons for withholding payment. City will pay an approved Payment Request to Contractor within ten (10) business days after it has remitted the request for payment to finance (the "Payment Date").

5.3.4 Contractor, after receipt of an objection to funding, shall have until the seventh (7th) business day next preceding the Payment Date within which to cure such objection and still be paid on the Payment Date. If the objection is not cured prior to the seventh (7th) business day next preceding the Payment Date, but is subsequently cured, the same shall be paid on the Payment Date that is not less than seven (7) business days after the cure date.

5.4 Title. Contractor warrants and guarantees that title to all Work, materials and equipment covered by a Requisition whether incorporated in the Project or not, will pass to City upon the receipt of currently due payment by Contractor, free and clear of all liens, claims or encumbrances; and that no Work, materials or equipment covered by a Requisition will have been acquired by Contractor; or by any other person performing the Work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise (including

retainage) imposed by Contractor or such other person. A partial release of lien will be required with each payment request. Stored Materials. City shall have the right, in its sole discretion, to withhold its consent to any payment for materials purchased or to be purchased but not yet installed or incorporated into the Project (the "Stored Materials"). Without limiting the generality of the foregoing, City, as a condition to its consent to any advance request relating to Stored Materials, may require that Contractor supply City with the following:

5.4.1 Evidence satisfactory to City that:

5.4.1.1 the Stored Materials requested are included within the coverage of the insurance policies required by this Agreement;

5.4.1.2 upon payment, ownership of the Stored Materials will vest in City free of liens and claims of third parties;

5.4.1.3 the Stored Materials will be stored on the Property for no more than forty-five (45) days unless otherwise agreed to in writing by City prior to the storage of such materials;

5.4.1.4 if off Site, that the Stored Materials will be placed in a bonded warehouse acceptable to City in its sole discretion; and

5.4.1.5 the Stored Materials are adequately protected from theft and damage.

5.4.2 A monthly inventory of all Stored materials must be provided to City by Contractor which will accurately reflect the materials stored and its declared value.

5.4.3 Contractor shall bear the risk of loss for Stored Materials to the extent such loss is not paid by the insurance policies.

5.5 Substantial Completion. Substantial Completion shall be deemed to have occurred upon (a) the submission of a Certificate of Substantial Completion (in the standard AIA form) to City by the Architect, (b) the issuance of a Temporary Certificate of Occupancy or Temporary Certificate of Use, as applicable, for any portion of the Project requiring said Certificates, (c) the issuance of all necessary approvals, permits and licenses for the operation of the Project and (d) the completion of all operational testing indicating the Project can be used for the purposes and to the capacity required by the Contract Documents. Prior to Contractor requesting City to perform the Substantial Completion review, Contractor shall inspect the Project and prepare a list of all deficient and unfinished Work. The list shall be submitted to City for review. At Substantial Completion, a final Punch List will be prepared and provided to Contractor. The final Punch List will contain a listing of all known remaining incomplete items of the Work, but is not to be considered by Contractor as a waiver by City of Contractor's obligation to complete all the Work in complete compliance with Contract Documents.

5.6 Final Completion. When Contractor determines that it has achieved Final Completion of the Work, it shall submit to City a Final Requisition, and City will promptly make an inspection of the Work and, if the Work is completed as required pursuant to the Contract

Documents, the Contract has been fully performed, and the conditions set forth in Subsections 5.7.1 through 5.7.9 below have been fulfilled, the Architect or Engineer will issue a Certificate of Final Completion (the "Certificate of Final Completion"), which shall be countersigned by City, stating that on the basis of observations and inspections the Work has been completed in accordance with this Agreement and all other terms and conditions of the Contract Documents. If and to the extent that there are Punch List items to be completed, the final balance due Contractor under the Contract less 200% of the cost to complete the punch list items shall be payable to Contractor by City within thirty (30) days after delivery of the Certificate of Final Completion and the balance shall be payable within thirty (30) days following completion of the punch list items; provided however that at such time as the balance of the punch list items may be completed for an amount less than \$100,000.00, Contractor may elect to accept the balance due less \$200,000.00 and City shall assume responsibility for completion of the remaining punch list items; further provided, however, that such assumption of responsibility by City shall not mitigate or reduce Contractor's warranties with respect to the Work which warranties shall become effective at such date as Contractor completes the punch list items or elects to accept the reduced payment.

5.6.1 City shall have received and approved the General Contractor's Affidavit in conformity with Section 713.06(3)(d), Florida Statutes, certifying that all construction costs have been paid or provision for the payment thereof acceptable to City has been made.

5.6.2 Contractor shall have delivered or caused to be delivered to City;

5.6.2.1 three (3) complete sets and one electronic set of civil engineering, architectural, structural, mechanical, electrical, plumbing, fire protection, interior design, landscaping drawings, shop drawings; and, field adjustments by Contractor and specifications, together with all such other reasonable information or documentation as may be reasonably required as "As-Built" drawings to be approved by the Governmental Authorities having jurisdiction thereof;

5.6.2.2 five (5) copies of the survey (the "Final Survey") prepared and sealed by a Florida licensed land surveyor or civil engineer in accordance with "Minimum Standard Detail Requirements for Land Title Surveys" jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping and include Items 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 13 of Table A thereof, and prepared pursuant to the accuracy standards (as adopted by A.L.T.A. and A.S.C.M. in effect on the date of the survey) of an urban survey.

5.6.3 City shall have received satisfactory evidence that no Uniform Commercial Code financing statements or fixture filings resulting from Contractor's or any person claiming by, through or under Contractor, purchase or lease of materials or equipment are recorded or filed in the Office of the Florida Secretary of State or in the Official Records of Monroe County, against City's interest in the Property or the Project.

5.6.4 Contractor shall have delivered to City appropriate approvals to occupy and use the Project for its intended purpose from all Governmental Authorities, which

approvals shall be evidenced by an irrevocable certificate for the permanent occupancy thereof, and such other certificates as may be required with respect thereto.

5.6.5 The Project shall have been completed in accordance with the Plans, Specifications, and all legal requirements, and City shall have received a standard AIA form of Certificate of Final Completion, signed by the Architect or Engineer, and approved by City, certifying that the Project has been completed in a good and workmanlike manner and in accordance with the Plans.

5.6.6 Contractor shall have submitted to City copies of all Project agreements, permits, and licenses, and all insurance policies or certificates required under the Contract.

5.6.7 Contractor shall have delivered to City: (1) all manufacturer's and subcontractor's warranties duly assigned to City, and (2) maintenance and operating instructions for all systems in the Project.

5.6.8 Any mechanical equipment, plumbing fixtures or any other mechanical devices furnished and installed by Contractor shall be thoroughly checked, started up, tested and adjusted by Contractor after installation to insure that they are in good working condition and operating properly.

6. CITY'S DELIVERIES; REPRESENTATIVES

6.1 City has delivered, and Contractor hereby acknowledges receipt of one (1) set of the Plans, which have been initialed by City and Contractor for identification. Additional sets of the Plans shall be supplied by City to Contractor upon payment by Contractor of the reasonable cost of reproduction of the Plans. The Plans shall not be used on any other work without the written consent of City.

6.2 City has delivered to Contractor an initial map of a current survey of the Site and had placed on the Site reference stakes and markers both for horizontal and vertical control.

6.3 Only City's Representative and such other individuals who may be so named by City from time to time shall be authorized to represent and bind City hereunder.

7. CONTRACTOR'S REPRESENTATIONS. Contractor hereby represents and warrants to City that:

7.1 Contractor is duly organized, validly existing and in good standing under the laws of both state of its incorporation and the State of Florida and it has the full right, power and authority to execute, deliver and carry out the terms and provisions of this Agreement.

7.2 The person executing this Agreement on behalf of Contractor is duly authorized to sign and execute this Agreement on behalf of Contractor.

7.3 There are no actions, suits or proceedings pending or threatened against Contractor which could, directly or indirectly, adversely affect its performance under this Agreement.

7.4 There are no acts, approvals or other conditions precedent to be performed by City or any other party (except as set forth in this Agreement) in order for Contractor to commence and complete the Work described in this Agreement in a timely fashion.

7.5 Contractor is experienced, duly licensed and skilled in the type of work to be performed by Contractor hereunder.

7.6 Contractor has carefully examined the Contract Documents, including, but not limited to, all Plans incorporated therein, and agrees that the Contract Documents are adequate and sufficient for the performance of the Work.

7.7 Contractor has visited the Site and is familiar with the local, surface and subsurface conditions under which the Work is to be performed and has correlated its observations with the requirements of this Agreement.

7.8 Contractor has obtained and carefully studied all examinations, investigations, explorations, tests, studies, and data concerning conditions at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto

7.9 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Guaranteed Maximum Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

7.10 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and Plans identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

7.11 Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents.

7.12 All Governmental Requirements and materials required by Contractor to perform the Work have already been received or, if not received, will be ordered in a timely fashion, in order to permit the timely completion of the Work.

7.13 Contractor can perform the Work within the Contract Time for the Guaranteed Maximum Price.

8. **CONTRACTOR'S COVENANTS**

8.1 Plans.

8.1.1 Subject to the provisions of this Agreement which require Contractor to construct the Project in accordance with Governmental Requirements, all Work shall be done in strict compliance with the Plans, any approved Shop Drawings and any detail drawings furnished during the progress of the Work and necessary for the completion of same. The Plans are intended to provide for the finished Work and Contractor shall not avail himself of any defect in the Plans which is known to or should be known to Contractor. No Change Orders shall be permitted for items which are reasonably inferable from the Contract Documents or for changes necessitated in order for the Work to be in compliance with Governmental Requirements.

8.1.1.1 Contractor shall maintain at the Site one copy of the Plans together with approved Shop Drawings, Field Orders, Change Orders and other modifications, in good order and marked to record all changes made during construction. These shall be available to City and Architect or Engineer. The Plans, marked to record all changes made during construction, shall be delivered to City upon completion of the Work.

8.1.1.2 Contractor shall cooperate with City and shall assist and provide information to City's consultants in the preparation of "as-built" Plans. In furtherance of the foregoing, Contractor shall provide said consultants with detailed information, measurements, locations and identification of the Work together with any and all other data requested by said consultants for the preparation of said "as-built" Plans. Contractor shall receive no additional compensation for such cooperation and information.

8.1.1.3 Contractor shall review all Shop Drawings and Samples to confirm that they comply with the Contract Documents and shall submit same for review by City not later than forty-eight (48) hours prior to incorporation in the Project of the subject Work or materials and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor or subcontractor. All Shop Drawings and Samples shall conform to the requirements of the Contract Documents. No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved by the Architect or Engineer and City. All such portions of the Work shall be in accordance with approved Shop Drawings and Samples.

8.2 Lines, Grades, Measurements, and Surveys.

8.2.1 Contractor hereby assumes full responsibility for the accuracy of all layouts, lines, levels and measurements. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of such conditions shall rest on Contractor.

8.2.2 Contractor shall be responsible for all such stakes and markers. Any stakes or markers so damaged by Contractor or any Subcontractor will be replaced by Contractor.

8.2.3 Upon completion of the foundation, Contractor shall furnish to City three (3) copies of a sealed foundation survey showing the exact location of the completed construction.

8.3 Staffing and Supervision.

8.3.1 Contractor shall furnish efficient business administration and adequate skilled employees, work places, materials, machinery, equipment and tools necessary and adequate to accomplish the Work in accordance with the Construction Schedule.

8.3.2 Contractor shall supervise and direct the Work, using its best skill and attention. It shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. It is understood and agreed that the relationship of Contractor to City shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of City, or (2) create any partnership, joint venture, or other association between City and Contractor. Any direction or instruction by City in respect of the Work shall relate to the results City desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

8.3.3 Contractor shall employ a competent superintendent Project Manager and necessary assistants who shall oversee the Work at the Project Site. All communications given to the Superintendent shall be binding upon Contractor. Contractor's agreement that the Superintendent and Project Manager assigned by Contractor to directly supervise and coordinate the performance of the Work is and was a material inducement to City to enter into the Contract. If Superintendent does not remain the Superintendent for any reason whatsoever or if the Project Manager does not remain the project manager for any reason whatsoever, City reserves the right to review and approve or disapprove said Superintendent's or Project Manager's replacement, as applicable, in City's reasonable discretion. If after good faith and diligent efforts Contractor is not able to provide a replacement reasonably satisfactory to City, the Contract, may, at City's option, be terminated for cause.

8.3.4 Contractor shall be responsible to City for the acts and omissions of all its employees and all its Subcontractors, their agents and employees, and all other persons performing any of the Work.

8.3.5 Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors and shall not knowingly employ on the Site any unfit person or anyone not skilled in the task assigned to him. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Contractor shall take all reasonable efforts to prevent any damage to City as a result of work stoppages, slowdowns, disputes or strikes.

8.3.6 Contractor shall perform the Work in a prompt and diligent manner and shall not delay, hinder or interfere with the performance on the Project by others in any manner whatsoever, including, but not limited to, interference by picketing, or refusing to work with other trades or refusing to work as a result of the picketing of others. Failure to comply with these provisions shall be deemed a material breach of the terms and conditions of the Contract and Contractor shall be liable for all damage to City for such breach including, but not limited to, those damages resulting directly or indirectly from the inability of other contractors or trades to timely perform pursuant to their contracts or otherwise.

8.4 Fees, Permits, Licenses. Contractor shall pay for and obtain as necessary any and all fees, royalties, permits and licenses associated with the Work. In the event that Contractor or Subcontractor is required by the Governmental Authority to secure a special permit in order to perform the Work, Contractor shall furnish City with a copy of such permit prior to commencement of any of the Work.

8.5 Patents. Contractor shall pay all royalties and license fees and shall defend and indemnify and save City harmless from any and all suits and liabilities arising from any claim that the means, methods, techniques, sequence or procedures of performing the Work infringes upon patent rights, except that City shall be responsible for all such loss when a particular design, process or the produce of a particular manufacturer or manufacturers is specified, but if Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless it promptly gives such information to City and Architect or Engineer.

8.6 Approvals. Contractor shall, without any extra charge or cost to City, attend meetings public or private with public officials, governmental agencies, utility companies or authorities and attend all public hearings or meetings as required in order to secure all necessary permits and approvals for the Work.

8.7 Governmental Requirements.

8.7.1 Contractor shall perform the Work in strict compliance with all Governmental Requirements; provided, however, when the Contract Documents require the Work, or any part of same to be above the standards required by applicable Government Requirements, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

8.7.2 If Contractor observes that any of the Contract Documents are at variance with any Governmental Requirements, in any respect, it shall promptly notify City and Architect or Engineer in writing, and any necessary changes shall be adjusted by appropriate modification.

8.7.3 If the Work does not comply with all Governmental Requirements, Contractor shall correct the Work with no additional compensation payable to Contractor.

8.8 Cooperation and Coordination.

8.8.1 Contractor shall perform the Work in such a manner so as not to interfere with the progress of the Project as a whole and shall cooperate with City, its agents, employees and other contractors.

8.8.2 Contractor shall attend all meetings, as required by City during the course of the Work, with City, other contractors or suppliers to review the progress of the Work to schedule the completion of the Work and to coordinate all aspects of the Work. Contractor shall not receive any additional compensation for attendance at such meetings.

8.9 Workmanship. Contractor shall perform all Work in a good and workmanlike manner in conformance with the best of modern trade practice and in strict conformance with the Contract Documents. All materials used shall be new, clean and of the most suitable grade of their respective kinds for the purpose, and all workmanship shall be first class. Should the Plans fail to particularly describe the material or kind of goods to be used in any place, then it shall be the duty of Contractor to make inquiry of City and Architect or Engineer as to what is intended. The material that would normally be used in this place to produce first quality finished Work shall be considered a part of the Contract.

8.10 Inspections, Testing and Approvals.

8.10.1 Contractor shall arrange for any inspection required by any Governmental Authorities during the course of construction and installation of the Work. Contractor shall give City, Architect or Engineer timely notice of readiness for inspection and the date arranged for inspection so that City, Architect or Engineer may observe such inspection, testing or approval. Accurate records shall be kept and provided to City.

8.10.2 In addition to the right granted to City by any other provision of this Agreement, City, Architect or Engineer shall have the right to inspect the progress of the Work required to be performed off Site.

8.11 Delivery, Storage, and Installation of Tangible Personal Property.

8.11.1 Contractor shall secure and maintain all materials, equipment, machinery, appliances and other tangible personal property to be incorporated into or attached to the Project (collectively, the "Personal Property") until completion of the Work and satisfactory acceptance by City. Contractor shall be solely responsible for the loading, unloading, delivery, hoisting and uncrating of all Personal Property from Supplier to storage point on the Site, and from there to the actual point of usage, whether said Personal Property has been bought by Contractor or City.

8.11.2 Contractor shall be responsible for storage and warehousing of all Personal Property.

8.11.3 Contractor shall be responsible for the security of all Personal Property until Final Completion of the Work and acceptance by City.

8.11.4 Contractor shall, if required by City or Architect or Engineer, furnish satisfactory evidence as to the kind and quality of any materials to be used in performance of the Work.

8.12 Tests. If the Contract Documents or Governmental Requirements require any Work to be inspected, tested or approved, Contractor shall give City and Architect and/or Engineer timely notice of its readiness and of the date arranged so that they may observe such inspection, testing or approval. Contractor shall bear all costs of any tests unless otherwise provided. Contractor shall make available to City and Architect or Engineer any and all test results for review and for use in preparing final certifications.

8.13 Clean-Up. During the progress of the Work, Contractor shall at all times keep and maintain the Site clean and free from accumulations of waste materials, rubbish and other debris resulting from the Work. On a daily basis, all debris and discarded material resulting from the Work shall be removed from the Project by Contractor or placed in a waste container approved by City. The completed Project shall be delivered to City clean of any debris and scrap generated by Contractor and 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. In the event that Contractor shall fail to clean the Site as agreed within forty-eight (48) hours after City has given Contractor notice thereof then at any time and from time to time, City may at its option, and in addition to any other remedy available, cause the same to be remedied and deduct the cost of same from the next following approved payment to Contractor.

8.14 Protection of Property.

8.14.1 As Work is completed, Contractor shall use reasonable efforts to protect same from damage by the elements and from damage caused by the performance of Work. Contractor shall also protect all other parts of the Project from damage by the Work. Should any damage to the Work be caused, either by Contractor's failure to properly protect the Work, or should the work of others be damaged by Contractor or any Subcontractor, Contractor shall immediately repair the same without compensation other than that provided by the proceeds of the insurance policies required by this Agreement. In the event that a hurricane alert is put into effect for the area containing the Project, Contractor shall immediately secure the Work in accordance with City's instructions without any additional compensation from City.

8.14.2 Contractor shall be responsible for any damage, theft, vandalism or mysterious disappearance of its own equipment or materials from the time such equipment and materials are placed on or about the Project. Materials placed on or about the Project by Contractor shall be at the sole risk of Contractor until said materials are accepted by City. After delivery and prior to acceptance by City, all responsibility and expense for a loss, damage, vandalism, mysterious disappearance or misuse of the material shall be Contractor's.

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

8.14.3.1 All persons on the Site or who may be affected by the construction;

8.14.3.2 All of the construction and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

8.14.3.3 Other property at the Site or adjacent thereto, including portions of the Project completed prior to the date hereof, trees, shrubs, lawns, irrigation, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

8.14.4 All damage, injury, or loss to any property referred to in Subsections 8.14.3.2 or 8.14.3.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor.

8.15 Hazardous Substances. Except as set forth herein with respect to Contractor's obligations to (i) notify City upon discovering or encountering any Hazardous Substances, (ii) stop work pending City's direction, and (iii) to take no other action with respect to such Hazardous Substances without City's prior written approval, Contractor shall have no responsibility for the discovery, presence, handling, containment, removal disposal, remediation, corrective action or other response to, or for exposure of persons to, any Hazardous Substances which exist in any form at, on, in, below, or above the Site as at the Effective Date. The foregoing shall not apply to any such Hazardous Substances introduced to the Site by Contractor or anyone acting by, through or under Contractor, including Subcontractors, and, notwithstanding anything to the contrary in this Agreement, Contractor shall have full responsibility therefor and shall indemnify and hold City harmless from any liability or loss caused thereby.

8.16 Safety Precautions and Programs. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, and comply with any or all Governmental Requirements with respect to the Work.

8.17 Safety of Persons.

8.17.1 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss as a result of Contractors, or Subcontractors actions, to all persons working on the Project.

8.17.2 Contractor shall comply with all Governmental Requirements for the safety of persons or property or to protect them from damage, injury or loss. It shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent utilities.

8.17.3 Contractor shall notify owners of adjacent property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

8.17.4 When the use or storage of Hazardous Substances is necessary for the execution of the Work, Contractor shall exercise appropriate care and shall carry on such activities under the supervision of properly qualified personnel. Storage of any Hazardous Substance shall comply with all Governmental Requirements.

8.17.5 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 City has made final payment to Contractor.

8.18 Emergencies.

8.18.1 In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act in a timely manner to prevent threatened damage, injury or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. Contractor shall be responsible for providing first aid and medical care in accordance with applicable laws and regulations.

8.18.2 Contractor shall remit a hurricane plan to City for approval. Contractor shall be required to secure or remove from the Site, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the Work, City's installations and public or private property. Site excavations shall be required to be secured or backfilled. No Contractor equipment may be parked within 100 feet of any City facilities. In the event of the issuance of a tropical storm warning, City will attempt to notify Contractor, however, Contractor is responsible for preparing for a tropical storm event. Contractor shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.

8.18.3 City's Representative may, but is not required to, order the Work be stopped if a condition of eminent danger exists. Nothing shall be constructed to shift responsibility or risk of loss for injuries or damages, cost of stoppage or delay of work, from Contractor to City. Contractor shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at worksite and work.

9. WARRANTY

9.1 Contractor warrants that:

9.1.1 The Work (or such portion of the Work that has been completed by Contractor if the Work is not completed for any reason) will be fit and will function for the particular purpose it was designed or intended; shall be in accordance with the Contract Documents and will not be Defective; will be free from any contamination by Hazardous Substances; and shall comply with all Governmental Requirements, including, without limitation, building, zoning, fire and safety codes, and the Americans with Disabilities Act.

9.1.2 All labor, material, equipment and supplies furnished and the Work completed pursuant to the Contract will be new, of the highest quality, free from faults and defects and in conformance with the Contract Documents as to kind, quality, function, design, and characteristic of materials and workmanship specified.

9.2 City's Representative, Architect or Engineer and other representatives of City, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

9.3 Contractor shall obtain warranties from each of its Subcontractors, which warranties shall run in favor of City. Contractor shall assign to City all manufacturer and dealer warranties and guarantees on equipment and materials, together with any other warranties or guarantees required by the Contract Documents.

9.4 If the Work is Defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, City may order Contractor to stop the Work, or any portion thereof, until the cause for such failure has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City to exercise this right for the benefit of Contractor or any other party.

9.4.1 If required by City's Representative, with the recommendation of the Architect or Engineer, Contractor shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by City's Representative, upon the recommendation of the Architect or Engineer, remove it from the Site and replace it with non-Defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of City's Representative, the Architect or Engineer, attorneys and other professionals) made necessary thereby.

9.4.2 If within one (1) year after the date of final completion or within any designated manufacturer's warranty, whichever is greater, 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 City and in accordance with City's written instructions, either correct such Defective Work, or, if it has been rejected by City or City's Representative, based on the recommendation of the Architect or Engineer, 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, City may have the Defective Work corrected or the rejected Work removed and replaced, and all of City's direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of the Architect or Engineer, attorneys and other professionals) will be reimbursed by Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by written amendment.

9.4.3 City shall reserve and retain all of its rights and remedies at law and equity against Contractor and its surety for damages and for corrections of any and all latent defects.

9.4.4 Any Defective construction that is either corrected or rejected and replaced will be warranted and guaranteed for a period of one (1) year from the date of acceptance of such correction or removal and replacement, even if it had previously been corrected or replaced, in accordance with the provisions of this Article 9. If within such extended warranty period, the Work is once again found to be Defective, City shall be entitled to all of City's rights and remedies under this Article.

9.5 Contractor shall indemnify and hold harmless City from any claims, loss, damage or expense due to defects in the Work. Contractor's warranty obligations will survive the making of the Final Requisition or any earlier termination of this Agreement.

9.6 In the event of a conflict between any warranty and indemnity, the provision which grants greater rights to City shall prevail. The various rights, options and remedies of City shall be construed as cumulative and no one of them shall be exclusive of any other, or exclusive of any of the rights or remedies allowed to City by law. All warranties, representations and indemnities made and given by Contractor hereunder shall survive both the performance of the Work and any termination of this Agreement.

10. FACILITIES

10.1 Contractor shall provide any and all field office buildings, trailers, storage sheds, sanitary facilities for the use of Contractor's personnel, and other temporary facilities which are necessary for the proper conduct of the Work. All temporary facilities shall be subject to City's approval prior to installation.

10.2 The Contractor shall furnish, install and maintain for the duration of construction all required scaffolds, tarpaulins, barricades, canopies, warning signs, steps, bridges, platforms and other temporary construction structures necessary for the proper conduct of the Work in compliance with all Governmental Requirements. All such temporary construction structures shall be removed by Contractor upon the completion of the Work.

10.3 Contractor shall furnish and install any and all temporary fencing which may be required for the proper conduct of the Work and storage of materials by Contractor. Contractor shall obtain City's written approval of any such fencing prior to its installation. Contractor shall remove all such temporary fencing upon the completion of the Work.

10.4 Contractor shall provide and maintain all required access to the Work from paved areas and other established routes, in strict accordance with requirements as may be established by City from time to time.

10.5 Contractor shall restrict operations at the Site to areas permitted by Governmental Requirements, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment. Contractor shall keep all men and materials away from any area of the Project that has been delivered to and accepted by City.

11. **SUBCONTRACTORS**

11.1 Within thirty (30) days after execution of this Agreement, Contractor shall prepare and submit to City for City's approval a list of persons or entities proposed by Contractor to furnish materials, equipment, or services for each portion of the Work. Contractor shall contract solely in its own name and behalf, and not in the name or behalf of City with the selected Subcontractor. City shall promptly advise Contractor of its approval or disapproval of such subcontractor.

11.2 Contractor's form of Subcontractor Contract shall be subject to approval of City, and once approved may be utilized by Contractor without further approval by City provided that no substantial deviations are made to the approved form of Subcontractor Contract. Promptly after the execution of a subcontract, Contractor shall deliver a true and complete copy thereof to City.

11.2.1 As security for the performance of its obligations under the Contract, Contractor hereby collaterally assigns to City all its right, title and interest in and to all Subcontracts now or hereafter executed in connection with the Work. Unless and until City elects to exercise its rights hereunder as aforesaid, City shall have no liability to or obligation to pay Subcontractors pursuant to this assignment.

11.3 Nothing contained herein shall, however, create any obligation on City to assume any Subcontractor Contract or make any payment to any Subcontractor unless City chooses to request Subcontractor to perform or as otherwise provided in this Agreement, and nothing contained herein shall create any contractual relationship between City and any Subcontractor.

11.4 No Subcontractor shall be a third party beneficiary of this Agreement. Contractor shall be responsible for any act or failure to act by all Subcontractors and their employees, and all the Work, material and work product provided by the Subcontractors. All work performed for Contractor by a Subcontractor shall be pursuant to an appropriate agreement between Contractor and the Subcontractor acceptable to City in its reasonable discretion which shall contain the provisions that:

11.4.1 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance;

11.4.2 provide for a waiver of lien as described in Section 8.15 above;

11.4.3 consent to the collateral assignment set forth in this Section and agree to continue to perform the Work for City; and

11.4.4 obligate each Subcontractor specifically to consent to the provisions of this Section.

11.5 All computations, calculations, plans, specifications, Shop Drawings or reports, if any, prepared by Subcontractors shall, upon City's request, be available to City for its review and approval.

11.6 In the event of the failure of Contractor during the progress of the Work or at any time thereafter to pay for all materials and labor used in the prosecution of the Work, City may, at its option and without notice to Contractor prior thereto, pay all such claims for labor and materials and charge the amounts, including attorneys' fees and costs, to Contractor and deduct same from the next following approved payment (if any) to Contractor. City may, at its option, pay any amounts owed to Contractor by joint check payable to Contractor and its Subcontractors. Any notice received by City that Contractor has failed to timely pay for any material, equipment, or payroll expenses, including, but not limited to, all appropriate withholding taxes, shall be deemed an event of default which must be cured by Contractor within three (3) working days after notice by City. Any lien placed on the Project by a Subcontractor or otherwise by, through or under Contractor shall be removed by Contractor, at Contractor's sole cost and expense, by transfer to bond or otherwise within five (5) days of the filing thereof.

12. INDEMNIFICATION

12.1 Contractor shall defend, pay, discharge, satisfy, indemnify and save harmless City, its officers, directors, shareholders and employees and the Project or any portion thereof from any and all liabilities, losses, obligations, debts, claims, demands, liens, cause or causes of action, suits, damages, costs or expenses, including reasonable attorney's fees, arising from, in whole or in part:

12.1.1 any misfeasance, malfeasance, nonfeasance, breach of warranty or breach of this Agreement by Contractor, its agent(s), servant(s), employee(s), invitee(s), licensee(s), permittee(s), independent contractor(s) or Subcontractor(s) in the performance of the Work;

12.1.2 accidents or injuries (including, but not limited to, death) to persons or property occasioned by the negligent and non-negligent act or acts of Contractor, its agents or employees, independent contractors and Subcontractors, whether or not insured and whether or not singularly or jointly caused by any third party (including, but not limited to, City); and

12.1.3 The failure by Contractor to make any payment to a Subcontractor, material supplier or laborer as and when due.

12.2 City may set off any amount to which it may be entitled under this Article 12 against amounts otherwise payable under the Contract. Neither the exercise of nor the failure to exercise such right of set-off will constitute an election of remedies or limit City in any manner in the enforcement of any other remedies that may be available to it.

12.3 Promptly after receipt by an City of notice of any matter or action against which it is indemnified, City will give notice to Contractor thereof, but the failure to notify Contractor will not relieve Contractor of any liability that it may have to City, except to the extent that Contractor demonstrates that the defense of such action is prejudiced by City's failure to give such notice.

12.3.1 If any matter referred to in Subsections 12.1.1 through 12.1.3 is brought against City and it gives notice to Contractor of the commencement of such matter,

Contractor will, pay or transfer to bond any liquidated claims or if the claim is not liquidated, be entitled to participate in such proceeding and, to the extent that it wishes unless (i) Contractor is also a party to such proceeding and City determines in good faith that joint representation would be inappropriate, or (ii) Contractor fails to provide reasonable assurance to City of its financial capacity to defend such proceeding and provide indemnification with respect to such proceeding, to assume the defense of such proceeding with counsel satisfactory to City and, after notice from Contractor to City of its election to assume the defense of such proceeding, Contractor will not, as long as it diligently conducts such defense, be liable to City under this Article 12 for any fees of other counsel or any other expenses with respect to the defense of such proceeding, in each case subsequently incurred by City in connection with the defense of such proceeding, other than reasonable costs of investigation. If Contractor assumes the defense of a proceeding, (i) it will be conclusively established for purposes of this Agreement that the claims made in that proceeding are within the scope of and subject to indemnification; (ii) no compromise or settlement of such claims may be effected by Contractor without City's consent unless there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against City, and the sole relief provided is monetary damages that are paid in full by Contractor; and City will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to a Contractor of the commencement of any proceeding and Contractor does not, within ten days after City's notice is given, give notice to City of its election to assume the defense of such proceeding, Contractor will be bound by any determination made in such proceeding or any compromise or settlement effected by City.

12.3.2 Notwithstanding the foregoing, if City determines in good faith that there is a reasonable probability that a proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, City may, by notice to Contractor, assume the exclusive right to defend, compromise, or settle such proceeding, but Contractor will not be bound by any determination of a proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld or delayed).

12.4 A claim for indemnification for any matter not involving a third-party claim may be asserted by notice from City to Contractor.

12.5 The indemnities set forth herein shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by Contractor under this Agreement.

13. INSURANCE.

13.1 Contractor shall obtain, pay for and keep in effect from the commencement of the Work until Final Completion, Builder's Risk Insurance Special Cause of Loss (Form CP 1040) endorsed to include: theft of building materials, fixtures, machinery and equipment (Form CP 1121); collapse during construction (Form CP 1120); legal liability (Form CP 0040) on a non-reporting completed value basis. Contractor shall be an additional named insured on the policy (but not as loss payee). The loss payee shall only be City. The first

\$10,000 of policy deductibles on each claim arising from the negligence of Contractor shall be paid by Contractor; any additional deductibles shall be paid by City.

13.2 Contractor shall procure, maintain and pay for the following insurance on a per Project basis during the entire progress of the Work:

13.2.1 Workmen's Compensation. Statutory coverage and employer's liability.

13.2.2 Commercial General Liability. Commercial General Liability (CGL) Policy (Form CG 00 01 10 01) with limits not less than:

General Aggregate on a per Project Basis Limit:	\$ <u>2,000,000</u>
Each Occurrence Limit:	\$ <u>1,000,000</u>
Products-Completed Operations Aggregate Limit:	with Excess Liability \$ <u>2,000,000</u>

The CGL Policy shall be endorsed as Additional Named Insureds:

1. City and all of its directors, officers and employees; and
2. Designated Construction Project.

13.2.3 Commercial Umbrella Liability. Commercial Umbrella Liability (also known as Excess Liability) in an amount not less than \$2,000,000 on, at City's election, an occurrence or claims made basis, if available, which shall cover:

1. Personal injury;
2. Contractual Liability;
3. X.C.U. Liability;
4. Additional Insureds.

13.2.4 Automobile Liability. Automobile liability (owned, non-owned and hired vehicles) for bodily injury and property damage in an amount not less than \$300,000, for each accident.

13.3 Contractor shall furnish a copy of each policy and a certificate of said insurance to City. Neither City nor Contractor shall cause any insurance policies to be canceled or permit them to lapse prior to the dates specified above. Each policy shall contain a provision that it may not be cancelled without at least 30 days prior written notice to City and Contractor. The policies of such insurance furnished by Contractor shall be issued by Insurance Companies having a financial rating acceptable to City. Contractor hereby waives any and all rights of

recovery against City for injury or loss due to any hazard or occurrence covered by any of the foregoing policies.

13.4 City shall have the power to adjust and settle any loss with its insurers.

13.5 All insurance policies provided by Contractor pursuant to this Agreement shall be on an occurrence basis.

13.6 Contractor hereby releases, and shall cause its Subcontractors and suppliers to release, City, City's partners, the parent companies and affiliates of City and of any partner and the directors, officers, shareholders, employees and agents of any of the above mentioned parties (the "Released Parties") from any and all claims or causes of action which Contractor and such parties might otherwise possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance, including the deductible portion thereof, maintained and required to be maintained by Contractor, its Subcontractors, and suppliers pursuant to this Agreement. This release is further intended to bind Contractor's and such parties' insurers providing the above stated insurance coverage, and Contractor agrees to inform and obtain permission from its insurers, and further agrees to require its Subcontractors and suppliers to inform and obtain permission from their insurers, to so release the Released Parties from any and all claims or causes of action as provided above only so as to effectively waive any subrogation rights of said insurers.

14. CESSATION

In the event the development of the Project ceases or is interrupted by an Unavoidable Delay which continues for a period of more than one hundred twenty (120) consecutive days after Contractor has performed any services pursuant to the terms hereof, either party may terminate this Agreement upon written notice given from one to the other. Upon such termination, Contractor's sole remedy shall be payment of the Cost of the Work and that portion of Contractor's Fee earned through date that the Work substantially stopped.

15. CONTRACTOR DEFAULT

If Contractor shall fail to perform any of its obligations under the Contract Documents, be adjudged a bankrupt, make a general assignment for the benefit of insolvency, become insolvent otherwise, or fail to make prompt payments to its subcontractors, materialmen or laborers, City shall have the right, if Contractor shall not commence to cure and diligently pursue such cure of such default after five (5) days written notice thereof, and complete such cure within thirty (30) days after written notice thereof, to (i) terminate this Agreement, (ii) take possession of and use all or any part of Contractor's materials, equipment, supplies and other property of every kind used by Contractor in the performance of the Work and to use such property in the completion of Work, (iii) complete the Work in any manner it deems desirable, including engaging the services of other parties therefore including but not limited to the assumption of Contractor's rights under any such contracts, and (iv) take such other action as may be available in law or equity. Any or all such acts by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City in taking possession of the Site and of the performance of the balance of the Work is in excess of that part

of the Guaranteed Maximum Price which has not theretofore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse City for such excess upon demand.

16. **CITY DEFAULT**

As Contractor's sole remedy, if City fails to perform any of its obligations hereunder, Contractor shall have the right to give City a written notice thereof, stating the nature of the default and if City does not commence to cure and diligently pursue such cure of such default within fifteen (15) days after receipt of such notice, Contractor shall have the right to suspend the Work, and if not cured within sixty (60) days, to terminate this Agreement by giving City written notice, thereof at any time thereafter while such default remains uncured, and payment shall be made to Contractor for all Work executed and for any proven loss sustained upon any materials, equipment, tools construction equipment and machinery, and reasonable demobilization costs and that portion of Contractor's Fee earned to date of termination. In the event of remobilization, payment shall be made to Contractor for reasonable remobilization costs. A wrongful termination for cause by City shall be deemed a termination for convenience and Contractor's sole remedy shall be the rights provided therefor.

17. **TERMINATION FOR CONVENIENCE**

City may, for its own convenience and without cause, terminate this Agreement at will, in which event, Contractor, as its sole remedy, shall be paid (i) the cost of the Work incurred through the date of termination; (ii) its demobilization cost, and (iii) the portion of Contractor's Fee earned through the date of termination.

18. **DISPUTE RESOLUTION**

18.1 All claims, disputes and other matters in question between Contractor and City arising out of, or relating to, the Contract Documents or the breach thereof, shall be decided by the courts of the State of Florida and venue for any such action shall be in Monroe County.

18.2 Unless otherwise agreed in writing, Contractor shall carry on the Work and maintain its progress during any arbitration or court proceedings, and City shall continue to make payments to Contractor in accordance with the Contract Documents.

19. **MISCELLANEOUS**

19.1 **Invalid or Inconsistent Provisions.** In the event that any of the provisions of this Agreement, or any part thereof, is rendered invalid or unenforceable by Governmental Requirements, or by judicial decision; then such provision, or any part thereof, shall continue in effect only to the extent permitted. However, the invalidity or unenforceability of any provision, or any part thereof, of this Agreement shall not affect the enforceability of the remaining provisions of this Agreement. To the extent that any of the Sections herein contain provisions relating or pertaining to the same subject matter, the obligations, covenants and conditions set forth therein shall be cumulative and, where applicable, concurrent. Further, to the extent that any such provisions may be interpreted to be conflicting or mutually exclusive, it is the intent of the parties hereto that the obligations, conditions or covenants, as applicable, which provide the

greatest protection or benefit to the party for whose benefit such protection is intended, shall apply.

19.2 Amendments. This Agreement may only be amended by the prior written approval of the parties or by execution of a Change Order or a Field Order.

19.3 Assignment of Contract. Except as expressly permitted by this Agreement, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, 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. If Contractor is an entity other than a natural person, a change in the ownership of forty percent (40%) or more of such entity shall be deemed an assignment prohibited hereby. If, notwithstanding this Section, Contractor shall so assign, subcontract or sublet Work contrary to the provisions of this Section, then at any time thereafter City shall have the right to terminate this Agreement as upon any other material breach hereof. City reserves the right to transfer and assign this Agreement or any portion hereof to any corporation, individual, partnership or person which it may designate.

19.4 Successors and Assigns. City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

19.5 Attorney's Fees. If any party obtains judgment against any other party by reason of breach of this Agreement, a reasonable attorney's fee and costs shall be included in such judgment and term "reasonable attorney's fees" as used in this Agreement shall include and not be limited to, reasonable attorney's fees incurred in any and all judicial bankruptcy, re-organization, arbitration and any other proceedings, including appellate proceedings, whether such proceedings arise before or after the entry of a final judgment.

19.6 Modifications. No provision of the Contract Documents shall be added to, modified, changed or waived, unless same is in writing and signed by the party against whom enforcement is sought.

19.7 Survival of Obligations. All indemnities, representations, warranties and waivers made by Contractor in favor of City, its agents, employees, successors or assigns, shall survive completion of the Work, the making of the Final Payment and any cancellation or termination of the Contract.

19.8 Jurisdiction. The parties hereto submit to the jurisdiction of the State and Federal Courts in and for Monroe County and waive any claim that the same is an inconvenient forum.

19.9 No Recording. Neither this Agreement, nor any memorandum thereof, may be recorded in the Public Records and any such recording by Contractor shall be deemed a material default.

19.10 Notices. Any notice to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing, and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed, with postage prepaid is deposited in the United States Mails; and if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the address set forth in the introduction to this Agreement. Any party hereto may, at any time by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

19.11 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Florida.

19.12 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

19.13 Counterparts. This Agreement may be executed in any number of counterparts; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

19.14 Construction of Agreement. All of the parties to this Agreement have participated freely in the negotiation and shall not be more strictly construed against any one of the parties hereto.

19.15 Signage. Contractor shall erect no signs or advertising of any kind whatsoever in or about the vicinity of the Project without City's prior written consent. All approved signs shall be removed by Contractor upon completion of the Work.

19.16 Waiver of Jury Trial. **CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.**

19.17 Policy of Non-Discrimination/Wages

19.17.1 Contractor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

19.17.2 Contractor shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, Contractor shall be required to comply with the same.

19.18 No Contingent Fee. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event Contractor violates this provision, City shall have the right to terminate this Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

19.19 Independent Contractor. Contractor is an independent contractor under this Agreement. Services provided by Contractor shall be by employees of Contractor, and not as officers, employees, or agents of City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of Contractor.

19.20 Truth-in-Negotiation Certificate. Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

19.21 Public Entity Crimes Act. Contractor represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a Contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on Contracts of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall be a material breach of the Contract and result in termination of this Agreement and recovery of any monies paid by City, and may result in debarment from City's competitive procurement activities. In addition to the foregoing, City further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether City has been placed on the convicted vendor list.

19.22 Trench Safety Act. Contractor shall also comply with the Trench Safety Act set forth in Sections 553.60 through 553.64, inclusive, Florida Statutes, and OSHA Standard 29 C.F.R. § 1926.650 Subpart P. In order to evidence Contractor's intent to comply with the foregoing, upon execution of this Agreement, Contractor shall also execute and deliver to City a Trench Safety Act Compliance Statement on a form provided City. Without limiting the foregoing, at all times during performance of the Work, under no circumstances shall any trench(es) remain open overnight.

19.23 Access To Public Records. Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. City shall have the right to immediately terminate this Agreement for the refusal by Contractor to comply with Chapter 119, Florida Statutes. Contractor shall retain all records associated with this Agreement for a period of five (5) years from the date of Final Payment or Termination of this Agreement.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF MARATHON, FLORIDA, signing by and through its City Manager, authorized to execute same by Council action on the 14th day of July, 2009, and by Clyde Burnett signing by and through its City Manager, duly authorized to execute same.

CITY

ATTEST:

CITY OF MARATHON, FLORIDA

Diane Clavier
City Clerk

By: Clyde Burnett
City Manager

30th day of JULY, 2009.

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF CITY OF MARATHON ONLY:

By: [Signature]
City Attorney

CONTRACTOR

WITNESS:

Conquest Engineering Group Company

8491 N.W. 17 St Suite L-111

Miami, Florida 33126

By: [Signature]

By: [Signature]
Ricardo Guadarrama, President
(Corporate Seal)

RICARDO GUADARRAMA/PRESIDENT
(Type Name/Title signed above)

28th day of JULY, 2009.

(* In the event that Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, JEANETTE GUADALPAMA, certify that I am the VICE PRESIDENT of CONQUEST BUILDING GROUP, and that RICARDO GUADALPAMA, who signed the Bid with City of Marathon, Monroe County Florida for CONQUEST BUILDING, is PRESIDENT of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 28th day of July, 2009.

(SEAL)

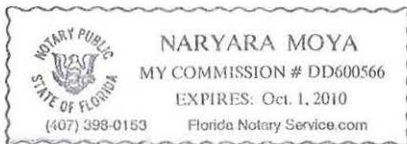
Jeanette Guadalupe
Signature

Jeanette Guadalupe Vice-President
Typed w/Title

STATE OF FLORIDA
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 28th day of July, 2009.

My Commission Expires:



Naryara Moya
Notary Public

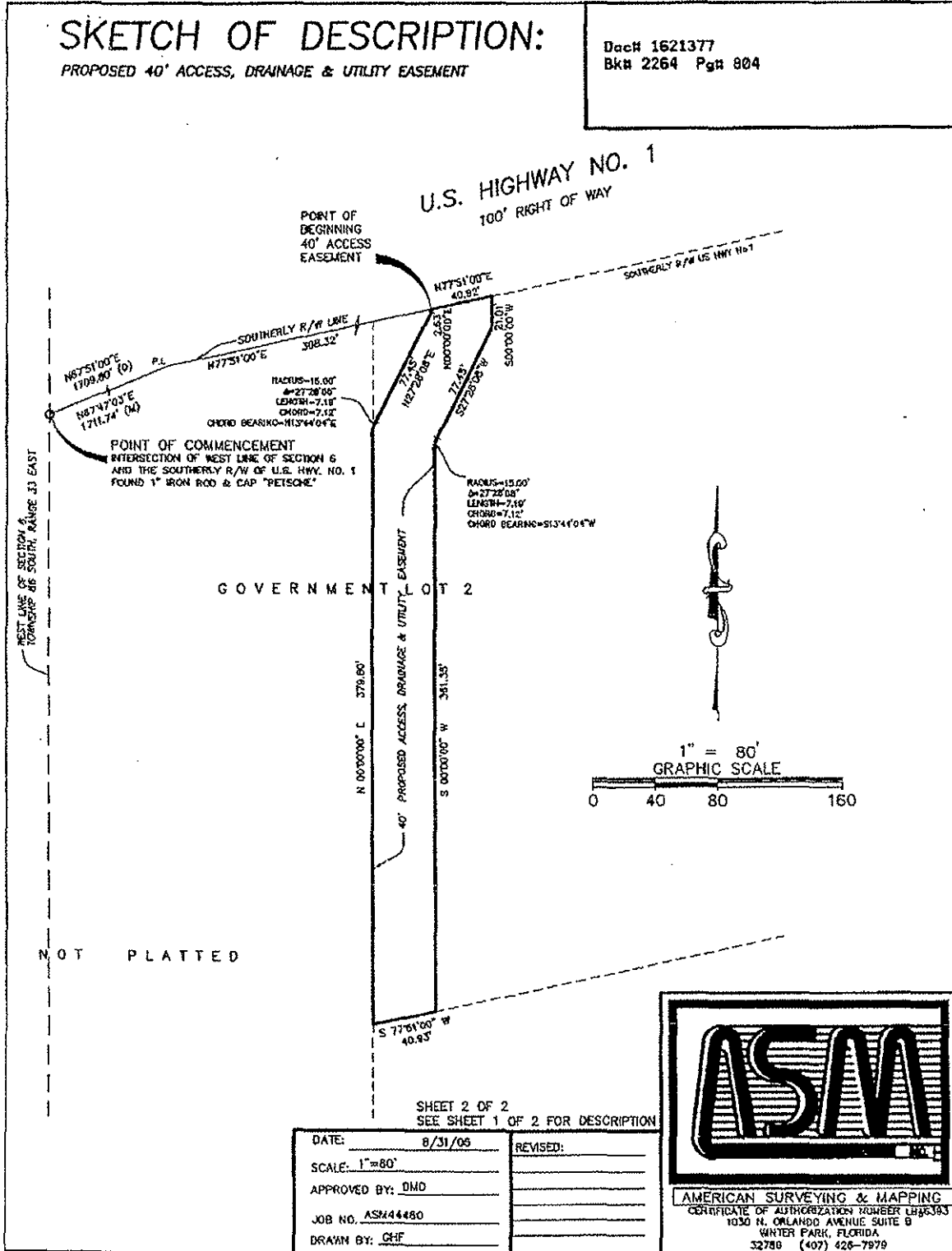
EXHIBIT A

LEGAL DESCRIPTION

SKETCH OF DESCRIPTION:

PROPOSED 40' ACCESS, DRAINAGE & UTILITY EASEMENT

Dach 1621377
Bk# 2264 P# 804



DATE: 8/31/05	REVISED:
SCALE: 1"=80'	
APPROVED BY: DMD	
JOB NO. AS44480	
DRAWN BY: CHF	



AMERICAN SURVEYING & MAPPING
 CERTIFICATE OF AUTHORIZATION NUMBER LB451A3
 1030 N. ORLANDO AVENUE SUITE 9
 WINTER PARK, FLORIDA
 32780 (407) 426-7979

DESCRIPTION:

A PORTION OF GOVERNMENT LOT 2, LYING IN SECTION 6, TOWNSHIP 66 SOUTH, RANGE 33 EAST, MONROE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE WEST LINE OF AFORESAID SECTION 6 AND THE SOUTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING TWO COURSES: (1) NORTH 67°47'03" EAST, A DISTANCE OF 1711.74 FEET; (2) THENCE NORTH 77°51'00" EAST, A DISTANCE OF 308.32 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY NORTH 77°51'00" EAST, A DISTANCE OF 40.92 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY SOUTH 00°00'00" WEST, A DISTANCE OF 21.01 FEET; THENCE SOUTH 27°28'08" WEST, A DISTANCE OF 77.45 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 27°28'08" AND A CHORD DISTANCE OF 7.12 FEET WHICH BEARS SOUTH 13°44'04" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 7.19 FEET; THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 361.35 FEET; THENCE SOUTH 77°51'00" WEST, A DISTANCE OF 40.93 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 379.80 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 27°28'08" AND A CHORD DISTANCE OF 7.12 FEET WHICH BEARS NORTH 13°44'04" EAST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 7.19 FEET; THENCE NORTH 27°28'08" EAST, A DISTANCE OF 77.45 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 2.63 FEET TO THE POINT OF BEGINNING.
CONTAINING 0.43 ACRES (18,687 SQUARE FEET), MORE OR LESS

CH. 61G17-6, Florida Administrative Code requires that a legal description drawing bear the notation that
THIS IS NOT A SURVEY.

SHEET 1 OF 2
SEE SHEET 2 OF 2 FOR SKETCH

BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1 AS BEING N77°51'00"E.

SKETCH OF DESCRIPTION
OF
40 FOOT PROPOSED EASEMENT
MONROE COUNTY, FLORIDA SECTION 6-66-33

DATE: 9/1/08	REVISED:
SCALE: N/A	
APPROVED BY: DMG	
JOB NO. ASM44160	
DRAWN BY: GHF	



AMERICAN SURVEYING & MAPPING
CERTIFICATE OF AUTHORIZATION NUMBER LB76393
1030 N. ORLANDO AVENUE SUITE B
WINTER PARK, FLORIDA
32789 (407) 426-7979

1. THE SURVEYOR HAS NOT ABSTRACTED THE LAND SHOWN HEREON FOR EASEMENTS, RIGHT OF WAY, RESTRICTIONS OF RECORD WHICH MAY AFFECT THE TITLE OR USE OF THE LAND
2. NO IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS SHOWN.
3. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

David H. DeFoppo
David H. DeFoppo, P.S.M. #5038
DATE: 9/1/08

EXHIBIT B

FORM OF PAYMENT AND PERFORMANCE BOND

PERFORMANCE BOND

BY THIS BOND (the "Bond"), We as CONQUEST ENGINEERING GROUP COMPANY ,
called CONTRACTOR, and Arch Insurance Company ,
hereinafter called SURETY, are bound to the CITY OF MARATHON, a Florida municipal
corporation, hereinafter called CITY, in the amount of One Hundred Ninety Nine Thousand Six
Hundred Seventy Four And No/100 Dollars
for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal
representatives, executors, administrators, successors and assigns, jointly and severally, with
reference to a written CONTRACT entered into by CONTRACTOR and CITY, for the following:

Contract Title: La Palma Access Road

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

1. Performs said contract in accordance with its terms and conditions; and
2. Pays CITY all losses, damages (direct and consequential including delay and liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that CITY sustains because of a default by CONTRACTOR under the CONTRACT; and
3. Pays CITY and all other amounts due CITY by CONTRACTOR because of a default by CONTRACTOR under the CONTRACT; and
4. Performs the guarantee of all work and materials furnished under the CONTRACT for the time specified in the CONTRACT;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the Contract or with the changes, do not affect the Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the City. Any suit under this bond must be initiated before the expiration of the limitation period applicable to common law bonds under Florida Statutes.

CITY

CITY OF MARATHON, FLORIDA

AUTHENTICATION:



City Clerk

(SEAL)

By: 

The 20 day of Aug, 2007.

APPROVED AS TO FORM AND LEGALITY

FOR THE USE AND BENEFIT OF THE

CITY OF MARATHON ONLY:



City Attorney

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(Witness)

By: _____
(Individual Principal)

(Witness)

Business Address

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

(Witness)

Business Name and Address

(Witness)

By: _____
Signature of Individual

WHEN A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness)

Name and Address of Partnership

(Witness)

(Partner)

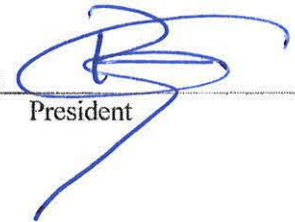
WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal)


(Secretary)

Conquest Engineering Group
Company
(Type Corporate Principal Name)
8491 N.W. 17th Street, Suite L-111
Miami, FL 33128
Business Address

By: 
President

SURETY

ATTEST:

(Surety Seal)

As per Attached Power
of Attorney
(Secretary)

Arch Insurance Company
(Type Corporate Surety Name)
One Liberty Plaza 53rd Floor
New York, NY 10006
Business Address

By: 
SURETY Warren M. Alter, Attorney In Fact

By: 
Florida Resident Agent Warren M. Alter

Warren M. Alter
(Type Florida Resident's Name)

(305) 722-2663
Florida Agent's Business Telephone Number

ATTORNEY-IN-FACT

By: 

Name Warren M. Alter
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached.

NOTE 3: Surety shall include evidence that Agent is licensed in Florida.

IMPORTANT: *Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.*

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

POWER OF ATTORNEY

Know All Men By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal office in Kansas City, Missouri (hereinafter referred to as the "Company") does hereby appoint

Mary C. Aceves, Warren M. Alter, Charles D. Nielson, Charles J. Nielson, David R. Hoover and Gicelle Pajon of Miami Lakes, FL (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds and undertakings

EXCEPTION: NO AUTHORITY is granted to make, execute, seal and deliver bonds or undertakings that guarantee the payment or collection of any promissory note, check, draft or letter of credit.

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The Company may revoke this appointment at any time.

The execution of such bonds and undertakings in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office in Kansas City, Missouri.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on March 3, 2003, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings, obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on March 3, 2003:

VOTED, That the signature of the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on March 3, 2003, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

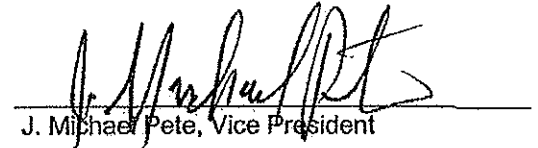
In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 1st day of May, 2008.

Arch Insurance Company

Attested and Certified


Martin J. Nilsen, Secretary

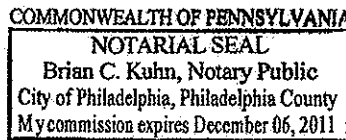


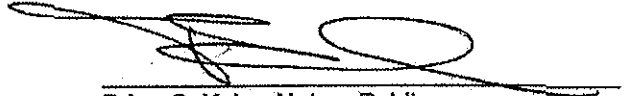

J. Michael Pete, Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Brian C. Kuhn, a Notary Public, do hereby certify that Martin J. Nilsen and J. Michael Pete personally known to me to be the same persons whose names are respectively as Secretary and Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.

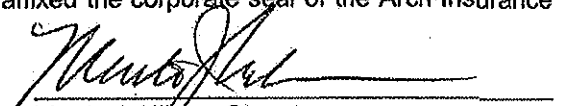



Brian C. Kuhn, Notary Public
My commission expires 12-06-2011

CERTIFICATION

I, Martin J. Nilsen, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated May 1, 2008 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said J. Michael Pete, who executed the Power of Attorney as Vice President, was on the date of execution of the attached Power of Attorney the duly elected Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 5th day of August, 2009.


Martin J. Nilsen, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

**Arch Surety
3 Parkway, Ste. 1500
Philadelphia, PA 19102**



PAYMENT BOND

BY THIS BOND (the "Bond"), We as CONQUEST ENGINEERING GROUP COMPANY, called CONTRACTOR, and Arch Insurance Company, hereinafter called SURETY, are bound to the CITY OF MARATHON, a Florida municipal corporation, hereinafter called CITY, in the amount of One Hundred Ninety Nine Thousand Six Hundred Seventy Four And No/100 Dollars for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written CONTRACT entered into by CONTRACTOR and CITY, for the following:

Contract Title: La Palma Access Road

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the contract;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the CONTRACT or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the CITY.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 20____.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(Witness)

By: _____
(Individual Principal)

(Witness)

Business Address

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

(Witness)

Business Name and Address

(Witness)

By: _____
Signature of Individual

WHEN A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness)

Name and Address of Partnership

(Witness)

By: _____
(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

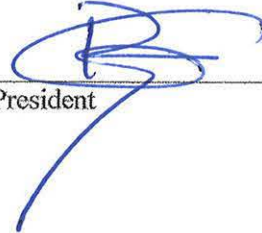
(Corporate Seal)


Secretary

Conquest Engineering Group
Company

(Corporate PRINCIPAL Name)
8491 N.W. 17th Street, Suite L-111
Miami, FL 33128

Business Address

By: 
President

ATTEST:

(Surety Seal)

Arch Insurance Company
(Corporate SURETY)
One Liberty Plaza 53rd Floor
New York, NY 10006

As per Attached
Power of Attorney

(Secretary)

Business Address

By: 
(Surety) Warren M. Alter, Attorney In Fact

Florida Resident Agent
Warren M. Alter

ATTORNEY-IN-FACT

By: 

Name Warren M. Alter
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

FLORIDA DEPARTMENT OF INSURANCE



WARREN MITCHELL ALTER

A004782

FOLLOWING CLASSES OF INSURANCE:

Life, Variable Annuity & Health
Life & Health
Gen. Lines (Prop. & Cas. Ins.)

ISSUED: 04/09/92

746891

A handwritten signature in black ink, appearing to read "Warren Mitchell Alter". The signature is written in a cursive style and is positioned above a horizontal line.

SIGNATURE

POWER OF ATTORNEY

Know All Men By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal office in Kansas City, Missouri (hereinafter referred to as the "Company") does hereby appoint

Mary C. Aceves, Warren M. Alter, Charles D. Nielson, Charles J. Nielson, David R. Hoover and Gicelle Pajon of Miami Lakes, FL (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds and undertakings

EXCEPTION: NO AUTHORITY is granted to make, execute, seal and deliver bonds or undertakings that guarantee the payment or collection of any promissory note, check, draft or letter of credit.

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The Company may revoke this appointment at any time.

The execution of such bonds and undertakings in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office in Kansas City, Missouri.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on March 3, 2003, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings, obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on March 3, 2003:

VOTED, That the signature of the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on March 3, 2003, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 1st day of May, 2008.

Arch Insurance Company

Attested and Certified



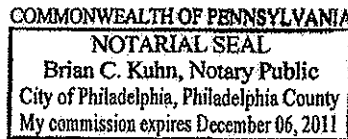
Martin J. Nilsen
Martin J. Nilsen, Secretary

J. Michael Pete
J. Michael Pete, Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Brian C. Kuhn, a Notary Public, do hereby certify that Martin J. Nilsen and J. Michael Pete personally known to me to be the same persons whose names are respectively as Secretary and Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Brian C. Kuhn
Brian C. Kuhn, Notary Public
My commission expires 12-06-2011

CERTIFICATION

I, Martin J. Nilsen, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated May 1, 2008 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said J. Michael Pete, who executed the Power of Attorney as Vice President, was on the date of execution of the attached Power of Attorney the duly elected Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 5th day of August, 2009.

Martin J. Nilsen
Martin J. Nilsen, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Surety
3 Parkway, Ste. 1500
Philadelphia, PA 19102

