

CITY OF MARATHON, FLORIDA
RESOLUTION 2014-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA ACCEPTING THE LOWEST RESPONSIVE AND RESPONSIBLE BID AND APPROVING A CONTRACT WITH KEYS CONTRACTING SERVICES, INC. FOR THE CONSTRUCTION OF A FITNESS TRAIL AT OCEANFRONT PARK IN AN AMOUNT NOT TO EXCEED \$159,184.00; AND AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on December 18, 2013, the City of Marathon (the "City") published An Invitation to Bid for Oceanfront Park Fitness Trail (the "Project"); and

WHEREAS, on January 24, 2014, four bids were received with the lowest bid submitted by Keys Contracting, Inc., (the "Contractor") and City staff subsequently reviewed and determined the City's local preference regulations applied to the Project and the low bid was complete and the bidder was responsive and responsible; and

WHEREAS, the City finds that accepting the low bid and entering into a contract with the Contractor is in the best interest of the City.

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 Contract between the City and the Contractor for the construction of the Project in an amount not to exceed \$159,184.00, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The Acting City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11th DAY OF FEBRUARY, 2014.

THE CITY OF MARATHON, FLORIDA



Chris Bull, Vice Mayor

AYES: Keating, Senmartin, Snead, Bull
NOES: None
ABSENT: Ramsay
ABSTAIN: None

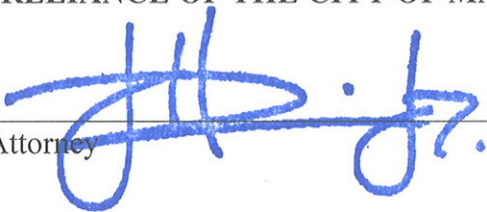
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

CONSTRUCTION CONTRACT

THIS CONTRACT (the "Contract") is dated as of the 11 day of February 2014 by and between THE CITY OF MARATHON (hereinafter called the "CITY") and Keys Contracting Services, Inc (hereinafter called CONTRACTOR) for the Oceanfront Park Fitness Trail project located behind City Hall at 9805 Overseas Highway in the awarded amount of \$159,184.

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

Article 1. WORK

1.1 **Project/Work.** CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following:

City Of Marathon – Oceanfront Park Fitness Trail

The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals per plans and specifications provided by DDAI to construct new 8ft wide asphalt paved fitness trail to include all awarded bid line items.

Article 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1. It is understood that the City will designate a representative for the Work. The CITY'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Debra London at City Hall, 9805 Overseas Highway, Marathon Florida 33050.

Article 3. TERM

3.1 **Contract Times.** The work shall be substantially completed within fifty (50) calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fifteen (15) calendar days after the date specified in the Notice to Proceed ("Final Completion").

3.2. **Term.** This Contract shall not be effective until the City issues a Notice To Proceed to the Contractor and the terms of the Contract shall be through the date of final payment unless terminated earlier pursuant to Section 00700, Article 14, Payments to Contractor and Completion of the General Conditions.

3.3 **Survival of Obligations.** Any obligations by the Contractor, including but not limited to Document 00700, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4. **Liquidated Damages.** CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes the delays, expense and difficulties involved in proving 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 Fifty Dollars (\$50.00)** for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Final Completion, if **CONTRACTOR** shall neglect, refuse or fail to complete the remaining Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by **CITY**, **CONTRACTOR** shall pay **CITY One Hundred Dollars (\$100.00)** for each calendar day that expires after the time specified in Section 3.1 for completion and readiness for final payment.

3.5. Should the Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the **CONTRACTOR**, it is understood and agreed that aside from any other liquidated damages, all actual additional costs incurred by the **CITY** for professional services will be the responsibility of the **CONTRACTOR**.

3.6. Monies due to the **CITY** under Sections 3.4 and 3.5 shall be deducted from any monies due the **CONTRACTOR**, or if no money is due or the amount due is insufficient to cover the amount charged, the **CONTRACTOR** shall be liable for said amount.

Article 4. CONTRACT PRICE

4.1 **CITY** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to bid form attached.

Estimated quantities are not guaranteed, and determination of actual quantities and classification are to be made by **ENGINEER** as provided in the Contract Documents.

4.2. The **CONTRACTOR** agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents. **THIS IS A LUMP SUM CONTRACT. QUANTITIES ARE PROVIDED FOR THE BIDDERS CONVENIENCE AND ESTABLISHMENT OF UNIT PRICE IN ORDER TO FACILITATE CHANGE ORDERS IF REQUIRED. (Refer to bid sheet)**

Article 5. PAYMENT PROCEDURES

5.1 **CONTRACTOR** shall submit Applications for Payment in accordance AIA payment Application attached herein. Applications for Payment will be processed by **CITY** as provided in the General Conditions.

5.2 Progress Payments, Retainage. **CITY** shall make progress payments, deducting the amount from the Contract Price above, on the basis of **CONTRACTOR'S** Applications for Payment as recommended by the **CITY'S REPRESENTATIVE**, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1 No progress payment shall be made until **CONTRACTOR** delivers to **CITY** complete original partial releases and waivers of all liens and claims signed by all Subcontractors,

materialmen, suppliers, and vendors, indicating receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the CITY.

5.3. The **CONTRACTOR** agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by City for each Progress Payment until Final Payment.

5.3.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as **CITY'S REPRESENTATIVE** shall determine, or **CITY** may withhold, in accordance with the General Conditions.

5.4. The payment of any Application for Payment by **CITY**, including the Final Request, does not constitute approval or acceptance by **CITY** of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of City's rights hereunder or at law or in equity.

5.5. The Final Application for Payment by **CONTRACTOR** shall not be made until the **CONTRACTOR** delivers to the City complete original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the **CITY**, and an affidavit that so far as the **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The **CONTRACTOR** may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

5.6. Final Payment. Upon final completion and acceptance of the Work in accordance with the General Conditions, **CITY** shall pay the remainder of the Contract Price and any retainage as recommended by the **CITY'S REPRESENTATIVE**.

Article 6. INSURANCE/INDEMNIFICATION.

6.1. Insurance. The **CONTRACTOR** shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the **CITY** against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

6.2. Indemnification. The **CONTRACTOR** shall indemnify, defend and hold harmless the **CITY**, their officials, agents, employees, and volunteers as set forth in General Conditions of the Contract Documents.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce **CITY** to enter into this Contract, **CONTRACTOR** makes the following representations:

7.1. **CONTRACTOR** has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2. **CONTRACTOR** has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. **CONTRACTOR** is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. **CONTRACTOR** has made, or caused to be made, examinations, investigations, tests or studies as necessary to determine surface and subsurface conditions at or on the site. **CONTRACTOR** acknowledges that **CITY** does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the site. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto. **CONTRACTOR** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. The **CONTRACTOR** is aware of the general nature of Work to be performed by **CITY** and others at the site that relates to the Work as indicated in the Contract Documents.

7.6. The **CONTRACTOR** has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7. The **CONTRACTOR** has given the **CITY'S REPRESENTATIVE** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents and the written resolution thereof by the **CITY'S REPRESENTATIVE** is acceptable to **CONTRACTOR**, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8. The **CONTRACTOR** warrants the following:

7.8.1. **Anti-Discrimination:** The **CONTRACTOR** agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

7.8.2. **Anti-Kickback:** The **CONTRACTOR** warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the **CITY**, or any other applicable federal or State Agency has any interest, financially or

otherwise, in the Project. For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.3. Licensing and Permits: The **CONTRACTOR** warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

7.8.4. Public Entity Crime Statement: The **CONTRACTOR** warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in Document 00100, Section 7.5, of the Instructions to Bidders.

Article 8. CONTRACT DOCUMENTS.

8.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the **CONTRACT** as though physically attached as a part thereof:

- 8.1.1** Change Orders.
- 8.1.2** Field Orders.
- 8.1.3** Contract for Construction.
- 8.1.4** Exhibits to this Contract.
- 8.1.5** Supplementary Conditions.
- 8.1.6** General Conditions.
- 8.1.7** Technical Specifications and Drawings bearing the general title:

Oceanfront Park Fitness Trail.

8.1.8. Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by **CONTRACTOR**, Notice of Award and Notice to Proceed.

8.1.9. Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.

8.1.10. The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).

8.1.11. There are no **Contract Documents** other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

8.1.12. The **Contract Documents** shall remain the property of the **CITY**. The **CONTRACTOR** shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the **CONTRACTOR** use, or permit to be used, any or all of such Contract Documents on other Projects without the City's prior written authorization.

8.1.13. The General Conditions discuss the bond and surety requirements of the **CITY**. This Contract does [**XX**] does not [] require bonds. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders also apply to this Contract.

9.2. Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto 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.

9.3. **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.

9.4. Severability: Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

9.5. Remedies: If and when any default of this Contract occurs, the **CITY** may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the **CITY**. Nothing contained in this Contract shall limit the **CITY** from pursuing any legal or equitable remedies that may apply.

9.6. Access to Public Records: The **CONTRACTOR** shall comply with the applicable provisions of Chapter 119, Florida Statutes. The **CITY** shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or Termination of this Contract.

9.7. Inspection and Audit: During the term of this Contract and for five (5) years from the date of Termination, the **CONTRACTOR** shall allow **CITY** representatives access during reasonable business hours to **CONTRACTOR'S** records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the **CITY** determines the **CONTRACTOR** was paid for services not performed, upon receipt of written demand by the **CITY**, the **CONTRACTOR** shall remit such payments to the **CITY**.

9.8. Counterparts: This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

9.9. Notices: Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to addressees below.

FOR CONTRACTOR:

Keys Contracting Services Inc.
6465 Overseas Hwy #3
Marathon, Fla. 33050



FOR CITY:

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: Michael H. Puto, Assistant City Manager

WITH COPY TO:

Gray-Robinson
401 E. Las Olas Blvd., Suite 1850
Ft Lauderdale
ATTN: John Herin – City Attorney

9.10. Waiver Of Jury Trial And Venue: The **CITY** and **CONTRACTOR** knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be in the Middle Keys Division, Monroe County, Florida.

9.11. Attorneys' Fees: If either the **CITY** or **CONTRACTOR** is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

9.12. Amendments: This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form attached hereto as Exhibit B.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor, Vice Mayor or City Manager, authorized to execute same by Council action on the 11 day of February Reso-2014-14, 2014, and by Chris Gratton, Keys Contracting (Contractor), signing by and through its President, duly authorized to execute same.

CITY

ATTEST

Diane Clavier
City Clerk, Diane Clavier

Michael H. Puto
Michael H. Puto, Acting City Manager

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

By: [Signature]
City Attorney

Keys Contracting Services, Inc.
Chris Gratton
By: CHRIS GRATTON
Its: President

CONTRACTOR

WITNESSES:

Alicia Williams
Name: Alicia Williams

Lisa Carroll
Name: LISA Carroll

(Corporate Seal)



(* In the event that the 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.

PUBLIC WORKS BOND

Doc# 1971115 03/04/2014 10:49AM
Filed & Recorded in Official Records of
MONROE COUNTY AMY HEAVILIN

**THIS IS THE FRONT PAGE OF THIS PERFORMANCE AND PAYMENT BOND
ISSUED IN COMPLIANCE WITH CHAPTER s255.05 FLORIDA STATUTES.**

BOND NO. K0889646A
CONTRACTOR NAME: Keys Contracting Services, Inc.
CONTRACTOR ADDRESS: 6465 Overseas Highway, #3
Marathon, FL 33050
CONTRACTOR PHONE NO. (305)-481-1582
SURETY COMPANY: Westchester Fire Insurance Company
436 Walnut Street-WA10H
Philadelphia, PA 19106 (215)640-1982
OWNER NAME: City of Marathon
OWNER ADDRESS: 9805 Overseas Highway
Marathon, FL 33050
OWNER PHONE NO. (305) 743-0033
OBLIGEE NAME:(If contracting entity
is different from the owner, the contracting public
entity) Same
OBLIGEE ADDRESS: Same
OBLIGEE PHONE NO. () -
BOND AMOUNT: \$159,184.00
CONTRACT NO. (If Applicable)
DESCRIPTION OF WORK: Ocean Park Fitness Trail
PROJECT LOCATION: Marathon, FL
LEGAL DESCRIPTION:

FRONT PAGE

Doc# 1971115
Bk# 2673 Pg# 1481

**(ALL OTHER BOND PAGES ARE DEEMED SUBSEQUENT TO THIS PAGE REGARDLESS OF ANY
PAGE NUMBERS THAT MAY BE PRE-PRINTED THEREON)**

K0889646A

SECTION 00610
PERFORMANCE BOND

BY THIS BOND (the "Bond"), We as Keys Contracting Services, Inc., called CONTRACTOR, and Westchester Fire 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 Fifty Nine Thousand One Hundred Eighty Four Dollars 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: City of Marathon Oceanfront Park Fitness Trail.

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

By: Michael H. Puto

The 18 day of February, 2014.

AUTHENTICATION:

Diane Clarice

City Clerk

(SEAL)

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

[Handwritten Signature]

City Attorney

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal)



[Handwritten Signature]

(Secretary)

Keys Contracting Services, Inc.

(Type Corporate Principal Name)
6465 Overseas Highway, #3
Marathon, FL 33050
Business Address

By: *[Handwritten Signature]*

President

Chris Gratton

SURETY

ATTEST:

(Surety Seal)

[Handwritten Signature]

(Secretary) Witness

Westchester Fire Insurance Company

(Type Corporate Surety Name)
436 Walnut Street-WA10H
Philadelphia, PA 19106
Business Address

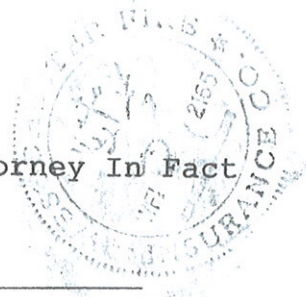
By: *[Handwritten Signature]*

SURETY Robert Barra Attorney In Fact

By: *[Handwritten Signature]*

Florida Resident Agent

Robert Barra



Robert Barra

9373 W. Sample Road, (Type Florida Resident's Name)
Ste 206
Coral Springs, FL 33065

954-255-9855

Florida Agent's Business Telephone Number

ATTORNEY-IN-FACT

By: 

Name Robert Barra
(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.

K0889646A

**SECTION 00620
PAYMENT BOND**

BY THIS BOND (the "Bond"), We as Keys Contracting Services, Inc., called CONTRACTOR, and Westchester Fire 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 Fifty Nine Thousand One Hundred Eighty Four 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: **CITY OF MARATHON – Oceanfront Park Fitness Trail**

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 13 day of February, 2014

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal)



[Signature]
Secretary

Keys Contracting Services, Inc.
(Corporate PRINCIPAL Name)
6465 Overseas Highway, #3
Marathon, FL 33050
Business Address


By: [Signature]
President
Chris: Gratton

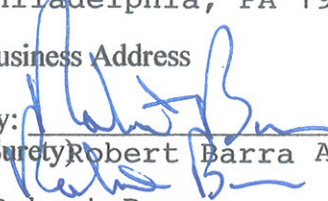
ATTEST:

(Surety Seal)

Westchester Fire Insurance Company
(Corporate SURETY)
436 Walnut Street-WA10H
Philadelphia, PA 19106

Business Address

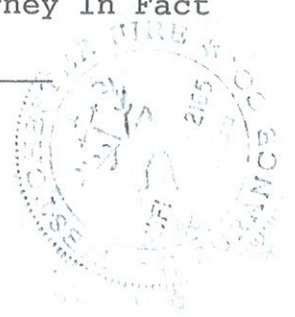

~~(Secretary)~~ Witness

By: 
(Surety) Robert Barra Attorney In Fact
Robert Barra
Florida Resident Agent

ATTORNEY-IN-FACT

By: 

Name Robert Barra
(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.

K0889646A

Power of Attorney

WESTCHESTER FIRE INSURANCE COMPANY

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the Commonwealth of Pennsylvania pursuant to the following Resolution, adopted by the Board of Directors of the said Company on December 11, 2006, to wit:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such persons written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

Does hereby nominate, constitute and appoint Robert Barra, all of the City of Coral Springs, Florida, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding Ten million dollars & zero cents (\$10,000,000.00) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office,

IN WITNESS WHEREOF, the said Stephen M. Haney, Vice-President, has hereunto subscribed his name and affixed the Corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY this 1 day of August 2013.

WESTCHESTER FIRE INSURANCE COMPANY



Stephen M. Haney
Stephen M. Haney, Vice President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA ss.

On this 1 day of August, AD. 2013 before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Haney, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KAREN E. BRANDT, Notary Public
City of Philadelphia, Phila. County
My Commission Expires September 28, 2014

Karen E. Brandt
Notary Public

I, the undersigned Assistant Secretary of the WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 13 day of February 2014



William L. Kelly
William L. Kelly, Assistant Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER August 01, 2015.

MONROE COUNTY
OFFICIAL RECORDS

007169082

Please look for the following additional security features before accepting this document. IF NOT PRESENT, DO NOT NEGOTIATE THE DOCUMENT.

- **Laid lines** on the back of document should be in alignment or the document is not authentic – watch for cut and paste.
- **Microprinting** - under magnification, the inside border on the front of this document should read: "Standard Register Standardized Security".
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- **Security void pattern** on front if copied.

**SECTION 00700
GENERAL CONDITIONS**

ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms shall have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1 Acceptance – The formal action by the CITY accepting the Work as being completed after review by the CITY’S REPRESENTATIVE and recommendation for final completion.
- 1.2 Addenda - Written or graphic instructions and / or instruments issued by the CITY prior to the opening of the Bids.
- 1.3 Application for Payment - The form attached hereto as Exhibit A, or such other form as may be provided by CITY from time to time, which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.
- 1.4 Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.5 Bidding Documents – The Advertisements for Bid, Instructions to Bidders, Bid Form, Bid Security, sample contract for construction, proposed Contract Documents, as defined herein, including but not limited to all documentation accompanying Bid, post Bid documentation submitted prior to Notice of Award, Qualifications Statement, General Conditions, Technical Conditions, Supplemental Conditions, Plans and Specifications, and any Addenda issued.
- 1.6 Bonds - Bid, performance and payment bonds and other instruments of security, if applicable.
- 1.7 Claim - A written demand or assertion by CITY or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract Documents. A demand for money or services by a third party is not a Claim.
- 1.8 Change Order - A document recommended by the CITY’S REPRESENTATIVE, which is signed by CONTRACTOR and CITY and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement, substantially in the form of Exhibit B to the Contract.
- 1.9 Contract (also Contract for Construction or Agreement) - The written instrument which is evidence of the agreement between CITY and CONTRACTOR covering the Work to be performed, including the Contract Documents and any exhibits that are attached to the Contract or made a part thereof; and any other Contract Documents which are incorporated in or referenced in the CONTRACT and made a part thereof.

ATTEST:

(Surety Seal)

(Corporate SURETY)

Business Address

(Secretary)

By: _____
(Surety)

Florida Resident Agent

ATTORNEY-IN-FACT

By: _____

Name _____
(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.

- 1.10 Contract Documents - The Contract Documents consist of the Drawings, Plans and Specifications, Bid Form, including all documentation accompanying Bid, post Bid documentation submitted prior to the Notice of Award, Qualifications Statement, Contract for Construction, Addenda, and Notice of Award, Notice to Proceed, Certificates of Insurance, Payment and Performance Bonds, the General Conditions, Supplementary Conditions, Permits, any additional documents which are required to be submitted under the Contract, and all changes, amendments, modifications and supplements issued on or after the effective date of the Contract.
- 1.11 Contract Price - The total compensation payable by CITY to CONTRACTOR under the Contract Documents as stated in the Contract, for satisfactory completion of the Work.
- 1.12 Contract Time - The number of days or date stated in the Contract for the completion of the work.
- 1.13 CONTRACTOR - The person, firm or corporation with whom CITY has entered into the Contract for the performance of the Work as defined by the Contract Documents.
- 1.14 Day - A day shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
- 1.15 Defective - An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the recommendation for final payment by the CITY'S REPRESENTATIVE.
- 1.16 Drawings - The drawings, diagrams, illustrations and other data which show the character, extent and scope of the Work to be performed and which have been prepared or approved by the Architect and/or Engineer with the concurrence of the CITY'S REPRESENTATIVE and are referred to in the Contract Documents.
- 1.17 Effective Date -The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- 1.18 ENGINEER - The individual or firm designated by the CITY to be the CITY'S REPRESENTATIVE for engineering related matters during construction of the Project, if an ENGINEER is required.
- 1.19 Final Completion - The term Final Completion as used herein, shall mean that 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 and/or use, issuance by all governmental and/or governing authorities having

jurisdiction over the Work of all required final approval, permits, and licenses required, delivery of record drawings, electronic files, and manuals to the CITY.

- 1.20 Notice of Award - The written notice by CITY to the lowest responsive, responsible Bidder.
- 1.21 Notice to Proceed - A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.
- 1.22 Project - The Work to be performed under the Contract Documents which may be the whole or a part as may be indicated elsewhere in the Contract Documents.
- 1.23 Punch List - A list of items of Work required by the Contract Documents, which after inspection by the ARCHITECT and/or ENGINEER, and the CITY'S REPRESENTATIVE, and the Contractor has been termed to be not completed, deficient and/or inconsistent with the Contract Documents.
- 1.24 Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted to CITY by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- 1.25 Site - Lands or areas upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR.
- 1.26 Specifications - Those portions of the Contract Documents consisting of written instructions and technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.27 Subcontractor - An individual, firm or corporation who enters into a Contract with CONTRACTOR for the performance of any part of CONTRACTOR'S Work. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 1.28 Submittals - Documents prepared by the Contractor or those working on his behalf (subcontractors, material suppliers and others) to show how a particular aspect of the Work is to be fabricated and installed. The CONTRACTOR'S submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.29 Substantial Completion - The term Substantial Completion as used herein, shall mean that point at which, as certified in writing by CITY'S REPRESENTATIVE, based on a recommendation by the

Architect and/or Engineer, the Work, or a designated phase thereof if the work has been directed in phases, is at a level of completion in substantial compliance with the Contract Documents such that the CITY or its designee can have beneficial use or occupy the project and can use or operate the project in all respects for its intended purpose. In the event the Work includes more than one Phase, the CITY at its discretion may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase, including Final Completion.

- 1.30 Superintendent or Resident Superintendent – The executive representative for the CONTRACTOR present on the Work site at all times during progress, authorized to receive and fulfill instructions, including field orders, from the CITY and the ARCHITECT and/or ENGINEER and who is capable of supervising the work efficiently and communicating effectively with CITY staff and the general public.
- 1.31 Supplementary Conditions - That part of the Contract Documents which amends or supplements these General Conditions.
- 1.32 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.
- 1.33 Surety – The firm, corporation, or individual which is bound by the Performance and Payment Bonds with and for the CONTRACTOR, and which engages to be responsible for the CONTRACTOR’S acceptable performance of the Work and for his payment of all debts pertaining thereto in accordance with the bond documents and Section 255.05, Florida Statutes.
- 1.34 Total Base Bid - The sum of all the unit prices times the quantities as provided in the Bid Form.
- 1.35 Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following utility services or materials, including but not limited to: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage, and drainage removal, traffic or other control systems or water.
- 1.36 Unit Price Bid - the amount stated in the Bid Form as a price per unit of measurement for materials or labor as described in the Bidding Documents.
- 1.37 CITY – The City of Marathon City Council or City Manager, as applicable.
- 1.38 CITY’S REPRESENTATIVE – The individual designated by the CITY in writing to act as the CITY’S REPRESENTATIVE with respect to the CONTRACTOR’S performance of the Work. Such individual shall have authority to transmit instructions, receive information, and make decisions with respect to the performance of the Work.
- 1.39 Work (Also referred to as the “Project”) - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work

is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Commencement of Contract Time; Notice to Proceed:

The Work shall commence subsequent to the execution of this Contract by all parties and upon a written Notice to Proceed from CITY. No Work shall be done at the site prior to the date on which the Contract Time commences to run. CITY shall furnish to CONTRACTOR one final executed original of the Contract Documents.

2.2 Pre-Construction Conference:

Within five (5) days after the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, CITY, ARCHITECT and/or ENGINEER, the CITY'S REPRESENTATIVE and others as appropriate will be held to discuss the schedules for Work referred to in Section 2.3, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to all aspects of the Work, its progress and the Contract Documents.

2.3 Acceptance of Schedules:

Within five (5) days from the pre-construction conference and before submission of the first Application for Payment, the CONTRACTOR shall submit finalized schedules for the Work. The finalized progress schedule will be reviewed by the CITY for acceptance as providing an orderly progression of the Work to completion within the Contract Time. The finalized schedule of Shop Drawing submissions shall be acceptable to the CITY'S REPRESENTATIVE as providing a workable arrangement for processing the submissions. The finalized schedule of values shall also be acceptable to the CITY'S REPRESENTATIVE as to form and substance.

2.3.1 CONTRACTOR'S schedule of Submittals will be acceptable to CITY as providing a workable arrangement for reviewing and processing the required Submittals. CITY'S acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work.

2.3.2 Price for construction mobilization and demobilization shall be distributed such that the mobilization and demobilization charges are equal. The demobilization shall be paid in the Final Application for Payment.

2.3.3 If at any time during the progress of Work, the CONTRACTOR'S actual progress is inadequate to meet the requirements of the Contract Documents, the CITY'S REPRESENTATIVE shall notify CONTRACTOR in writing of the CONTRACTOR'S failure to meet the Schedule. The CONTRACTOR shall within five (5) days, provide CITY with a written explanation of the steps necessary to maintain the project Schedule so as to complete the Work on or before the required Substantial Completion Date.

ARTICLE 3 - CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

3.1 Entire Agreement:

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Florida.

3.2 Intent:

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, labor, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR, or the CITY'S REPRESENTATIVE, or any of their consultants, agents or employees from those set forth in the Contract Documents.

3.3 Reference Standards:

Standards, Specifications, Codes, Laws, and Regulations - Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or laws or regulations in effect on last day for receipt of Bids, except as may be otherwise specifically stated in the Contract Documents.

3.4 Reporting and Resolving Discrepancies

3.4.1

Reporting Discrepancies - If, during the performance of the Work, CONTRACTOR, or any of his Subcontractors or Suppliers, discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any law or regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it immediately to CITY in writing. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by Section 5.13.) until obtaining a written clarification from the CITY. After

CONTRACTOR'S discovery of such a conflict, error or discrepancy, or after the date when CONTRACTOR should have reasonably known thereof, until the interpretation or clarification is obtained from the CITY, any Work done by CONTRACTOR which is directly or indirectly affected by same, will be at CONTRACTOR'S own risk and CONTRACTOR shall bear all costs and delay arising therefrom.

- 3.4.2 Resolving Discrepancies - Except as may be otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in Section 3.5, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
- 3.4.2.1 The CONTRACTOR shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the CITY'S REPRESENTATIVE with copy to the ARCHITECT and/or ENGINEER of any conflict, ambiguity, error or omission which the CONTRACTOR may find with respect to these documents before proceeding with the affected Work.
 - 3.4.2.2 The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - 3.4.2.3 The provisions of any laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).
- 3.4.3 In resolving such conflicts, errors or discrepancies, the Contract Documents shall be given preference in the order specified in the Contract.
- 3.4.4 In all cases where notes, specifications, sketches, diagrams, details or schedules in the Specifications or Drawings, or between the Specifications and Drawings, conflict, the higher cost requirements shall be furnished by CONTRACTOR unless otherwise directed by the CITY.
- 3.4.4.1 No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of CONTRACTOR, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to CITY, or any of CITY'S Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.5 Amending Contract Documents:

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

- 3.5.1 A Written Amendment; or
- 3.5.2 A Change Order.

3.6 Supplements, Minor Variations or Deviations:

The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

- 3.6.1 Approval of a Shop Drawing, sample or submittal, by CITY'S REPRESENTATIVE, based on a recommendation by the ARCHITECT and/or ENGINEER;
- 3.6.2 Written interpretation or clarification by CITY'S REPRESENTATIVE, which does not adjust the Contract Price or Contract Times; or
- 3.6.3 A Field Order.

3.7 Ownership and Reuse of Documents:

Ownership of all documents, including but not limited to drawings, as-builts, plans and specifications and related computerized documents utilized or prepared by the CONTRACTOR in the performance of the Work shall remain with the City. The CONTRACTOR, any Subcontractors or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect Contract with the CITY shall not reuse any documents without the prior written consent of the CITY.

ARTICLE 4 - AVAILABILITY OF LANDS, PHYSICAL CONDITIONS, REFERENCE POINTS

4.1 Availability of Lands:

CITY shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use by CONTRACTOR. CONTRACTOR shall provide at CONTRACTOR'S own expense and without liability to CITY any and all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. CONTRACTOR shall furnish to CITY copies of written permission that is obtained from the owners of such additional lands and access for such facilities in a form agreement.

4.2 Physical Conditions: Physical conditions information includes:

4.2.1 Reports and Drawings:

- 4.2.1.1 Reports of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 4.2.1.2 Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except underground facilities).

4.2.2 Differing Subsurface or Physical Conditions.

4.2.2.1 Contractor may make a claim pursuant to Section 4.2.2.1.3 if CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

4.2.2.1.1 Differs materially from that shown or indicated in the CITY'S Plans and Specifications; or

4.2.2.1.2 Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Project and is of an unforeseen nature that such conditions could not have been discovered by CONTRACTOR.

4.2.2.1.3 CONTRACTOR shall, within 24-hours after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Section 5.15), notify CITY in writing about such condition. CONTRACTOR'S timely submission of written notice to CITY shall be a strict condition precedent to CONTRACTOR'S entitlement to make a claim. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of a written order to do so from the CITY'S REPRESENTATIVE.

4.2.3 Underground Facilities:

The cost of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for:

4.2.3.1 Locating all such underground facilities; prior to commencement of the Work;

4.2.3.2 Coordination of the Work with the owners of such underground facilities, including CITY, before, during and after construction; and

4.2.3.3 The safety and protection of all such underground facilities and repairing any damage thereto resulting from the Work.

4.3 Hazardous Environmental Condition at Site:

CONTRACTOR shall be responsible for any hazardous environmental conditions created by the CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible. If CONTRACTOR encounters a hazardous environmental condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a hazardous environmental condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Section 5.15); and (iii) notify CITY and immediately thereafter confirm such notice in writing.

ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES

5.1 Contractor Performance:

The Contractor shall perform all of the Work required by the Contract Documents and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work, and shall perform the Work in a good and workmanlike manner with sufficient manpower to perform the Work in accordance with the time requirements set forth in the Contract Documents, and shall perform all other acts and supply all other things necessary to complete the Work in strict accordance with the Contract Documents.

5.2 Contractor Representations and Warranties:

The Contractor represents and warrants to the CITY that:

- 5.2.1 It is financially solvent and has sufficient working capital to perform the obligations under this Construction Contract;
- 5.2.2 It is experienced and skilled in the construction of the type of Project described in the Contract Document;
- 5.2.3 It is able to provide the labor, materials, equipment and machinery necessary to complete the Work for the agreed upon price;
- 5.2.4 It is a fully licensed under all applicable laws and authorized to do business in the State of Florida in the name of the entity identified as the "Contractor" in the Construction Contract;
- 5.2.5 It has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings; and the location of electric and utility lines and water, sanitary, wastewater and storm drain lines.
- 5.2.6 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.
- 5.2.7 When Notice of Final Completion is submitted by CONTRACTOR to CITY, the completed Work shall conform to all of the requirements of the Contract Documents including resolution of Punch List items and be completely ready for use and / or occupancy.

5.3 Supervision and Superintendence:

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

5.4 Resident Superintendent:

Before the commencement of Work, the CONTRACTOR shall designate a competent, authorized representative (herein Resident Superintendent or Superintendent), acceptable to the CITY in its sole discretion, to represent and act for the CONTRACTOR. Contractor shall:

- 5.4.1 Inform CITY in writing, of the name, address and contact information of such representative together with a clear definition of the scope of his authority to represent and act for CONTRACTOR and shall specify any and all limitation on such authority.
- 5.4.2 Provide notice to the CITY in writing of any subsequent changes in the foregoing.
- 5.4.3 The Superintendent shall be present or be duly represented at the site of the Work at all times when the Work is actually in progress, and shall be able to communicate effectively with CITY staff and the general public.
- 5.4.4 During periods when portions of the Work are suspended, arrangements for an authorized

representative acceptable to the CITY shall be made for any emergency, which may be required.

- 5.4.5 All notices, determinations, instructions and other communications given to the CONTRACTOR'S Superintendent shall be binding upon the CONTRACTOR.

5.5 Labor and Materials:

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- 5.5.1 The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR'S employees and other persons carrying out the Contract. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 5.5.2 Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular Working hours, and CONTRACTOR will not permit overtime Work or the performance of Work on Saturday, Sunday or any legal holiday without CITY'S prior written consent. Regular Working Hours are considered between 7:00 a.m. and Sunset.
- 5.5.3 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the CITY'S REPRESENTATIVE, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY'S REPRESENTATIVE, or any of CITY'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to those provided in the Contract Documents.
- 5.5.4 All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY.
- 5.5.5 Manufacturers' or Suppliers' warranties for all materials products and equipment to be furnished by CONTRACTOR and to be incorporated into the completed Work shall be furnished to the CITY through CONTRACTOR. CONTRACTOR shall obtain from Suppliers of all materials, products and equipment, complete information as to any special condition or restriction to be applied in the use of these items. Should the manner or method of installation, specified performance or test results as set forth in the Specifications be contrary to the manufacturer's recommendations for use of the product, CONTRACTOR shall notify the CITY in writing of such conflict as soon as reasonably possible, but no later than the time of Shop Drawing submittal including those products. Failure to provide such written notice before proceeding with the Work affected thereby

shall be certification by CONTRACTOR that the specification requirements will be met by the materials, products and equipment, and that the cost and time required to perform the Work affected thereby have been included in the Contract Price and in the schedule for the performance of the Work within the Contract Time.

5.6 Substitutes or "Or Equal" Items:

5.6.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/or ENGINEER if sufficient information is submitted by CONTRACTOR to allow a determination that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by the CITY'S REPRESENTATIVE from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to the CITY'S REPRESENTATIVE for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application must state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct Contract with CITY for the Work) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The CITY may require the application to contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign affected by the resulting change, all of which shall be considered by the CITY'S REPRESENTATIVE based on the recommendation of the ARCHITECT and/or ENGINEER in evaluating the proposed substitute. The CITY'S REPRESENTATIVE may require CONTRACTOR to furnish, at CONTRACTOR'S expense, additional data about the proposed substitute.

5.6.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the CITY'S REPRESENTATIVE based on the recommendation of the ARCHITECT and/or ENGINEER, if CONTRACTOR submits sufficient information to allow the CITY'S REPRESENTATIVE to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the CITY'S REPRESENTATIVE will be similar to that provided in Section

5.6.1 as applied by the CITY'S REPRESENTATIVE and as may be supplemented in the Contract Documents.

5.6.3 The CITY'S REPRESENTATIVE, ARCHITECT and/or ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. The City will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the prior written acceptance and approval by the CITY, which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

5.7 Concerning Subcontractors, Suppliers and Others:

5.7.1 CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with CONTRACTOR to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between CITY, CITY'S REPRESENTATIVE or the ARCHITECT and/or ENGINEER and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY, CITY'S REPRESENTATIVE or the ARCHITECT and/or ENGINEER to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations governing the Work.

5.7.2 CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those not acceptable to CITY), whether initially or as a replacement, against whom CITY may have objection. CONTRACTOR shall submit names, addresses and contact information of any and all subcontractors to CITY in writing prior to commencement of Work and during Work progress if subcontractors change or are added.

5.7.3 CONTRACTOR shall be solely responsible for scheduling and coordinating Subcontractors, engineers, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Engineers, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the CITY through CONTRACTOR. CONTRACTOR shall require all subcontractors to register with the City's Building Department prior to commencement of Work.

5.7.4 The CITY requires the identity of Subcontractors, Suppliers, and other individuals or entities to be submitted to the CITY in advance of the Work for acceptance by CITY. The CONTRACTOR shall not remove or replace any Subcontractors or Suppliers listed in its Bid subsequent to execution of the Contract without the prior written approval of the CITY. CITY'S acceptance of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected

Subcontractor, Supplier, or other individual or entity. No acceptance by CITY of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of CITY to reject defective Work.

5.7.5 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the subcontractor, which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY. Furthermore, CONTRACTOR shall assign to CITY all of its rights, interests, benefits and privileges under any agreement with a Subcontractor pursuant to an Assignment.

5.8 Patent Fees, Licenses and Royalties:

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

5.9 Permits, Fees and Licenses:

CONTRACTOR shall be responsible for obtaining and paying for all permits and licenses required by any Federal, State or other agencies to perform the Work (other than those obtained by the CITY). CONTRACTOR shall post at the site of the Work required permits and maintain on site other permit documents as appropriate.

5.10 Laws and Regulations:

5.10.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work. Neither CITY, CITY'S REPRESENTATIVE nor the ARCHITECT and/or ENGINEER shall be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations.

5.10.2 If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws or regulations, CONTRACTOR shall give CITY'S REPRESENTATIVE with copy to the ARCHITECT and/or ENGINEER prompt written notice thereof, and any necessary changes will be authorized as appropriate by CITY'S REPRESENTATIVE. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such laws or regulations, and without such notice to CITY, CONTRACTOR shall bear all costs arising therefrom.

5.11 Taxes:

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with all applicable Federal, State and local laws and regulations during the performance of the Work.

5.12 Use of Site and Premises:

5.12.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and areas identified in and

permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the CITY or the ARCHITECT and/or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. Notwithstanding this provision, the general indemnification provided elsewhere in this Contract specifically applies to claims arising out of CONTRACTOR'S use of the premises.

5.12.2 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.13 Record Documents:

5.13.1 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to CITY, the CITY'S REPRESENTATIVE and the ARCHITECT and/or ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to the CITY'S REPRESENTATIVE for the CITY.

5.13.2 The record drawings shall be marked up as the Work progresses to reflect current conditions and shall become the "as-built" plans. The revisions are to be indicated in a neat, well-organized manner and are to include the elevation and plan location of any utilities, structures, etc., encountered or installed. A "record" survey book will be kept and shall include the following items:

5.13.2.1 The location and elevation of all existing utilities, structures, etc. encountered.

- 5.13.2.2 The finished product location and elevation of all utilities and structures installed, including, but not limited to, fire hydrants, catch basin and manhole lids, inverts, pipes, and any and all underground structures.
- 5.13.3 All record notes shall be kept in book(s) designated "record" and no other survey notes will be kept in such books. CONTRACTOR will be required to review with the CITY the status of the "as-built" plans and the "record" survey notes in connection with CITY'S evaluation of an application for payment. Failure to maintain current record documents shall be just cause for the CITY to withhold payments for Work performed.
- 5.13.4 Upon completion of the Work, CONTRACTOR shall deliver to the CITY a reproducible set of updated Contract plans. CONTRACTOR will transfer all its "as-built" information to these reproducibles and deliver the resulting "as-built" set of plans, together with the record survey book to the CITY. Each completed set of "as-built" drawings must include on its face, a certified statement by the CONTRACTOR that the set of "as-built" drawings accurately depicts the actual work as constructed. The Contractor shall also deliver the "as-built" plans to the CITY electronically in CAD format.

5.14 Safety and Protection:

- 5.14.1 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:
 - 5.14.1.1 All persons on the Site or who may be affected by the Construction;
 - 5.14.1.2 All the Construction Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 5.14.1.3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements roadways, structures, utilities, and underground facilities not designated for removal, relocation or replacement in the course of construction.
- 5.14.2 CONTRACTOR shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in Sections 5.14.1.2 or 5.14.1.3 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. 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 the CITY has made final payment to CONTRACTOR.

- 5.14.3 CONTRACTOR shall furnish watchmen, flagmen, warning signs, cones, barricades, flashing lights and other necessary safeguards in sufficient numbers and at appropriate locations as necessary to protect and divert vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new Work.
- 5.14.4 CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

5.15 Emergencies:

- 5.15.1 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.
- 5.15.2 The 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, the CITY'S installations and/or public or private property. Site excavations shall be required to be secured and/or backfilled. No CONTRACTOR equipment may be parked within 100 feet of any CITY facilities. In the event of the issuance of a storm warning, the CITY will attempt to notify the CONTRACTOR, however, the CONTRACTOR is responsible for preparing for a storm event. The CONTRACTOR shall take the necessary precautions to protect the walking and motoring public from harm due to construction activity.
- 5.15.3 The 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 and / or damages, cost of stoppage or delay of work, from the CONTRACTOR to the CITY. The 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.

5.16 Shop Drawings and Samples:

- 5.16.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Conditions herein, CONTRACTOR shall submit Shop Drawings to the CITY'S REPRESENTATIVE for review and approval, based on the recommendation of the ARCHITECT and/or ENGINEER. Shop Drawings shall be submitted in accordance with the accepted schedule of Shop Drawing submissions or for other appropriate action if so indicated. Five (5) copies of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission shall be submitted to the CITY'S REPRESENTATIVE, with a copy to the ARCHITECT and/or ENGINEER. The data shown on the Shop Drawings

will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the CITY'S REPRESENTATIVE, ARCHITECT and/or ENGINEER, to review the information as required.

- 5.16.2 CONTRACTOR shall also submit to the CITY'S REPRESENTATIVE for review and approval, with the recommendation of the ARCHITECT and/or ENGINEER, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- 5.16.3 Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- 5.16.4 At the time of each submission, CONTRACTOR shall give the CITY'S REPRESENTATIVE, with copy to the ARCHITECT and/or ENGINEER, specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the CITY'S REPRESENTATIVE for review and approval, with the recommendation of the ARCHITECT and/or ENGINEER, of each such variation. Failure to point out such departures shall not relieve CONTRACTOR from his responsibility to comply with the Contract Documents.

5.17 Temporary Utilities:

- 5.17.1 Water for the Work: The CONTRACTOR shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Contractor or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents. Copies of the receipts for payment shall be given to the City prior to final payment.
- 5.17.2 Electric for the Work: The CONTRACTOR shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the CONTRACTOR or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents. Copies of the receipts for payment shall be given to the City prior to final payment.

5.17.3 Temporary Sanitary Facilities:

5.17.3.1 The CONTRACTOR shall provide and maintain temporary sanitary facilities at a location approved by the CITY in a neat and sanitary condition and such accommodations and facilities shall be for the use of his employees and subcontractors as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues, including the CITY building department.

5.17.3.2 No nuisance will be permitted.

5.17.3.3 Upon completion of Work, such sanitary facilities shall be removed and the premises left in a sanitary condition.

5.18 Continuing the Work:

CONTRACTOR shall carry on the Work and adhere to the progress Schedule during all disputes or disagreements with CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, unless CONTRACTOR and CITY may otherwise agree in writing. Suspension of the Work by CONTRACTOR during any dispute or disagreement with CITY shall entitle CITY to terminate the CONTRACT for cause.

5.19 Indemnification:

5.19.1 General Indemnification:

CONTRACTOR shall indemnify, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney's, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of CITY. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, including the loss of use resulting therefrom; (c) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this Project including the warranty period; (d) the use of any improper materials; (e) any construction defect including patent defects; (f) any act or omission of CONTRACTOR or his Subcontractors, agents, servants or employees; (g) the violation of any federal, state, county or CITY laws, ordinances or regulations by CONTRACTOR, his Subcontractors, agents, servants or employees; (h) the breach or alleged breach by CONTRACTOR of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

5.19.2 Patent and Copyright Indemnification:

CONTRACTOR agrees to indemnify, save and hold harmless CITY, its officers, agents and employees, from all such claims and fees, and from any and all actions of every

claim and description that may be brought against CITY, its officers, agents and employees, on account of any claims, fines, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against CITY, its officers, agents and employees for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

- 5.19.3 CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of CITY, in connection with the foregoing indemnifications, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of CITY when applicable.
- 5.19.4 In the event that any claims are brought or actions are filed against the CITY with respect to the indemnity contained herein, the CONTRACTOR agrees to defend against any such claims or action regardless of whether such claims or actions are rightfully or wrongfully brought or filed. CITY reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of CONTRACTOR.
- 5.19.5. Such CONTRACTOR'S indemnification shall not be limited to the amount of comprehensive general liability insurance which CONTRACTOR is required to obtain under the Contract. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.
- 5.19.6 Any terms or conditions of the indemnification that may take place after expiration or termination of the Contract shall survive termination or expiration of the Contract.

5.20 Responsibility for Security of Work Site

- 5.20.1 CONTRACTOR shall at all times conduct, at its sole expense, all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any CITY property.
- 5.20.2 CONTRACTOR shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.
- 5.20.3 CONTRACTOR shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions as described in Sections 5.20.1 and 5.20.2 and shall be solely responsible for discovery, determination and correction of any such condition.
- 5.20.4 CONTRACTOR shall cooperate with the CITY'S REPRESENTATIVE on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by CITY.

- 5.20.5 Security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.
- 5.20.6 Compliance with CITY security requirements shall not relieve CONTRACTOR of its responsibility for maintaining property security for the above noted items, nor shall it be constructed as limiting in any manner CONTRACTOR's obligation to undertake reasonable action as required to establish and maintain secure conditions at the Site.
- 5.20.7 CONTRACTOR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to the CITY'S REPRESENTATIVE in a timely manner.

ARTICLE 6 - OTHER WORK

6.1 Related Work at Site:

CITY may perform other Work related to the Project at the Site by CITY'S own forces, have other Work performed by utility owners or directly Contract for such other work. Written notice thereof will be given to CONTRACTOR prior to starting any such other Work not previously noticed to CONTRACTOR.

ARTICLE 7 - CITY'S RESPONSIBILITIES - GENERALLY

- 7.1 CITY shall furnish the data in its possession required of CITY under the Contract Documents.
- 7.2 CITY will provide lands and easements for the Work as required. CITY will make available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site that are known and readily available to CITY at the time of executing the Contract.
- 7.3 Limitations on CITY'S Responsibilities:
The CITY shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with laws and regulations applicable to the performance of the Work. CITY will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

ARTICLE 8 - ADMINISTRATION OF THE CONTRACT.

8.1 Visits to Site:

ARCHITECT and/or ENGINEER as well as the CITY'S REPRESENTATIVE may make visits to the site at intervals appropriate to the various stages of construction to inspect the progress and quality of the executed Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of such visits and on-site inspections, the ARCHITECT and/or ENGINEER shall keep the CITY'S REPRESENTATIVE informed of the progress of the Work and shall guard the CITY against defects and deficiencies in the Work.

8.2 Technical Clarifications and Interpretations:

The CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, will issue with reasonable promptness such written clarifications or interpretations of the technical requirements of the Contract Documents as the CITY'S REPRESENTATIVE may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in this Contract. Should CONTRACTOR fail to request an interpretation of questionable items in the Contract Documents neither CITY, CITY'S REPRESENTATIVE nor ARCHITECT and/or ENGINEER will thereafter entertain any excuse for failure to execute the Work in a satisfactory manner.

8.3 Authorized Variations in Work:

CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, may authorize minor variations in the Work from the technical requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on CITY, and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a field order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided elsewhere in this Contract.

8.4 Approval of Work:

The CITY'S REPRESENTATIVE will have the authority to disapprove or reject Work that the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, believes to be defective, and will also have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed.

8.5 Decisions on Disputes:

The CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, will be the initial interpreter of the technical requirements of the Contract Documents and the acceptability of the Work thereunder. Claims, disputes and other matters by the CONTRACTOR relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the Contract Price or Contract Time shall be referred to the CITY'S REPRESENTATIVE in writing with a request for a formal decision in accordance with this Section with copies to the ARCHITECT and/or ENGINEER and City Manager. Written notice of each such claim, dispute and other matter shall be delivered by the CONTRACTOR to the CITY'S REPRESENTATIVE with copies to the ARCHITECT and/or ENGINEER and City Manager no later than three (3) calendar days after the occurrence of the event giving rise thereto, including written supporting data. The CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/or ENGINEER, will review the claim and provide a recommendation to the City Manager within seven (7) calendar days of receipt of written request from CONTRACTOR. The City Manager will review the recommendation and make a decision on the request. The City

Manager's decision will be final.

ARTICLE 9 - CHANGES IN THE WORK

- 9.1 Without invalidating the Contract and without notice to any surety, CITY may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment or Change Order. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). All such changes in the Work shall be authorized by a Change Order.
- 9.2 If CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in Article 10 or Article 11.
- 9.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented, as provided in Section 3.5, except in the case of an emergency and except in the case of uncovering Work as those situations are addressed herein.
- 9.4 The CITY and CONTRACTOR shall execute appropriate change orders or written amendments covering:
- 9.4.1 Changes in the Work which are ordered by CITY pursuant to Section 9.1, and are required to correct defective Work or are agreed to by the parties; and
- 9.4.2 Changes in the Contract Price or Contract Time, which are agreed to by the parties. CONTRACTOR shall carry on the Work and adhere to the progress schedule. Proposed change orders shall be prepared by CONTRACTOR on forms approved by CITY.
- 9.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be CONTRACTOR'S sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.
- 9.6 There shall be no CONTRACTOR delay claim based upon CONTRACTOR'S inability to perform Change Order work due to delay caused by CITY'S standard approval process.

ARTICLE 10 - CHANGE OF CONTRACT PRICE

- 10.1 The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by

CONTRACTOR shall be at his expense without change in the Contract Price.

10.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered to the CITY'S REPRESENTATIVE promptly (but in no event later than three (3) days after the occurrence of the event giving rise to the amount of the claim) with supporting data to be delivered within seven (7) days and accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) as a result of the occurrence of said event. The CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, will review the claim and provide a recommendation to the City Manager within seven (7) working days of receipt of written request from CONTRACTOR. The City Manager and/or the City Council, as applicable, will review the recommendation and make a decision on the request. The City Manager's/City Council's decision will be final. No resolution of a claim for adjustment in the Contract Price shall be effective until approved by the CITY in writing.

10.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

10.3.2 By mutual acceptance of a negotiated lump sum.

10.3.3 By "Cost of the Work".

10.3.4 For Change Orders falling within Section 10.3.2, the CITY'S REPRESENTATIVE will consider inclusion of a profit and overhead percentage as part of any negotiated Change Order. However, the CITY'S REPRESENTATIVE will not recommend for approval any percentages in excess of 10% for profit and 10% for overhead as part of any Change Order.

10.3.5 For Change Orders falling within Section 10.3.3, the CONTRACTOR may include up to an additional ten percent (10%) of the sum of all costs in Sections 10.4.1, 10.4.2 and 10.4.3 for overhead and an additional ten (10%) percent of the sum of all costs in Sections 10.4.1, 10.4.2. and 10.4.3 for profit in the Cost of the Work.

10.4 Cost of the Work

The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the work. Except as otherwise may be agreed to in writing by CITY such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in Section 10.5:

10.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the work under schedules of job classifications agreed upon by 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.

10.4.2 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.

10.4.3 Supplemental costs including the following:

10.4.3.1 Cost, including transportation and maintenance of all materials, supplies, equipment, and machinery.

10.4.3.2 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 and/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.

10.4.3.3 Sales, consumer, use or similar taxes related to the work and for which CONTRACTOR is liable, imposed by laws and regulations.

10.4.3.4 Royalty payments and fees for permits and licenses.

10.4.3.5 The cost of utilities, fuel and sanitary facilities at the site.

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

10.5 Not Included in the Cost of the Work:

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

10.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives,

principals (of partnership and sole proprietorships), 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 included in the agreed upon schedule of job classifications referred to in Section 10.4.1 all of which are to be considered administrative costs covered by CONTRACTOR'S fee.

10.5.2 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

10.5.3 Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

10.5.5 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.

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

10.6 Cost Breakdown Required:

10.6.1 Whenever the cost of any Work is to be determined pursuant to Sections 10.4 or 10.5 CONTRACTOR will submit in a form acceptable to the CITY'S REPRESENTATIVE an itemized cost breakdown together with supporting data.

ARTICLE 11 - CONTRACT TIME

11.1 Commencement

The date of commencement of the Work is the date established in the Notice to Proceed.

11.2 Time of Substantial Completion:

The date of Substantial Completion of the Work or designated portion thereof is the date certified by the CITY'S REPRESENTATIVE when construction is sufficiently complete, in accordance with the Contract Documents, so CITY can occupy or utilize the Work for the purposes for which it is intended.

11.3 Change of Contract Time:

11.3.1 All time limits stated in the Contract Documents are of the essence. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS. CONTRACTOR shall not be entitled to an increase in the Contract Price or

payment or compensation of any kind from CITY for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area, which shall be defined, for purposes hereof, as four (4) rain days per month.

11.3.2 NO RECOVERY FOR EARLY COMPLETION. If the CONTRACTOR submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the CITY shall not be liable to the CONTRACTOR for any costs incurred because of delay or hindrance should the CONTRACTOR be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the CITY to the CONTRACTOR shall be consistent with and applicable only to the completion of the work and completion dates set forth in these General Conditions.

11.3.3 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for extension of time shall be made in writing to the CITY'S REPRESENTATIVE not more than five (5) days after the detection or beginning of the occurrence of the event giving rise to the delay and stating the general nature of the claim; otherwise, the claim shall be waived. In the case of a continuing delay only one claim is necessary. CONTRACTOR shall provide an estimate of the probable effect of such delay on the progress of the Work.

11.4 Liquidated Damages:

11.4.1 Upon failure of CONTRACTOR to complete the Work within the time specified for substantial completion, (plus approved extensions if any) CONTRACTOR shall pay to CITY the liquidated damages sum stated in the Contract for each calendar day that the substantial completion of the Work is delayed beyond the time specified in the Contract for Substantial Completion, as fixed and agreed liquidated damages and not as a penalty. After Substantial Completion, if CONTRACTOR neglects, fails or refuses to complete the remainder of the Work within the Contract Time or any approved extension thereof, CONTRACTOR shall pay to CITY the liquidated damages sum provided in the Contract for Construction for each calendar day (plus approved extensions if any) after the time specified in the Contract for final completion and readiness for final payment as fixed and agreed liquidated damages and not as a penalty.

11.4.2 Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay and both parties desiring to obviate any question

of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Work on time. Regardless of whether or not a single Contract is involved, the liquidated damages sum shall apply separately to each portion of the Work for which a time of completion is given. The CITY shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to CONTRACTOR, the amount of such liquidated damages and if the amount retained by CITY is insufficient to pay in full such liquidated damages, the CONTRACTOR shall pay in full such liquidated damages.

11.4.3 Additional Expenses of City: CONTRACTOR shall be responsible for reimbursing CITY, in addition to liquidated damages or other per day damages for delay, for all costs of engineering, ARCHITECT and/or ENGINEER's fees, other professional fees, cost of inspection and other costs incurred in administering the construction of the project beyond the Final Completion date specified or beyond an approved extension of time granted to CONTRACTOR whichever is later.

ARTICLE 12 – CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

12.1. CONTRACTOR warrants and guarantees to CITY all Work shall be in accordance with the Contract Documents and will not be defective.

12.2. CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents:

- 12.2.1 Observations by CITY and/or CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER;
- 12.2.2 Payment by CITY of any progress or final payment;
- 12.2.3 The issuance of a certificate of Substantial Completion or any payment related thereto by CITY;
- 12.2.4 Use or occupancy of the Work or any part thereof by CITY;
- 12.2.5 Any acceptance by CITY or any failure to do so;
- 12.2.6 Any review and approval of a Submittal or the issuance of a notice of acceptability by the CITY'S REPRESENTATIVE;
- 12.2.7 Any inspection, test, or approval by others; or
- 12.2.8 Any correction of defective Work by CITY.

12.3 Access to Work:

The CITY'S REPRESENTATIVE, ARCHITECT and/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.

12.4 Tests and Inspection:

12.4.1 CONTRACTOR shall give CITY timely notice of readiness of the Work for all required inspections, tests, observations or approvals. Inspections, tests or observations by the

CITY'S REPRESENTATIVE, the ARCHITECT and/or ENGINEER, CITY or its agents may be performed at its discretion to provide information to the CITY on the progress of the Construction. However such information is not intended to fulfill the CONTRACTOR'S obligations in accordance with the Contract Documents.

12.4.2 CONTRACTOR shall assume full responsibility, pay all costs in connection therewith and furnish CITY the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

12.5 Uncovering the Work:

If any Construction that is to be inspected, tested or approved is covered without written concurrence of CITY'S REPRESENTATIVE, it must, if requested by CITY or the CITY'S REPRESENTATIVE, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense and will exclude the right to an increase in the Contract Price or Contract Times unless CONTRACTOR has given CITY or the CITY'S REPRESENTATIVE timely written notice of CONTRACTOR'S intention to cover such Construction and CITY or the CITY'S REPRESENTATIVE has not acted with reasonable promptness in response to such notice.

12.5.1 If CITY considers it necessary or advisable that covered Work be observed by CITY'S REPRESENTATIVE or the ARCHITECT and/or ENGINEER, or inspected or tested by others, CONTRACTOR, at CITY'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as CITY may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, any additional expenses experienced by the CITY due to delays to others performing additional work, other contractual obligations, and attorneys' fees and CITY shall be entitled to issue an appropriate deductive Change Order. CONTRACTOR shall further bear the responsibility for maintaining the schedule and will not be allowed an increase in Contract Price or Contract Time due to the uncovering. If, however, such Construction is not found to be defective, and Section 8.5 is not applicable, CONTRACTOR shall be allowed an increase in the Contract Price or the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if it makes a claim therefore as provided in the Contract Documents.

12.6 CITY May Stop the Work:

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, 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.

12.7 Correction or Removal of Defective Work:

If required by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/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 the

CITY'S REPRESENTATIVE, upon the recommendation of the ARCHITECT and/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 the CITY'S REPRESENTATIVE, the ARCHITECT and/or ENGINEER, attorneys and other professionals) made necessary thereby.

12.8 One Year Correction Period:

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 the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/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 the CITY'S direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of the ARCHITECT and/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.

12.9 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.

12.10 Extended Warranty Period Due to Defective Construction:

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 12. 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.

ARTICLE 13 - TRUTH-IN-NEGOTIATION

13.1 CONTRACTOR warrants that all proposal price items are true, complete and accurate and include all costs, overhead, profit and all other amounts associated with such items and may be relied upon by CITY when making additions or deductions to the Contract Price. CONTRACTOR further warrants that all cost and pricing data provided to the CITY'S REPRESENTATIVE and CITY during the term of the Contract shall be complete, accurate and current when provided. Should there be any changes in the Cost and Pricing Data previously submitted, the CONTRACTOR shall notify and provide the new information to the CITY'S REPRESENTATIVE and CITY immediately. CITY shall be entitled to issue an appropriate Change Order to adjust the Contract Price and Contract Times based on correcting inaccurate or incomplete information provided by CONTRACTOR.

- 13.2 Despite any provisions in the Contract Documents to the contrary, any amounts paid by CITY to CONTRACTOR in excess of that to which it is entitled under the Contract Documents shall be reimbursed by CONTRACTOR to CITY. The making of Final Payment to CONTRACTOR shall not be a waiver of CITY'S right to reimbursement from CONTRACTOR nor shall it discharge CONTRACTOR'S obligation to refund the overpayment. The terms of this Article shall survive the CITY'S making Final Payment.
- 13.3 CONTRACTOR shall insert a provision containing all the requirements of this Article, in all Subcontracts between CONTRACTOR and Subcontractors, Engineers or Suppliers or other persons, altering the section only as necessary to identify properly the contracting parties.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

- 14.1 Schedule of Values:
The schedule established as provided in Section 2.3 will serve as the basis for progress payments and will be incorporated into the Application for Payment.
- 14.2 Application for Progress Payment:
At least twenty (20) days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit for review to the CITY'S REPRESENTATIVE with copy to the ARCHITECT and/or ENGINEER an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that CITY has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect CITY'S interest therein, all of which will be satisfactory to CITY. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- 14.2.1 Each application shall contain an affidavit or partial release of lien by CONTRACTOR that partial payments received from CITY for the Work have been applied by CONTRACTOR to discharge in full all of CONTRACTOR'S obligations, including payments to subcontractors, stated in prior Applications For Payment. Contractor shall also furnish Release of Lien from all suppliers, subcontractors, or any other entity furnishing material, equipment, labor, or services for the project.
- 14.3 CONTRACTOR'S Warranty of Title:
CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to CITY no later than the time of payment free and clear of all Liens.
- 14.4 Review of Applications for Progress Payments:
The CITY'S REPRESENTATIVE will, within ten (10) days after receipt of each Application for

Payment, and based on the recommendation of the ARCHITECT and/or ENGINEER, either indicate in writing a recommendation of payment to the CITY, or return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make corrections, if necessary, and resubmit the Application.

14.5 If required by law, the first application for payment will include a charge for Indemnification of the CITY by the CONTRACTOR.

14.6 Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied in full to discharge CONTRACTOR'S obligations associated with prior Applications for Payment.

14.7 Review of Applications:

14.7.1 CITY will, after receipt of each Application for Payment and recommendation from the CITY'S REPRESENTATIVE, either make payment or return the Application to CONTRACTOR, indicating in writing the CITY'S reasons for refusing to make payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

14.7.2 CITY may refuse to make the whole or any part of any payment if, in CITY'S opinion, it would be incorrect to make such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment previously made, to such extent as may be necessary in CITY'S opinion to protect CITY from loss because:

- 14.7.2.1 the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- 14.7.2.2 the Contract Price has been reduced by Written Amendment or Change Orders;
- 14.7.2.3 CITY has been required to correct defective Work or complete Work in accordance with Section 12.7; or
- 14.7.2.4 The CONTRACTOR fails to comply with the requirements for performance of the Work as stated in the Contract Documents.

14.8 Prompt Payment:

All payments by the CITY to the CONTRACTOR pursuant to this Article 14 shall be made in accordance with Chapter 218.70, Florida Statutes.

14.9 Substantial Completion:

When CONTRACTOR considers the Work ready for its intended use, CONTRACTOR shall notify the CITY'S REPRESENTATIVE certifying in writing that the Construction is substantially complete (except for items specifically listed by CONTRACTOR as incomplete), submit to CITY all operation and maintenance manuals and instructions and spare parts required by the Contract Documents, and request that the CITY issue a certificate of Substantial Completion. Promptly thereafter, CITY, CONTRACTOR, and the CITY'S REPRESENTATIVE, with the ARCHITECT and/or ENGINEER, shall make an inspection of the Construction to determine the status of completion. If the CITY'S REPRESENTATIVE does not consider the

Work substantially complete, the CITY'S REPRESENTATIVE will notify CONTRACTOR in writing giving the reasons therefor. If CITY'S REPRESENTATIVE considers the Construction substantially complete, based on the recommendation of the ARCHITECT and/or ENGINEER, the CITY'S REPRESENTATIVE shall prepare a letter verifying the certificate of Substantial Completion, which shall fix the date of Substantial Completion.

14.10 Punch List:

There shall be attached to the Certificate of Substantial Completion a Punch List of items, which should be minor in scope and nature, to be completed or corrected before final payment. CONTRACTOR shall immediately address Punch List items required after receipt of the certificate to complete or correct items to the satisfaction of the CITY'S REPRESENTATIVE. Retainage shall be adjusted up or down based upon the Punch List. A value will be placed on each Punch List item based upon the City's cost to have it completed. The total value of the Punch List will be multiplied by five and this shall be the retainage held until Final Completion is achieved.

14.11 Final Application for Payment:

After CONTRACTOR has completed all such corrections specified in Section 14.10 to the satisfaction of the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/or ENGINEER, and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record Documents and other Documents, all as required by the Contract Documents, and after the CITY'S REPRESENTATIVE, upon the recommendation of the ARCHITECT and/or ENGINEER, has indicated that the Work is acceptable, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to CITY to indemnify CITY against any lien. In addition, CONTRACTOR shall also submit with the final Application for Payment, the completed set of "As-Built" prints. Final payment to CONTRACTOR shall not be made until said prints have been reviewed and approved by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/or ENGINEER. Prior to approval, if necessary, the prints may be returned to CONTRACTOR for changes or modifications and if in the opinion of the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, they do not represent correct or accurate as-builts.

14.12 Final Payment and Acceptance:

14.12.1 If, on the basis of an inspection of the Work by the CITY'S REPRESENTATIVE, with the recommendation of the ARCHITECT and/or ENGINEER, during construction and final inspection, and review of the final Application for Payment and accompanying documentation by the CITY'S REPRESENTATIVE, all as required by the Contract Documents, the CITY'S REPRESENTATIVE is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, the CITY'S REPRESENTATIVE will, within ten (10) days after receipt of the final Application for Payment, indicate in writing a recommendation of payment and present the Application to City Manager for payment. Thereupon the CITY'S REPRESENTATIVE will give written notice to City Manager and CONTRACTOR that the Work is acceptable. Otherwise, the CITY'S REPRESENTATIVE will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with the CITY'S REPRESENTATIVE's recommendation and notice of acceptability, the amount recommended by the CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, will become due and will be paid by CITY to CONTRACTOR.

14.12.2 The CITY will be the interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.

14.12.3 Any moneys not paid by CITY when claimed to be due to CONTRACTOR under this Contract shall not be subject to interest, including but not limited to pre-judgment interest.

14.13 CONTRACTOR'S Continuing Obligation:

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the CITY'S REPRESENTATIVE, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by CITY'S REPRESENTATIVE, based on the recommendation of the ARCHITECT and/or ENGINEER, nor any correction of defective Work by CITY will constitute an acceptance of defective Work or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

14.14 Waiver of Claims:

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.

14.15 CITY May Suspend Work:

CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR, which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall not be allowed an increase in the Contract Price but may request an extension of the Contract Time, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided in the Article 11 of the General Conditions.

14.16 CITY TERMINATION

14.16.1 CITY shall have the right at any time, on not less than seven (7) days prior written notice to the CONTRACTOR, to terminate this Contract without cause and/or for CITY's convenience including, but not limited to termination in the event that the Project is abandoned by CITY; and/or the City Council terminates, suspends or modifies the Work. Upon receipt by the CONTRACTOR of such notice of termination (the "Date of Termination"), the CONTRACTOR shall immediately discontinue the Work and remove its equipment and employees from the Project location. In the event of termination under this Section, the CONTRACTOR shall have the right, as its sole and exclusive remedy, to recover from CITY payment for Work performed and accepted by the CITY up to the Date of Termination (less any payment made to the CONTRACTOR by CITY). In addition, without terminating this Contract as a whole, CITY may, for convenience, terminate a portion of this Contract (by reducing, in such manner as CITY deems appropriate, the scope of the Work to be performed by the CONTRACTOR). In which event such termination of a portion of this Contract shall be treated as a reduction in the scope of the Work, to which an equitable reduction shall be made to the Contract Price as evidenced by the Change Order.

14.16.2 In addition to CITY's right to terminate this Contract immediately for any material breach or for default under the terms as specified in any other section of this Contract, if the CONTRACTOR shall fail to commence the Work in accordance with the provisions of this Contract, fail to perform the Work or portions thereof to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents, fail to use an adequate quantity or quality of personnel, equipment, or material to complete the Work within the Contract Time, fail to perform any of its obligations under the Contract Documents, be adjudged bankrupt, make a general assignment for the benefit of its creditors, permit a receiver to be appointed on account of its insolvency, otherwise insolvent, or fail to make prompt payments to its Subcontractors, materialmen or laborers, CITY shall provide the CONTRACTOR with written notice thereof, stating the nature of the default complained of. If CONTRACTOR does not cure such default within seven (7) days after receipt of such notice (or such longer period agreed to in writing by the parties if the nature of the default is such that it cannot be cured within seven (7) days and CONTRACTOR has commenced and is diligently proceeding to cure within the original seven (7) day period), the CITY shall have the right, on forty-eight (48) hours written notice thereof to the CONTRACTOR to terminate this Contract.

14.16.2.1 In the event of termination under this Section, CITY shall notify the CONTRACTOR's surety, and the CONTRACTOR's surety shall take over and perform this Contract. The CONTRACTOR's surety shall continue to perform, on at least an interim basis, until such time as it

makes other satisfactory arrangements for completion pursuant to the Bond obligations. If the CONTRACTOR's surety does not commence performance with adequate quantity and quality of personnel, equipment, and material to maintain the Contract Time, within five (5) days from the date of receipt of such notice of termination, CITY may, without further notice to the CONTRACTOR or its surety, take possession of and use, without any rental obligation to the CONTRACTOR or any third party, all or any part of the CONTRACTOR's materials and other property of every kind used by the CONTRACTOR in the performance of the Work and use such property in the completion of the Work, and complete the Work with its own forces or by engaging the services of other parties therefore. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY under this Contract, the Bonds or otherwise. If after exercising any such remedy the cost to CITY of the performance of the balance of the Work is in excess of that part of the Contract Price which has not previously been paid to the CONTRACTOR hereunder, the CONTRACTOR and the CONTRACTOR's surety shall be liable for and shall reimburse CITY for such excess costs and all delay and damages suffered by CITY as a result thereof.

14.16.2.2 If after termination of this Contract under this Section, it is determined that the CONTRACTOR was not in default or that sufficient cause to terminate under Section 14.16.2 did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CITY under Section 14.16.1, and that the CONTRACTOR agreed to CITY's use of its materials and other property, in which case the CONTRACTOR shall be entitled to be paid a reasonable sum for City's use of the Contractor's Materials and/or other property of the CONTRACTOR.

14.16.3 CITY may, if the CONTRACTOR neglects to perform the Work properly or to perform any provision of the Contract Documents, or does, or omits to do, anything whereby safety or proper construction may be endangered or whereby damage or injury may result to person or property, after forty-eight (48) hours written notice to the CONTRACTOR, without prejudice to any other remedy CITY may have, make good all Work, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the Contract Price due or which may thereafter become due the CONTRACTOR, but no action taken by CITY hereunder shall affect any of the other rights or remedies of CITY granted by this Contract or by law relieve the CONTRACTOR or the CONTRACTOR's surety from any consequences or liabilities arising from such acts or omissions.

14.16.4 The rights and remedies of CITY under this Article 14 shall be non-exclusive, and shall be in addition to all the other remedies available to CITY at law or in equity.

14.16.5 In the event of a strike or stoppage of Work resulting from a dispute involving or affecting the labor employed by the CONTRACTOR or any of its Subcontractors, CITY may, at its option and without demand, terminate this Contract for default pursuant to Section 14.16.2.

14.17 Termination by CONTRACTOR for non-CITY Suspension:

If the Work should be stopped under an order of any court or other public authority for a period of more than ninety (90) days through no act or fault of CONTRACTOR or of anyone employed by him, or if the CITY'S REPRESENTATIVE fails to review and approve or state in writing

reasons for non-approval of any application for payment within thirty (30) days after it is submitted, then CONTRACTOR may, upon ten (10) days written notice to CITY and the CITY'S REPRESENTATIVE stop Work or terminate this Contract. If the CONTRACTOR terminates the contract under this Section, the CONTRACTOR shall be entitled solely to payment for all Work executed and approved by the CITY through the date of termination. The CONTRACTOR may only recover actual expenses that the CONTRACTOR or his subcontractors have incurred prior to the date of termination. The provisions of this Section shall not relieve CONTRACTOR of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with CITY.

14.18 CITY Suspension Beyond 90 Days:

If the Work should be stopped by order or request of the CITY for a period of more than ninety (90) days through no act or fault of the CONTRACTOR or anyone employed by him, then the CONTRACTOR shall be entitled to request a CHANGE ORDER for the Contract Price and Contract Time in accordance with the procedures in Article 11. Any claim for additional time or price shall include documentation of non cancellable contractual obligations, and any other actual expense of the CONTRACTOR necessary for the CONTRACTOR to maintain compliance with the CONTRACT.

ARTICLE 15 - NOTICES & COMPUTATION OF TIME

15.1 Giving Notice:

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon hand delivery or by mailing by certified mail, return receipt requested per page 6 herein. following:

ARTICLE 16 - BONDS AND INSURANCE

16.1 Performance, Payment and Other Bonds:

Within ten (10) calendar days after issuance of Notice of Award, the CONTRACTOR shall execute and furnish to the CITY a performance bond and a payment bond on the forms provided by the CITY.

16.1.1 Two (2) separate bonds are required. The penal sum stated in each bond shall be the amount equal to 100% of the Contract Price payable under the Contract.

16.1.1.1 The Performance Bond shall guarantee the full and faithful execution of the Work in an amount equal to 100 percent (100%) of the total Contract Price, and including guaranteed repair and maintenance of all defects due to faulty materials and workmanship that appear within one year after completion of the contract. The performance bond shall be conditioned that the CONTRACTOR perform the Work in the time and manner prescribed in the Contract Documents.

16.1.1.2 The Labor and Material Payment Bond shall guarantee the full and proper protection of all claimants supplying labor and materials in the Work in an amount equal to 100 percent (100%) percent of the total Contract Price. The payment bond shall be conditioned that CONTRACTOR promptly make payments to all persons who supply CONTRACTOR with labor, materials and supplies used directly or indirectly by CONTRACTOR in the prosecution of the Work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save and hold harmless CITY to the extent of any and all payments in connection with the carrying out of said Contract which CITY may be required to make under the law.

16.1.2 Qualification of Surety:

- 16.1.2.1 Each bond must be executed by a Surety company of recognized standing, authorized to do business in the State of Florida as Surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. Each Surety shall submit verification from the Florida Department of Insurance Office of the Treasurer stating the surety company's license and certificate of authorization to do business in the State of Florida.
- 16.1.2.2 The Surety company shall hold a current certificate of authority as acceptable Surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 2, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety company shall provide the CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner.
- 16.1.2.3 The CITY will accept a Surety bond from a company with a rating of B+ or better for bonds up to \$2 million, provided, however, that if any Surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the CITY shall review and either accept or reject the Surety company based on the financial information available to the CITY. A Surety company that is rejected by the CITY may be substituted by the Bidder with a Surety company acceptable to the CITY, only if the bid amount does not increase.
- 16.1.2.4 Bonds executed by an Attorney-in-Fact on behalf of the Surety, shall have affixed thereto a certified and current copy of Power of Attorney, indicating the monetary limit of such power.

16.1.2.5 More stringent requirements may be made by the CITY due to grants from other agencies and are set forth with in the Supplementary Conditions, Section 00800, of the Contract Documents. If there are no more stringent requirements, the provisions of this Article shall apply.

16.2 Bonds, Reduction After Final Payment:

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Contract Price, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the CITY except in Contracts which are concerned solely with demolition Work, in which case the twenty five percent (25%) shall not be applicable.

16.3 Notification to Surety:

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

16.4 Duty to Substitute Surety:

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to CITY.

16.5 Insurance

16.5.1 The CONTRACTOR shall provide or cause to be provided insurance of the type and on the terms and conditions as specified in Exhibit "C" attached hereto. The cost of this insurance is included in the Contract Price. The failure of the CONTRACTOR to provide such insurance shall be considered a material breach of the Contract. Insurance purchased by the CONTRACTOR shall be purchased from a carrier acceptable to CITY. Any decrease in the required insurance coverage requires the prior written approval of the City Manager.

16.5.2 CONTRACTOR shall maintain the coverages for insurance as required by Exhibit "C" as set forth in this Section 16.5 and thereafter during any and every period when CONTRACTOR and/or any of its Subconsultants and/or Subcontractors are performing any Work or furnishing any services pursuant to the Contract Documents. Upon execution of the Contract, CONTRACTOR shall provide or cause to be provided the workers' compensation insurance, comprehensive general liability insurance, business automobile insurance, professional liability insurance and the umbrella liability insurance policies. Immediately following the issuance of the Notice to Proceed for the Work, CONTRACTOR shall provide the builder's risk insurance policy; provided, however, no Work shall be performed unless and until the builder's risk insurance policy is provided

to the CITY in accordance with this Section 16.5.

- 16.5.3 The CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.
- 16.5.4 Certificates of Insurance shall be provided to the CITY at the time of execution of the Contract and certified copies provided if requested. Certificates of Insurance shall include the CITY as additional insured or certificate holder. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CITY before any policy or coverage is cancelled or restricted.
- 16.5.5 The CONTRACTOR shall not commence work under the Contract until after he has obtained all of the minimum insurance herein described and submitted Certificates of Insurance to the CITY as herein required.
- 16.5.6 The CONTRACTOR agrees to perform the work under the Contract as an independent contractor, and not as a sub-contractor, agent or employee of CITY.
- 16.5.7 Violation of the terms of this Article and its sub-parts shall constitute a breach of the Contract and CITY, at its sole discretion, may cancel the Contract and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate.
- 16.5.8 CITY'S Liability and Insurance: CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, Subcontractors or others on the Work. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute Sections 768.28 and 95.11.

ARTICLE 17 - ASSIGNMENT

- 17.1 CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Section shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR without any further notice.

ARTICLE 18 – AUDIT/INSPECT

- 18.1 CITY reserves the right to audit the records (pertaining to this project) of CONTRACTOR at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times

during normal business hours during the term of the Contract. If an Auditor determines that the CONTRACTOR was paid for Work not performed or paid in excess of materials provided, the CONTRACTOR shall reimburse the CITY for such overpayment.

ARTICLE 19 – COMPUTATION OF TIME

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

ARTICLE 20 – CUMULATIVE REMEDIES

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

ARTICLE 21 – SURVIVAL OF OBLIGATIONS

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

ARTICLE 22 – CONTROLLING LAW

- 22.1 The Laws of the State of Florida shall govern this Contract.

EXHIBIT A

APPLICATION FOR PAYMENT NO. _____

To: _____ (OWNER)
From: _____ (CONTRACTOR)
Contract: _____
Project: _____
OWNER's Contract No. _____ ENGINEER's Project No. _____

- For Work accomplished through the date of: _____
1. Original Contract Price: \$ _____
2. Net change by Change Orders and Written Amendments (+ or -): \$ _____
3. Current Contract Price (1 plus 2): \$ _____
4. Total completed and stored to date: \$ _____
5. Retainage (per Agreement):
% of completed Work: \$ _____
% of stored material: \$ _____
Total Retainage: \$ _____
6. Total completed and stored to date less retainage (4 minus 5): \$ _____
7. Less previous Application for Payments: \$ _____
8. ~~Accompanying Determination~~ DUE THIS APPLICATION (6 MINUS 7): \$ _____

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

DATE _____ CONTRACTOR _____

By: _____
State of _____
County of _____
Subscribed and sworn to before me this _____ day of _____, 2014

Notary Public
My Commission expires: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____ ENGINEER _____

Prepared by Engineers Joint Contract Documents Committee and endorsed by Associated General Contractors of America and the Construction Specification Institute.

APPLICATION FOR PAYMENT

INSTRUCTIONS

A. GENERAL INFORMATION

The sample form of Schedule of Values is intended as a guide only. Many projects require a more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by Engineer and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Contract permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage. Refer to Article 14 of the General Conditions for provisions concerning payments to Contractor.

B. COMPLETING THE FORM

The Schedule of Values, submitted and approved as provided in Section 2.3 of the General Conditions, should be reproduced as appropriate in the space indicated on the Application for Payment form. Note that the cost of materials and equipment is often listed separately from the cost of installation. Also, note that each Unit Price is deemed to include Contractor's overhead and profit.

All Change Orders affecting the Contract Price should be identified and included in the Schedule of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

C. LEGAL REVIEW

All accompanying documentation of a legal nature, such as Lien waivers, should be reviewed by an attorney, and Engineer should so advise Owner.

CONTRACT EXHIBIT "B"

CHANGE ORDER

CHANGE ORDER NO. _____

TO: City of Marathon

PROJECT: CITY OF MARATHON – Oceanfront Park Fitness Trail

CONTRACTOR: _____

DATE: _____

This Change Order will authorize the following change to the Agreement:

The Work as set forth in the Agreement is hereby amended to include the items set forth on proposal attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under this Agreement.

The Contractor acknowledges and agrees that (a) the Contract Price of \$_____ under the Agreement will be [unchanged] [changed] by this Change Order, and (b) the schedule for performance of Work will be [unchanged] [changed] by this Change Order.

Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

THE CITY OF MARATHON
a Florida municipal corporation

CONTRACTOR

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

END OF SECTION

EXHIBIT C
INSURANCE REQUIREMENTS

CONTRACTOR shall provide or cause to be provided the following insurance and shall also ensure that the following insurance language shall be included in the Subcontractor Contracts. Prior to commencement of Work, certificates of insurance shall be provided evidencing CONTRACTOR's and its Subcontractor's compliance with these insurance requirements; provided, however, builder's risk insurance shall not be required unless and until the Work commences. Without limiting any of the other obligations or liabilities of CONTRACTOR and the Subcontractors, the CONTRACTOR and each Subcontractor shall provide, pay for, and maintain in force until all of the Work is completed and accepted by the CITY (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein.

1. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Million Dollars (\$1,000,000) each accident.
 - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
2. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to CONTRACTOR, and One Million Dollars (\$1,000,000) with per occurrence respect to Subcontractors, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
 - (a) Premises and/or Operations;
 - (b) Independent Contractors;
 - (c) Products and/or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000.00) CONTRACTOR shall maintain in force until at least three (3) years after completion of all work required under the Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage;
 - (d) Explosion, Collapse and Underground Coverages;
 - (e) Broad Form Property Damage;
 - (f) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement;
 - (g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
 - (h) CITY and CONTRACTOR are to be expressly included as "Additional Insureds" with respect to liability arising out of operations performed for CITY and CONTRACTOR by or on behalf of CONTRACTOR and Subcontractors or acts or omissions of CITY or CONTRACTOR in connection with general supervision of such operation.
3. Umbrella Liability, general aggregate of One Million Dollars (\$1,000,000)..
Business Automobile Liability with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form

no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- (a) Owned Vehicles.
 - (b) Hired and Non-Owned Vehicles.
5. Builder's Risk Insurance for the construction of above ground buildings and/or structures is required. The coverage shall be "All Risk" form for One Hundred Percent of the completed value, including CITY and CONTRACTOR as named insureds, with a deductible of not more than Twenty-five Thousand Dollars (\$25,000) each claim.
- (a) Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any "occupancy clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until the Substantial Completion Date.
 - (b) When the buildings or structures are located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance coverage available under the National Flood Program.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the CITY. The CONTRACTOR shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) days' prior written notice to CITY except in the case of non-payment by the CONTRACTOR for which ten (10) days' prior written notice will be provided to CITY; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the CITY; and (iv) be effective for a period from the date of this Agreement through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this Agreement through at least five (5) years after completion of the Work provided hereunder and builder's risk insurance which shall be effective through Substantial Completion. Insurance shall be provided to the CITY at the times required by Section 16.5 of the General Conditions at which time the CONTRACTOR shall deliver to CITY a certificate of insurance naming CITY as an additional insured as required hereunder for each policy of required insurance except for professional liability insurance. The minimum coverage and time periods specified above are not intended, and shall not be construed, to limit any liability of the CONTRACTOR to CITY under this Contract Documents. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). CONTRACTOR is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by the Contract Documents. The cost of deductibles paid by CONTRACTOR shall be included in the Contract Price.