

UP FRONT BID DOCUMENTS

FOR

**39<sup>th</sup> STREET STORMWATER IMPROVEMENTS PROJECT**

Owner:  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

**MONROE COUNTY, FLORIDA**

*Work Authorization No. 2017-01*

Prepared by

WEILER ENGINEERING CORPORATION

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May 2018

**BID DOCUMENTS AND FORMS  
FOR  
39<sup>th</sup> STREET STORMWATER IMPROVEMENTS PROJECT**

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## SECTION 00100

### INVITATION TO BID

All interested parties are hereby notified that the City of Marathon is accepting sealed bids for, 39<sup>th</sup> Street Stormwater Improvements Project.

The construction of this project consists of labor, materials and equipment necessary to convert an existing gravity injection well to a pump assist well by installing two (2) pumps, valves, control structure, and all associated components as detailed in the Contract Plans for the City of Marathon.

Bids shall be prepared, addressed and submitted in compliance with the instructions as set forth herein. ITB documents shall be obtained through Demandstar ([www.demandstar.com](http://www.demandstar.com)). A copy of the ITB documents will be available for inspection at City Hall.

**ITB DOCUMENTS OBTAINED FROM ANY SOURCE OTHER THAN DEMANDSTAR MAY NOT BE ACCURATE OR COMPLETE, AND EACH POTENTIAL RESPONDENT ASSUMES ALL RISKS BY ITS RELIANCE ON SUCH DOCUMENTS. ANY RESPONDENT WHO HAS NOT OBTAINED THE ITB DOCUMENTS FROM DEMANDSTAR WILL NOT BE NOTIFIED OF ANY ADDENDA ISSUED BY THE CITY, WHICH COULD CONTAIN MATERIAL CHANGES THERETO (SUCH AS ADDITIONS OR CHANGES TO THE TECHNICAL SPECIFICATIONS, EXTENSIONS OF TIME, ETC).**

**All bids must be submitted in sealed envelopes to the City Clerk on or before June 28, 2018 at 3:00 PM local time. Any bids received after 3:00 PM on said date will not be accepted and will be returned unopened.** Bids submitted will be opened publicly and read aloud at this time in the City Hall Conference Room located at 9805 Overseas Highway Marathon, Florida, on the same date. The City assumes no responsibility for bids not properly marked.

A **Mandatory** Prebid meeting is scheduled for May 31, 2018 at 1:30PM. The meeting is to be held at City Hall, 9805 Overseas Highway with plant visits to follow the meeting.

Prospective Bidders shall not contact or otherwise communicate with City staff or City officials except as set forth in Paragraph 4.1 of Section 00200, Instructions to Bidders. Bid Security in the amount of five percent (5%) of the Total Base Bid must accompany the Bid in accordance with the Instructions to Bidders unless otherwise excluded.

The City reserves the right to reject any or all bids and to waive informalities, except timely submission of bids, in any bids received, to re-advertise for bids or to take any other such actions that may be deemed in the best interests of the City. As a matter of information to Bidders, the City does not bind itself to accept the minimum specifications stated herein, but reserves the right to accept any bid, which in the judgment of the City Council will best serve the needs and interests of the City.

END OF SECTION

## SECTION 00200

### INSTRUCTIONS TO BIDDERS

The definitions provided in this section and all other sections herein will apply to the Project & Bidding Documents.

#### 1.0 DEFINITIONS

- 1.1 Bid/Proposal - The offer or proposal of the Bidder submitted on the proscribed form setting forth the prices for the Work to be performed under the Contract Documents.
- 1.2 Bidder - Any person, firm or corporation submitting a proposal for the Work covered by these specifications or his duly authorized representative.
- 1.3 Bidding Documents – The Invitation to 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.
- 1.4 CITY – City of Marathon City Council, or where specified the City Manager.
- 1.5 CONTRACTOR - The person, firm or corporation with whom the CITY has executed a contract for the Work as defined by the Contract Documents.
- 1.6 Days - A day shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
- 1.7 Responsible Bidder - Any person, firm, or corporation submitting a Bid for the Work who maintains a permanent physical place of business, has adequate equipment and personnel to do the Work within the time limits that are established, has adequate financial status to meet the obligations to perform the Work and has not been declared in default on any previous contract, who possesses the contractor license(s)/state certification(s)/local registration(s) required to perform the Work (if any), and who meets the qualifications of Article 00200.7.0.
- 1.8 Responsive Bidder - Any person, firm or corporation submitting a Bid for the Work whose Bid form is complete and includes all required attachments and enclosures, free from exclusions or special conditions and has no alternative Bids for any items, unless alternatives are requested in the specifications.
- 1.9 Total Base Bid - The sum of all unit prices and/or lump sum prices times the quantities as provided in the Bid Form.

- 1.10 Work (Also referred to as the “Project”) - The entire completed construction and/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.

## 2.0 PRE-BID CONFERENCE:

- 2.1 A Mandatory pre-bid conference is scheduled for **May 31, 2018 at 1:30 PM** at City Hall, 9805 Overseas Highway, Marathon, FL 33050 with site visits to each facility to follow the meeting. All prospective bidders are must attend the prebid meeting and each facility to qualify to bid.

## 3.0 EXAMINATION OF DOCUMENTS AND SITE

- 3.1 Bidders shall examine existing site and surrounding area, including but not limited to subsurface and soil conditions, utilities, and streets to determine all conditions that will affect the Work and become familiar with the nature and extent of Work to be performed and local conditions that may affect the Work.
- 3.2 The Bidding Documents were prepared to present an essentially accurate representation of existing conditions, interpreted from available information on site. The Bidder is not relieved, however, of the responsibility of becoming fully informed as to existing conditions at the site.
- 3.3 Bidders shall thoroughly examine the Bidding Documents, Plans and Specifications and any other documents which may be applicable to the Project.
- 3.4 A sample contract for construction has been included in the Bidding Documents. The CITY is not bound by this sample document and reserves the right to modify the final contract for construction.
- 3.5 Bidders should be aware that the CITY is subject to hurricanes and tropical storms and therefore the Bidder shall consider such likelihood in their scheduling and construction activities. Each Bidder must submit a hurricane plan as part of its Bid proposal.

## 4.0 INTERPRETATION OF BIDDING DOCUMENTS

- 4.1 All inquiries and requests for clarifications or interpretations of the Bidding Documents shall be made in writing to the CITY’S REPRESENTATIVE, at least ten (10) days prior to the date for receipt of Bids. For the purpose of this Bid the CITY’S REPRESENTATIVE is: Daniel Saus, Utility Director at sausd@ci.marathon.fl.us
- 4.2 Any modification or interpretation of the Bidding Documents will be made by written Addendum to all who are recorded by the CITY as having received a complete set of Bidding Documents.

- 4.3 Interpretations or modifications of Bidding Documents made in any manner other than by written Addendum will not be binding.
- 4.4 A Bidder, prior to submitting a Bid, shall ascertain that he has received all Bidding Documents and Addenda issued, have been received, and shall acknowledge their receipt on the Bid Form.

## 5.0 BID PREPARATION AND SUBMITTAL

- 5.1 The Bidder shall prepare Bids on the forms provided by the CITY with all blanks on the Bid Form filled in by typewriter or written in ink.
- 5.2 The Bidder shall write Total Base Bid amount in both words and figures. In case of a discrepancy between the two, the amount written in words shall govern.
- 5.3 The Bidder shall sign the Bid as follows: If the proposal is made by an individual, the Bidder's name and address shall be shown. If made by a firm or partnership, the name and address of the individual(s) authorized to bind the firm or partnership shall be shown. If made by a corporation, the person signing the proposal shall show the name of the state under the laws of which the corporation is chartered. Anyone signing the proposal as agent shall include in the proposal legal evidence of his/her authority to do so.
- 5.4 The Bidder shall **submit one (1) unbound original and one (1) bound copy of the Bid. Additionally, submit a CD containing the bid documents in PDF format.** Bids shall include the legal name and address of the Bidder and indicate whether the Bidder is a sole proprietor, a partnership, a corporation, or other legal entity. The Bid shall include: 1) Bid Form, Document 00300; 2) Contractor's Qualification Statement, Document 00303; 3); Bid Security, Document 00401; 4) Any Addenda, Document 00900; 5) Copy of the contractor license(s)/state certification(s)/local registration(s) required to perform the Work (if any); 6) a Corporate Resolution evidencing Authorization to submit the Bid, if applicable; and 7) Evidence of Insurability.
- 5.5 Bids shall include documentation required by the Florida "Trench Safety Act" and acknowledge conformance with O.S.H.A. standards. Forms are included within the Bidding Documents for completion by the Contractor and review by the CITY. The unit prices presented in the Bid shall include the Bidders' cost of compliance with these applicable standards.
- 5.6 **The Bid shall be enclosed in a sealed opaque envelope**, addressed to Attn: City Clerk, City of Marathon, as stated in the Invitation to Bid. **The envelope shall be further identified with the Project name and number, the Bidder's name and address, and the word "B I D".**
- 5.7 The Bidder shall deposit the Bid at the designated location provided on the Invitation to Bid on or before the time and date for receipt of Bids. Bids received after the time

and date indicated for receipt of Bids will not be accepted and will be returned unopened.

- 5.8 The Bidder and all sub-contractors shall be registered as a contractor with the CITY's Building Department after award of bid.

## 6.0 BID SECURITY (BID BOND)

- 6.1 A 5.0% Bid Bond is required for the project.

## 7.0 QUALIFICATIONS OF BIDDERS

- 7.1 Each Bidder shall complete the Contractor's Qualifications Statement provided in Document 00303, along with any other evidence of satisfactory experience, past performance and ability to perform the proposed Work, and shall submit the same with the Bid. Failure to submit the Qualifications Statement and all documents required there under together with the Bid Form and all items listed in Section 5.4 will constitute grounds for rejection of the Bid as non-responsive.
- 7.2 The Bidders may be disqualified and their Bids rejected for any of the following reasons:
- 7.2.1 The bid is not responsive, including without limitation, failure to include the bid security.
- 7.2.2 Reason to believe that collusion exists among Bidders.
- 7.2.3 Determination of lack of responsibility or competency as may be revealed by qualification statements, financial statements, references and other evidence of past performance.
- 7.2.4 The Bidder's uncompleted work load which in the judgment of the CITY may cause detrimental impact on prompt completion of this Project.
- 7.2.5 The Bidder is or has been involved in any litigation against the CITY.
- 7.2.6 The Bidder has been declared in default on any previous contract, or is in arrears on any existing contract on any public or private matters.
- 7.2.7 The submittal of more than one bid from an individual, firm, partnership, corporation or association under the same or different names.
- 7.2.8 The Bidder's previous work with the CITY has resulted in claims from third parties or subcontractors.
- 7.3 The CITY reserves the right to make a pre-award inspection of the Bidder's facilities and equipment prior to award.

- 7.4 It shall be a requirement of this bid that there are no related party transactions between the Bidder and any employee of the CITY. Any Bidder who is a related party, as noted herein, will be considered non-responsive and the proposal and the bid bond will be immediately returned. A Bidder will be considered a related party if any employee of the City has an ownership interest in the Bidder or can influence the management or operating policy of the Bidder.
- 7.5 PUBLIC ENTITY CRIMES ACT - In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the CITY, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.

## 8.0 AWARD OF CONTRACT

- 8.1 The award of the contract will be to the lowest responsive and responsible Bidder, whose qualifications indicate the award will be in the best interest of the CITY and who's Bid complies with the requirements of these specifications. In no case will the award be made until all necessary investigations have been made into the responsibility of the Bidder(s) and the CITY is satisfied that the Bidders are qualified to do the Work and have the necessary organization, capital and equipment to carry out the Work within the specified timeframes.
- 8.2 If the CITY accepts a Bid, the CITY will provide a written notice of the award to the lowest Responsive and Responsible Bidder.
- 8.3 Until final award of Contract, the CITY reserves the right to reject any and all Bids, with or without cause; to waive any informality or irregularity; or to accept the Bid which is in the best interest of the CITY.
- 8.4 The CITY reserves the right to hold all Bids and Bid security for a period not to exceed 120 days after the date of Bid opening stated in the Invitation to Bid.



## 9.0 EXECUTION OF CONTRACT AND CONTRACT DOCUMENTS

- 9.1 The successful Bidder(s) shall be notified upon receipt of a written Notice of Award. At that time, the CITY will offer a Contract for the construction of the Work.
- 9.2 The successful Bidder will be required to execute the Contract for construction within seven (7) days of the Notice of Award and submit all requested certificates of insurance and performance and payment bonds as required in the Contract Documents.
- 9.3 Until such time as the Contract is fully signed by the City, no contract exists between the City and the Bidder and the Bidder agrees that it has no claim for legal or equitable relief if a contract is not executed by the City.

## 10.0 FAILURE TO EXECUTE THE CONTRACT

- 10.1 The failure of the successful Bidder(s) to execute a contract and submit required insurance certificates and bonds as specified in Section 00200.9.2 above will result in forfeit of the Notice of Award. Each Bidder agrees in advance that the CITY will sustain certain damages too difficult to accurately ascertain. Accordingly, if the Notice of Award is forfeited under this Section, the amount of the Bid Security (Bid Bond) of the forfeiting Bidder will be retained by the CITY, not as forfeiture or a penalty, but as liquidated damages.
- 10.2 The CITY may, at the CITY's sole option, award the contract to the next lowest Responsive and Responsible Bidder or reject all Bids and re-advertise the Work.

## 11.0 RETURN OF THE BID GUARANTY

- 11.1 All Bid security of unsuccessful Bidders will be returned after the contract is awarded and executed, and the certificates of insurance and performance and payment bonds have been submitted by the successful Bidder.

## 12.0 MODIFICATION AND WITHDRAWAL OF BID

- 12.1 Prior to the date and time of bid opening, a Bidder may withdraw his Bid at any time.
- 12.2 After the bid opening, no Bid may be withdrawn, canceled or modified.

## 13.0 OPENING OF BIDS

- 13.1 Bids submitted will be opened publicly and read aloud at the time and place stated in the Invitation to Bid.
- 13.2 The Bidder agrees to abide by the unit prices and/or lump sum amount quoted as the Total Base Bid, in the Bid Form for 120 days from the date and time of bid opening.

#### 14.0 CONTRACT TIME AND PERFORMANCE

- 14.1 The Work to be performed under the Contract Documents shall be commenced upon issuance of a Notice to Proceed by the CITY.
- 14.2 The number of days in which the Work is to be completed is **One Hundred Twenty (120)** consecutive calendar days from the date of issuance of the Notice to Proceed to Final Acceptance.
- 14.3 By virtue of the submission of its Bid, Bidder agrees and fully understands that the completion time of the Work of the Contract is an essential and material condition of the Contract and that time is of the essence. The successful Bidder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified.
- 14.4 All Bidders shall agree that a liquidated damages provision will be required in the Contract for construction.

#### 15.0 GOVERNING LAWS AND REGULATIONS

- 15.1 Bidders shall be familiar with, and shall comply with, all federal, state, and local laws, ordinances, rules and regulations that may in any manner affect the Work.
- 15.2 Trench Safety Act: The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926 Subpart P trench safety standards will be in effect during the period of construction of the Project.

#### 16.0 INSURANCE/EVIDENCE OF INSURABILITY

- 16.1 The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in the General Conditions, Section 00700 of the Contract Documents for the life of the Contract. Certificates of Insurance shall be provided by the Bidder upon the notice of Award, as specified in the General Conditions.
- 16.2 Bidder shall be required to submit with the Bid Form written evidence of insurability from Bidder's insurance company, for the types and amounts of insurance specified herein.

#### 17.0 SUBCONTRACTOR LIST

- 17.1 The Bidder shall submit a list of names and addresses of the subcontractors and major material suppliers proposed for the principal portions of the Work and shall include such information on Document 00303 Contractor's Qualifications Statement.

- 17.2 Prior to award of Contract, the CITY will notify the Bidder in writing if there is an objection to any person or entity listed. Upon such objection, the Bidder shall propose an acceptable substitute in accordance with the General Conditions.

## 18.0 LICENSES, PERMITS AND FEES

- 18.1 In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, the CITY shall disclose all permit fees associated with the project. Licenses, permits, and fees which may be required by Monroe County or any State or Federal entities (other than those to be obtained by the CITY) are not included. Any delays in obtaining permits must be brought to the attention of the CITY without delay.
- 18.2 A Certified General Contractors License (CGC) is required for the project. The Bidder shall provide a copy of the contractor license(s)/state certification(s)/local registration(s) required to perform the Work (if any), following three (3) days of the Notice of Award.
- 18.3 The successful Bidder shall give all notices and comply with all permit requirements, laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work, including, but not limited to, the Department of Environmental Protection permit and the South Florida Water Management District permit for the Project. The CITY shall not be responsible for monitoring the successful Bidder's compliance with any laws or regulations.

## 19.0 ANTI-LOBBYING

- 19.1 Under no circumstances shall any Bidder, or any person or persons acting for or on behalf of any Bidder, seek to influence or gain the support of any member of the City governing body or staff favorable to the interest of any Bidder, or seek to influence or gain the support of any member of the City governing body or staff against the interest of any other Bidder. From the date of issuance of this invitation to bid until final City action, Bidders are not to discuss the bids or any part thereof with any employee, agent, or any other representative of the City except as expressly authorized by the Community Services Coordinator in writing. The only communications that shall be allowed with regard to this invitation to bid are the submission in response to the invitation to bid, written requests for clarification of the invitation to bid to the Community Services Coordinator, and any relevant written document submitted at the City's specific request. Any activities contrary to this paragraph may result in the disqualification of the Bidder.

END OF SECTION

**SECTION 00300**

**BID FORM**

**PART 1 GENERAL**

**1.01 Description**

The following Bid, for the (1) 39<sup>TH</sup> STREET STORMWATER IMPROVEMENTS PROJECT is hereby made to the City of Marathon, hereafter called the Owner. This Bid is submitted by (2):

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*(1) Name of Project as shown in the Invitation for Bids*

*(2) Name, address, and telephone number of Bidder*

**1.02 The Undersigned:**

A. Acknowledges receipt of:

1. Project Manual and Drawings identified within the Project Manual.
2. Addenda: Number \_\_\_\_\_ Dated \_\_\_\_\_  
Number \_\_\_\_\_ Dated \_\_\_\_\_  
Number \_\_\_\_\_ Dated \_\_\_\_\_

B. Has examined the site and all Bidding Documents and understands that in submitting his Bid, he waives all right to plead any misunderstanding regarding the same.

C. Agrees:

1. To hold this Bid open for 90 calendar days after the bid opening date.
2. To accept the provisions of the Instructions to Bidders regarding disposition of Bid Security.
3. To enter into and execute a contract with the Owner, if awarded on the basis of this Bid, and to furnish a Performance Bond and a Labor and Material Payment Bond in accordance with the Instructions to Bidders.

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NAME OF BIDDER

4. To accomplish the work in accordance with the Contract Documents.
5. To begin work not later than **30** days after the issuance of a Notice to Proceed; to achieve substantial completion of the work within **90** calendar days of the date of the Notice to Proceed; and to achieve final completion within **30** calendar days from substantial completion.
6. To accept the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time.

### **1.03 Bid Schedule**

The Bidder hereby agrees to perform all work as required by the Contract Documents for the following Base Bid Lump Sum plus any selected additive alternates. All work required to be performed by the Contract Documents is to be included within the following Pay Items, inclusive of furnishing all manpower, equipment, materials and performance of all operations relative to construction of the project. Work for which there is not a Pay Item will be considered incidental to the Contract and no additional compensation will be allowed.

**Lump Sum Bid (Numeric):**    \$ \_\_\_\_\_

**Lump Sum Bid (Written):**

**Dollars and    Cents**

### **1.04 List of Subcontractors**

List the subcontractors, if any that the Bidder proposes to use to perform a portion of the work with a value of more than one half of one percent of the total bid. Prior to award, the Bidder must provide evidence of each subcontractor's valid business license, and evidence of each subcontractor's valid certificate of competency or registration under Ch. 489, Fla. Stat.

If the Bidder fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is more than one half of one percent of the total bid, the Bidder shall be considered to have agreed to perform that portion of the work without the use of a subcontractor and to have represented the Bidder to be qualified to perform that work. The Bidder shall not remove or replace subcontractors listed in the bid subsequent to the lists being made public at the bid opening, except upon good cause shown.



ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT COST	TOTAL COST
1.01	Mobilization (not to exceed 5%)	LS	1		
1.02	Bonds, Insurance, Taxes	LS	1		
1.03	Erosion Control (BMPs)	LS	1		
2.01	Core Existing Basins for 18" pipe, mud in pipe and finish	EA	4		
2.02	Furnish & Install 18" RCP	LF	155		
2.03	Furnish & Install FDOT Type "C" Catch Basin	EA	1		
2.04	Furnish & Install 12" HDPE N-12 Storm Pipe (with Fittings)	LF	25		
2.05	Furnish & Install Pump Station Wet Well	EA	1		
2.06	Furnish & Install Pump Station Valve Box	EA	1		
2.07	Furnish & Install 2500 GPM Axial Flow Pumps	EA	2		
2.08	Furnish & Install 12" Check Valves in Valve Box	EA	2		
2.09	Furnish & Install 12" Plug Valves in Valve Box	EA	2		
2.10	Furnish & Install 4" Air Release Valve	EA	1		
2.11	Furnish & Install Interconnection (Ductile Iron) Pipe between Valve Vault & Well	LS	1		
2.12	Furnish & Install Electrical Service and Equipment	LS	1		
2.13	Install Well Pipe Tee & Cap	LS	1		
2.14	Furnish & Install 30F Snout to Well Box	EA	1		
2.15	Pavement Restoration	SY	48		
<b>Total Base Bid</b>					

NAME OF BIDDER

**1.05 Miscellaneous Requirements and Affirmations**

- A. Proposals (Bids) must be on the Bid Form.
- B. I have attached the required Bid Security to this Bid.
- C. I have attached the required Statement in connection with the Trench Safety Act.

**1.06** RESPECTFULLY SUBMITTED, signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_

Contractor

\_\_\_\_\_

By (Signature)

Date

\_\_\_\_\_

Printed Name and Title

\_\_\_\_\_

Business Address

\_\_\_\_\_

(CORPORATE SEAL)

City

State

Zip Code

\_\_\_\_\_

Telephone No.

Facsimile No.

ATTEST:

\_\_\_\_\_

By (Signature)

Date

\_\_\_\_\_

Printed Name and Title

**END OF SECTION**



**SECTION 00302**

**CONTRACTOR'S BID DOCUMENT CHECKLIST**

Several recent bid openings for construction projects in Monroe County have resulted in the disqualification of Bidders for failure to properly complete and submit all required forms. To help ensure that all forms are completed and submitted, Bidders are instructed to initial this form as each required submittal is completed. Please assemble your bid response in the order listed below, with this form placed on the top of the response package.

- |   | Initials |
|---|----------|
| 1. Bid Form – (section 00300) filled out completely including <ul style="list-style-type: none"><li>- Addenda acknowledgements</li><li>- All pricing</li><li>- Properly signed and sealed</li></ul> | _____    |
| 2. Contractor's Qualifications Statement (section 00303) signed and notarized   | _____    |
| 3. Bid Security (section 00401) bid bond, or cashier's check signed and sealed  | _____    |
| 4. Acknowledgement of Conformance with O.S.H.A. Standards (section 00650)<br>- signed and witnessed   | _____    |
| 5. Trench Safety Form (section 00660) signed and witnessed  | _____    |
| 6. Evidence of Insurability   | _____    |
| 7. Copy of the contractor license(s)/state certification(s)/local registration(s)<br>required to perform the Work (if any),   | _____    |
| 8. Certification of Non-segregated Facilities (section 00640) signed  | _____    |

**END OF SECTION**

**SECTION 00303  
SUPPLEMENT TO BID FORM  
CONTRACTOR'S QUALIFICATIONS STATEMENT**

**THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.** The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your company in detail.

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2. The address of the principal place of business is:

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3. Company telephone number, fax number and e-mail addresses:

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4. Number of employees:

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5. Number of employees assigned to this project:

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6. Company Identification numbers for the Internal Revenue Service:

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7. Provide **Monroe County Occupational License Number**, if applicable, and expiration date:

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8. How many years has your organization been in business performing, as a substantial portion of its business, the types of work described in the Bidding Documents? Does your organization have a specialty and, if so, what is it?

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9. What is the most recent project of this nature or magnitude that you have completed? Please provide project description, contract/project number, owner's contact information, reference, and final contract price.

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10. Have you ever completed a public works project in Monroe County, Florida? If so, please provide project description, contract/project number, and final contract price.

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11. Have you ever failed to complete any work awarded to you? If so, provide the reason, project description, contract/project number, owner's contact information and reference.

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12. Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have performed work similar to the Work described in the Bidding Documents:

12.1

Project Name

Contact Person

Address

Telephone No.

12.2

Project Name

Contact Person

Address

Telephone No.

12.3

Project Name

Contact Person

Address

Telephone No.

13. List the following information concerning all contracts **in progress** as of the date of submission of this bid. (In event of co-venture, list the information for all co-venturers.)

Name of Project	Owner	Value	Contract Completion Date	% of Completion to Date

*(Continue list on insert sheet, if necessary.)*

14. Has the Bidder or its representative inspected the proposed project site and does the Bidder have a complete plan for its performance?

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17. What equipment will you purchase for the proposed Work?

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18. What equipment will you rent for the proposed Work?

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19. State the names of your proposed Project Manager, Superintendent and Certified Maintenance of Traffic Supervisor (if work is being done in right-of-way), give details of his or her qualifications and experience in managing similar work.

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20. Provide copies of audited or CPA-reviewed financial statements for the past three years, indicating, at a minimum, annual revenues and net income/loss for the past three years.

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21. Provide names, addresses and telephone numbers of at least three vendor credit and bank references or lines of credit.

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22. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business. (If a corporation, also state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, also state the names of the individuals who do business under the trade name.)

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22.1 The correct name of the Bidder is:

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22.2 The business is a (Sole Proprietorship) (Partnership) (Corporation).

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22.3 The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:

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22.4 Identify all lawsuits and/or arbitrations commenced within the five years preceding the date of your Bid for the Work in which you were/are a named party. You need not list workers compensation claims or personal injury claims for which you have insurance coverage. For all matters listed, provide the full names of the named parties, the jurisdiction where the matter is pending, and the case number.

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STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20.

(NOTARY SEAL)

\_\_\_\_\_

(Signature of person taking oath)

\_\_\_\_\_

(Name of officer taking oath)

typed, printed or stamped

\_\_\_\_\_

\_\_\_\_\_

(Title or rank)

\_\_\_\_\_

(Serial number, if any)

END OF SECTION

**SECTION 00401**  
**BID BOND**

1. KNOW ALL PERSONS that we, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the City of Marathon, Florida (hereafter called the "Owner") in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), (5% of the Total Base Bid) as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns, jointly and severally, by these presents;
2. The Principal has submitted a bid to the Owner for the construction of the project known as 39<sup>th</sup> Street Stormwater Improvements Project. \_\_\_\_\_
3. The condition of this obligation is such that if the Owner shall accept the bid of the Principal, and
  - a. the Principal shall execute such contract documents, if any, as may be required by the terms of the bid and give such Contractor's bond or bonds for the performance of the contract and for the prompt payment of labor and material furnished for the project as may be specified in the bid, or
  - b. in the event of the failure of the Principal to execute such contract documents, if any, and give such Contractor's bond or bonds, if the Principal shall pay to the Owner the difference, not to exceed the penal sum hereof between the amount specified in the bid and such larger amount for which the Owner may in good faith contract with another party to construct the project, then this obligation shall be void, otherwise to remain in full force and effect.
4. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.
5. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the county and state in which the Project is located.
6. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
7. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_(Seal)  
*Principal*

ATTEST: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
*Secretary*

\_\_\_\_\_(Seal)  
*Title*

\_\_\_\_\_(Seal)  
*Surety*

ATTEST: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
*Secretary*

\_\_\_\_\_  
*Title*

END OF SECTION

**SECTION 00500  
AGREEMENT BETWEEN  
THE CITY OF MARATHON**

**AND  
(Contractor)**

**For  
39<sup>th</sup> Street Stormwater Improvements Project**

**THIS AGREEMENT** is made between the City of Marathon, Florida, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the “City”) and (contractor) a Florida corporation whose address and principal place of business is: (address), (hereinafter the “Contractor”), and

**WHEREAS**, the City desires to engage the Contractor to provide construction services as specified below (the “Work”).

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows.

1. **Scope of Services/Deliverables.**

- (a) The Contractor shall provide the Work at the unit prices of specified in **Exhibit “A” 39<sup>th</sup> Street Stormwater Improvement Project** attached to this Agreement, and made a part hereof by this reference. Contractor shall be responsible for supplying all apparatus, equipment, labor, materials, means of transport, services and tools incidental or necessary to complete the Work as described in the Bid Documents.

2. **Term/Commencement Date and Liquidated Damages.**

- (a) Unless specified otherwise in **Exhibit “A”** the Contractor shall not commence work until the City issues Contractor a written Notice to Proceed and the Work shall be substantially completed within **(90)** calendar days after the date specified in the Notice to Proceed (“Substantial Completion”), and fully completed and ready for final payment in accordance with the Agreement Documents within **(120)** calendar days after the date specified in the Notice to Proceed (“Final Completion”). The City Manager may extend the term of this Agreement up to an additional fifteen (15) days at his sole discretion based upon the recommendation of the City’s Community Services Director, City Engineer or Utilities Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in **Exhibit “A”**, unless extended by the City Manager. The City shall issue a written notice identifying the date the Work is deemed fully complete which shall be the Final Completion date.

- (c) 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 herein, plus any approved extensions thereof allowed by the City. The Contractor also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by City if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages to compensate the City, and not as a penalty for delay or as an incentive to complete on time, Contractor shall pay City **(\$250.00)** for each calendar day that expires after the time specified for Substantial Completion of the Work. After Substantial Completion, if Contractor fails to fully complete the Work within the time specified for Final Completion and readiness for final payment or any proper extension thereof granted by City, Contractor shall pay City **(\$250.00)** for each calendar day that expires after the time specified for Final Completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified herein bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the Work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.
- (d) Should the Substantial Completion and/or Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set above because of lack of performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the City including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.
- (e) Monies due to the City for liquidated damages and/or actual damages 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.

3. **Compensation and Payment.**

- (a) For the purpose of developing the values to be paid on a monthly basis, Contractor shall submit a Schedule of Values to be reviewed and approved by the City at least thirty (30) days before the first progress payment request. This Schedule of Values shall constitute

the values of each unit within each category that will be paid for the Work (see, Application for Payment, Instructions “General Information”).

- (b) The Contractor shall invoice the City on a monthly basis. All invoices shall provide a detailed statement of the Work performed by Contractor for the period of time covered by the invoice. Contractor shall use the form attached hereto as **Exhibit “B,”** 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 Agreement Documents. The City will withhold 10% of each Pay Application as retainage which shall be paid upon Final Completion of the Work.
- (c) Each application for partial payment shall include partial lien/bond releases from all subcontractors and suppliers and a sworn statement 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 and suppliers, stated in prior applications for payment. If payment has been withheld from a subcontractor and/or supplier the sworn statement shall state the reasons for the nonpayment. All partial payment requests shall be accompanied by consents of surety for each subcontractor and supplier.
- (d) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases and/or waivers (satisfactory to City) of all liens and claims arising out of or in connection with the Work and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a sub-tier release, Contractor shall provide the City with a sworn written explanation for why the subcontractor or supplier has not been paid. The City may require the Contractor to provide security to ensure all disputed and/or undisputed amounts owed are paid; or withhold the disputed and/or undisputed amounts owed from the final payment until such time as the final releases and consents of surety for each subcontractor and supplier.
- (e) The City shall pay Contractor in accordance with the Florida Prompt Payment Act. When the Contractor believes the Work is substantially complete, the Contractor shall notify the City and within 15 calendar days the parties shall create and review a single draft punch list of items to be completed in order for the Work to be fully complete. The City shall review the draft punch list and within 5 days of being provided with the draft punch list, the City shall provide the Contractor with the Final Punch list of work to be completed for the Work to be deemed fully complete.
- (f) If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

- (g) All payments shall only be from appropriations budgeted on an annual basis.

4. **Subcontractors.**

- (a) The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Work.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager and be properly licensed and insured in the same amounts as the Contractor.

5. **City's Responsibilities.**

- (a) Upon request, if available, the City shall furnish maps, plans, studies, reports and other information regarding anticipated field conditions readily available and in the City's possession.
- (b) The City shall arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to inspect the site and perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.
- (b) Contractor and its subcontractors 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 public and private 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 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.
- (c) On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as

otherwise directed by the City return the site in the same condition as at the beginning of the Work.

- (d) If the Work will create any obstructions, road closures or traffic impacts, Contractor shall provide the City and surrounding property owners with no less than seventy-two (72) hours prior notice of the anticipated or planned obstructions, road closures or traffic impacts.
- e) Permits: Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. The City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for prosecution of the work.

7. **Termination.**

- (a) The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- (b) Unless directed otherwise in writing by the City Manager, upon receipt of the City's written notice of intent to terminate or notice of actual termination, Contractor shall stop the Work.
- (c) In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. **Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- (a) Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.
- (b) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability as stated below:
  - a. Bodily Injury:



- 1) \$2,000,000 Each Person
- 2) \$2,000,000 Each Occurrence

b. Property Damage:

- 1) \$2,000,000 Each Occurrence, or
- 2) A combined single limit of \$2,000,000.

- © Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than stated below:

Commercial General Liability (ISO Form CG 00 01)

a. Bodily Injury (including completed operations and products liability):

- 1) \$2,000,000 Each Occurrence
- 2) \$2,000,000 Annual Aggregate

b. Property Damage:

- 1) \$2,000,000 Each Occurrence
- 2) \$2,000,000 Annual Aggregate,
- 3) or a combined single limit of \$2,000,000

c. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage where applicable.

d. Personal Injury, with employment exclusion deleted: \$2,000,000 Annual Aggregate

- (d) The Contractor will add the City as an additional named insured on all insurance policies applicable to the Work under this Agreement. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional named insured. 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.

9. **Nondiscrimination.**

- (a) During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. **Agreement Documents.**

The Agreement 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 Agreement as though physically attached as a part thereof:

Change Orders

Agreement

Exhibits to the Agreement

Bid Documents (Addendum, Invitation to Bid/RFQ, Instructions to Bidders/Proposers, Proposal Form provided by Contractor, Notice of Award and Notice to Proceed);

**CONTRACTOR AGREES THAT THERE IS NO IMPLIED OR EXPRESS WARRANTY OF CONSTRUCTABILITY WITH REGARD TO THE WORK OR DESIGN ENCOMPASSED BY THE AGREEMENT DOCUMENTS.**

11. **Attorneys' Fees and Waiver of Jury Trial.**

- (a) If either the City or Contractor is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.
- (b) In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

12. **Indemnification.**

- (a) **General Indemnity.** Contractor shall indemnify and hold harmless the City, its officers, 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 (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) 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 the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including

- patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.
- (b) Defense. In the event that any claims are brought or actions are filed against the City that are encompassed by the Contractor's duty to indemnify as stated in this Agreement, the Contractor agrees to defend against all claims and actions brought against the City 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.
- (c) Specific Indemnity. Contractor shall indemnify and hold harmless the City for liability for damages to persons or property caused in whole or in part by any act, omission, or default of the City, its officers, directors, agents, or employees arising from the Agreement or its performance. Such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The extent of the indemnification shall be limited to \$5,000,000 which the parties agree bears a reasonable commercial relationship to the contract. The monetary limitation on the extent of the indemnification provided to the City shall not be less than \$1 million per occurrence.
- (d) Payment of Losses. 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.
- (e) Contractor's indemnification shall not be limited to the amount of comprehensive general liability insurance which Contractor is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive City's rights and immunities under the common law or Section 768.28 *Florida Statutes*, 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.

(f) The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

(a) Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Charles Lindsey  
City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: David Migut  
City Attorney  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

For The Contractor: (contractor)  
  
(address)

14. **Governing Law.**

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Federal Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

(a) This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

(b) No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. This Agreement may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof

via a written Change Order, in the form attached hereto as **Exhibit “C,”** or such other form as may be provided by City from time to time.

16. **Ownership and Access to Records and Audits.**

- (a) All records, books, documents, maps, data, deliverables, papers, and financial information (the “Records”) that result from the Contractor providing services to the City under this Agreement shall be the property of the City. The Records shall be properly indexed and labeled.
- (b) **ACCESS TO PUBLIC RECORDS** – **The Contractor shall comply with the applicable provisions of Chapter 1 19, Florida Statutes. The City shall have the right to immediately terminate the contract for the refusal by the Contractor to comply with Chapter 1 19, Florida Statutes. If the Contractor has questions regarding the application of Chapter 1 19, Florida Statutes, to the Contractor’s duty to provide public records relating to this contract, contact the custodian of public records at [Cityclerk@ci.marathon.fl.us](mailto:Cityclerk@ci.marathon.fl.us) or 305-743-0033.**
- (c) The City may terminate this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 1 19, Florida Statutes.

17. **Nonassignability.**

- (a) This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

18. **Severability.**

- (a) If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

- (a) The Contractor and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This

Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

- (a) The Contractor shall ensure that it, and all its subcontractors (at all tiers), comply with all federal, state and local applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Work.

21. **Waiver.**

- (a) The failure of the City to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions.**

- (a) Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

- (a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts.**

- (a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

25. **Authorization to Sign Agreement.**

- (a) The execution and delivery of this Agreement by Contractor is within Contractor's capacity and all requisite action has been taken to make this Agreement valid and binding on Contractor in accordance with its terms.

26. **Non-Exclusive Agreement.**

- (a) The services to be provided by the Contractor pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City as determined in its sole and absolute discretion.

27. **Performance and Payment Bonds.**

- (a) Prior to commencing the Work identified in **Exhibit “A,”** the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as **Exhibit “D”** securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance and Payment Bonds will cease to be effective on the date of the City’s final payment for the Work. Effective immediately thereafter, Contractor shall provide a Maintenance Bond for the one year warranty period commencing on the date of the City’s final payment for the Work in the amount of one hundred twenty five percent (125%) of the Work price.
- (b) City may deem this Section “Not Applicable” as provided on the Instructions to Bid for the Work.

28. **Continuing the Work.**

- (a) Unless directed otherwise in writing by the City Manager, Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City.

29. **Changes In The Work.**

- (a) Without invalidating the Agreement and without notice to any surety, City may, at any time or from time-to-time, order additions, deletions, or revisions in the Work by a Written Amendment or Change Order. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved.
- (b) The Contract Price may only be changed by a written Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice of intent to claim delivered to the City promptly [but in no event later than three (3) business days after the first occurrence of the event giving rise to the amount of the claim]. Contractor shall deliver to the City a good faith estimate of the cost and time impacts caused by the claim causing event within seven (7) calendar days of the first occurrence of the event giving rise to the claim. Within seven (7) calendar days of the conclusion of the claim causing event, but no later than the Substantial Completion date, Contractor shall deliver to the City a full and complete written claim identifying all costs and time impacts that the Contractor believes should be paid due to the claim causing event and shall include full and final substantiation for all price and time adjustments. The City Manager will review the claim and

make a decision on the request. The City Manager's decision will be final unless within seven (7) calendar days of the date of the City Manager's decision the Contractor provides the City with written notice expressly stating that the Contractor disputes the decision and intends to pursue the matter via litigation. Failure by Contractor to strictly comply with the provisions of this article will result in a waiver of the claim.

30. **Subsurface Conditions**

- (a) Information shown on the Drawings and/or indicated in the Agreement Documents as to the location of existing utilities and subsurface conditions has been prepared from the most reliable data available to the City. This information is not guaranteed, however, and it shall be the Contractor's responsibility to determine the location, character and depth of existing utilities. The City expressly disclaims any warranty as to the underground conditions to be encountered. The Contractor should not rely on locations, condition, or quantity of subsurface structures or conditions depicted on drawings, as the locations, condition, and quantities are approximations.

31. **Compensation for Delay.**

- (a) **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, DISRUPTION, INTERFERENCE, OR HINDRANCE** (collectively "Delay"). Notwithstanding anything to the contrary contained in the Agreement Documents, the Contractor shall not be entitled to additional compensation for any Delay unless the Delay shall have been caused by acts constituting willful or intentional interference by the City with the Contractor's performance of the Work, and then only where such acts continue after Contractor's written notice to the City of such interference.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute same.

ATTEST:

CITY OF MARATHON

\_\_\_\_\_

By: \_\_\_\_\_

Diane Clavier, City Clerk

Charles Lindsey, City Manager

Date: \_\_\_\_\_

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

\_\_\_\_\_

David Migut, City Attorney

CONTRACTOR

By: \_\_\_\_\_

(contractor)

Date: \_\_\_\_\_

**EXHIBIT "A"**

**SCOPE OF WORK**

**City of Marathon**  
**39<sup>th</sup> Street Stormwater Improvements Project**  
**Date of Issue: 03/29/2018**  
**By: The Weiler Engineering Corporation**

**Briefly described as: The construction of this project consists of labor, materials and equipment necessary to convert an existing gravity injection well to a pump assist well by installing two (2) pumps, valves, control structure, and all associated components as detailed in the Contract Plans for the City of Marathon.**

**All sections, addendums and forms from the Bid Documents as bid on June 28, 2018 are to be included as contract documents.**

**EXHIBIT "B"**  
**APPLICATION FOR PAYMENT**

**Application For Payment No. \_\_\_\_\_**

To: City of Marathon

From:

Project: 39<sup>th</sup> Street Stormwater Improvement Project

City's Agreement 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:                        | \$ _____        |
| <b>8.</b> | <b>DUE THIS APPLICATION (6 MINUS 7):</b>                       | <b>\$ _____</b> |

Accompanying Documentation: \_\_\_\_\_

---

**Contractor's Certification:**

The undersigned Contractor certifies that (1) all previous progress payments received from City on account of Work done under the Agreement 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 City at time of payment free and clear of all liens, security interests and encumbrances (except such as are covered by a Bond acceptable to City indemnifying City against any such lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Agreement Documents and not defective.

\_\_\_\_\_ Contractor  
Date

By: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

Notary Public

My Commission expires: \_\_\_\_\_

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated \_\_\_\_\_

City's Representative

## **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 City and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Agreement permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage.

#### **B. COMPLETING THE FORM**

The Schedule of Values, submitted and approved, 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.

Application No. \_\_\_\_\_ Date: \_\_\_\_\_

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
1.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
14.								
15.								
16.								
17.								
18.								
19.								
20.								
<b>TOTAL</b>			\$		\$		\$	\$

Note: Total Schedule of Values Amount should equal the current Contract Price.

**EXHIBIT "C"**  
**CHANGE ORDER**

**CHANGE ORDER NO.** \_\_\_\_\_

---

---

**TO: City of Marathon**

**PROJECT: 39<sup>th</sup> Street Stormwater Improvements Project**

**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 **Exhibit "1"** 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, and/or time adjustments 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 the Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of \$ XXXXXX 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.



CONSENT OF SURETY TO CHANGE ORDER

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

\_\_\_\_\_ (Seal)

Surety's Name and Corporate Seal

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Signature and Title

Signature and Title

**City of Marathon**

**Contractor**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit “1”**

**CHANGE ORDER SUMMARY**

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price \_\_\_\_\_
- (2) Current Contract Price (Adjusted by Previous Change Orders) \_\_\_\_\_
- (3) Total Proposed Change in Contract Price \_\_\_\_\_
- (4) New Contract Price (Item 2 + Item 3) \_\_\_\_\_
- (5) Original Contract Time \_\_\_\_\_
- (6) Proposed Change in Contract Time \_\_\_\_\_
- (7) Current Contract Time (Adjusted by Previous Change Orders) \_\_\_\_\_
- (8) Total Proposed Change in Contract Time \_\_\_\_\_
- (9) New Contract Time (Item 6 ± Item 7) \_\_\_\_\_
- (10) Original Contract Substantial Completion Date \_\_\_\_\_
- (11) New Contract Substantial Completion Date \_\_\_\_\_

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

The Change Order is a result of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The cost breakdown is as follows:

WORK ITEM DESCRIPTION	PRICE
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
TOTAL	\$

**EXHIBIT “D”**

**PAYMENT AND PERFORMANCE BONDS**

(The Statutory Payment and Performance Bonds and the covered amounts of each are separate and distinct from each other)

**Payment and Performance Bond**

**Bond No.**\_\_\_\_\_

**This Bond must be recorded by Contractor and a certified copy provided to the City before payment will be made by the City.**

BY THIS BOND (the “Bond”), We (Insert Name, Address and Telephone No.) as principal (the “Contractor”), and (Insert Name, Address and Telephone No.) as surety (the “Surety”), are bound to the City of Marathon, a Florida municipal corporation whose address is 9805 Overseas Highway, Marathon, Florida 33050, [phone number: (305) 743-0033] (the “City”), in the amount of \_\_\_\_\_ 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 Agreement entered into by Contractor and City, for the following:

Agreement Title: \_\_\_\_\_

Agreement No.: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

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, and/or supplies, used directly or indirectly by Contractor in the prosecution of the Work provided for in the Agreement;

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

Any changes in or under the Agreement Documents and compliance or noncompliance with any formalities connected with the Agreement or with the changes, do not affect Surety's obligation under this Bond. Surety hereby waives notice of any alteration or extension of time to the Agreement 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 Contractor or Surety under this Bond after the time limits set forth in Section 255.05, *Florida Statutes*.

IN WITNESS WHEREOF, this instrument is executed this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WHEN THE CONTRACTOR IS AN INDIVIDUAL:**

\_\_\_\_\_

Contractor

Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_

(Witness)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

\_\_\_\_\_

(Witness)

\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

**WHEN THE CONTRACTOR OPERATES UNDER A TRADE NAME:**

\_\_\_\_\_

Contractor

Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_

(Witness)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

\_\_\_\_\_

\_\_\_\_\_  
(Witness)

\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

**WHEN THE CONTRACTOR IS A CORPORATION:**

\_\_\_\_\_

Contractor

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Corporation Name: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_ Corporate Seal

(Corporate Secretary)

Name: \_\_\_\_\_

**SURETY**

\_\_\_\_\_

Surety

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_

(Witness)

\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

\_\_\_\_\_

(Witness)

\_\_\_\_\_

\_\_\_\_\_

(Name and Address)

**ATTORNEY-IN-FACT**

---

Name: \_\_\_\_\_

*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/Attorney-in-Fact 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 Bond on behalf of Surety.

END OF SECTION

SECTION 00500



**SECTION 00510**  
**STANDARD FORM**  
**FOR**  
**CONTRACTOR'S FINAL AFFIDAVIT & RELEASE OF LIEN**

STATE OF FLORIDA, COUNTY OF MONROE

Before me, the undersigned authority, personally appeared \_\_\_\_\_

\_\_\_\_\_, who, after being by me first duly sworn, deposes and says that:

1. He is \_\_\_\_\_ of \_\_\_\_\_,  
(Title of Officer) (Name of Company)

doing business in the State of Florida, hereinafter called "Contractor".

2. Contractor pursuant to a contract dated \_\_\_\_\_, hereinafter referred to as "Contract", with the City of Marathon, hereinafter referred to as "Owner" has heretofore furnished or caused to be furnished labor, material and services for the construction of certain improvements as more particularly set forth in said contract.

3. Contractor represents that all work to be performed under the aforesaid contract has been fully completed and that all persons and firms who furnished material, labor and/or services incident to the completion of said work have been paid in full except to the following:

<u>NAME</u>	<u>ADDRESS</u>	<u>AMOUNT DUE</u>
-------------	----------------	-------------------

(Write in "None" if all persons and firms have been paid in full.)

4. The undersigned affiant for and in consideration of final payment to him in the amount of \$\_\_\_\_\_, and all other previous payments paid by Owner to contractor, does hereby for and in behalf of the contractor, waive, release, remise and relinquish the contractor's right to claim, demand or impose a lien or liens for work done or materials and/or services furnished or any other class of lien or liens whatsoever, on any of the premises owned by Owner on which improvements have been completed in connection with the aforementioned contract.
5. The affiant herein does hereby represent that he has authority to execute a full and final Release of Lien for and in behalf of the contractor as set forth above.
6. The affiant herein makes this Affidavit and Release of Lien for the express purpose of inducing Owner to make final disbursement and payment to the contractor in the amount of \$\_\_\_\_\_.

7. The Affidavit and Release of Lien is made by affiant with full knowledge of the applicable laws of the State of Florida. In addition to such rights as may be afforded to Owner under said applicable laws, affiant expressly agrees to indemnify and save Owner harmless from any and all actual costs and expenses, including reasonable attorney's fees, arising out of claims by laborers, subcontractors or materialmen who might claim that they have not been paid for services or material furnished by or through the contractor in connection with the work performed under the aforementioned contract.

\_\_\_\_\_

Name of Corporation

BY: \_\_\_\_\_

President

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_

Name of Corporation

\_\_\_\_\_

Secretary

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, AD, 20\_\_.

\_\_\_\_\_

Notary Public

\_\_\_\_\_

(Print Name)

(NOTARY SEAL)

My Commission Expires: \_\_\_\_\_

END OF SECTION

**SECTION 00520  
PARTIAL LIEN WAIVER AND RELEASE**

FROM:

Name of Project 39<sup>th</sup> Street Stormwater Improvements Project

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

Name of Owner: \_\_\_\_\_

**ACKNOWLEDGMENT AND RELEASE FOR PRIOR PAYMENTS RECEIVED**

The undersigned hereby acknowledges that the undersigned has received prior payment(s) in the amount of \$ \_\_\_\_\_ for labor/services/equipment and or material furnished to the above designated project through \_\_\_\_\_, 20 \_\_\_\_, and does hereby release unconditionally any mechanic's lien, stop notice, equitable lien or labor and material bond rights that the undersigned has to the above extent only and does not cover any retention or items furnished after that date. This release is for the benefit of and may be relied upon by the owner, the prime contractor, the construction lender, and the principal and surety on any labor and material bond posted for the project.

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGNED, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Person)

**CONDITIONAL LIEN WAIVER & RELEASE**

NOTICE: THE UNCONDITIONAL WAIVER OF RIGHTS APPLIES TO THE ABOVE EXTENT ONLY AND DOES NOT APPLY TO THE FOLLOWING CONDITIONAL RELEASE FOR THE PAYMENT NOW BEING REQUESTED.

In order to induce the owner/lender to make payment on the current invoice(s) due through \_\_\_\_\_, 20 \_\_\_\_, in the amount of \$ \_\_\_\_\_ for labor/services/equipment and/or materials furnished to the above designated project, the undersigned does hereby acknowledge that upon receipt of a check for the amount currently requested and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this portion of the release shall become effective to release any mechanic's lien, stop notice, equitable lien or labor and material bond rights to the undersigned to the extent of this paragraph only and does not cover any retention or items furnished after that date.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Person)

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

END OF SECTION

**SECTION 00550  
NOTICE OF AWARD**

Dated: \_\_\_\_\_, 20\_\_

TO: \_\_\_\_\_  
(CONTRACTOR)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OWNER'S PROJECT NO.: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER'S CONTRACT NO.: \_\_\_\_\_

CONTRACT FOR: \_\_\_\_\_  
\_\_\_\_\_

You are notified that your Bid dated \_\_\_\_\_, 20\_\_ for the above Contract has been considered. You are apparent successful bidder and have been awarded the contract for

\_\_\_\_\_  
(Indicate total Work, alternates or sections of Work awarded)

The Contract Price of your contract is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

Three copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three sets of the Drawings will be delivered separately or otherwise made immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by \_\_\_\_\_, 20\_\_.

1. You must deliver to the OWNER three fully executed counterparts of the Agreement including all the Contract Documents. This includes the triplicate sets of Drawings. Each of the Contract Documents must bear your signature on (the cover) (every) page.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders (paragraph 17), General Conditions (paragraph 5.1) and Supplementary Conditions (paragraph SC-5.1).



**SECTION 00560  
NOTICE OF PROCEED**

Dated: \_\_\_\_\_, 20\_\_

TO: \_\_\_\_\_  
(CONTRACTOR)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

OWNER'S PROJECT NO.: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER'S CONTRACT NO.: \_\_\_\_\_

CONTRACT FOR: \_\_\_\_\_  
\_\_\_\_\_

You are notified that the Contract Time under the above contract will commence to run on \_\_\_\_\_, 20\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and Final Completion are , \_\_\_\_\_20\_\_ and \_\_\_\_\_20\_\_, respectively.

Before you may start any Work at the site, paragraph 2.7 of the General Conditions provides that you and Owner must each deliver to the other (with copies to ENGINEER) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the site, you must  
(add other requirements)

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

Copy to ENGINEER  
(Use Certified Mail,  
Return Receipt Requested)

\_\_\_\_\_  
(OWNER)

By \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

END OF SECTION

## SECTION 00610

### Non-Collusion Bid Provision

Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid non responsive and not eligible for award consideration.

### Certification of Non-Collusion

I have been authorized by \_\_\_\_\_

to certify on their behalf that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid.

Firm Name: \_\_\_\_\_

Date: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF SECTION

## SECTION 00620

### SWORN STATEMENT ON PUBLIC ENTITY CRIMES UNDER FLORIDA STATUTES CHAPTER 287.133(3)(a).

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

1. This sworn statement is submitted with Sombrero Beach Road Landscaping Installation.
2. This sworn statement is submitted by \_\_\_\_\_ (name of entity submitting sworn statement) whose business address is \_\_\_\_\_ and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_. (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: \_\_\_\_\_.)
3. My name is \_\_\_\_\_ and

(Please print name of individual signing)

my relationship to the entity named above is \_\_\_\_\_.

4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that a "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  1. A predecessor or successor of a person convicted of a public entity crime: or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.



7. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

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

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

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

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

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

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

END OF SECTION

**SECTION 00640**

**CERTIFICATE OF NON-SEGREGATED FACILITIES**

We, \_\_\_\_\_(Company)

Certify that we do not and will not maintain or provide for our employees any segregated facilities at any of our establishments, and that we do not and will not permit our employees to perform their services at any location, under our control, where segregated facilities are maintained. We understand and agree that breach of this certification is a violation of Equal Opportunity clause required by Executive Order 11246, amended.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise.

We further agree that (except where we have obtained identical certifications from proposed Subcontractors for specific time periods) we will obtain identical certifications from proposed Subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that we will retain such certification in our files; and that we will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods).

**NOTICE TO PROSPECTIVE SUBBUILDERS OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES.** A certification of Non-segregated facilities as required by the 9 May 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, 19 May 1967), must be submitted from the provisions either for each subcontract or for all subcontracts during a period (i.e. quarterly, semi-annually, or annually).

**NOTE:** Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

\_\_\_\_\_  
(Name of Company)

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

END OF SECTION

**SECTION 00650**

ACKNOWLEDGEMENT OF CONFORMANCE

WITH O.S.H.A. STANDARDS

TO THE CITY OF MARATHON

We, \_\_\_\_\_, hereby acknowledge and agree that as supplier for the chemical delivery of the " \_\_\_\_\_ ", that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the CITY, its officers, agents, employees, and consultants against any and all legal liability or loss the CITY, its officers, agents, employees, and consultants may incur due to

\_\_\_\_\_ failure to comply with such act.

\_\_\_\_\_  
ATTEST

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
ATTEST

By: \_\_\_\_\_

\_\_\_\_\_  
DATE

Title: \_\_\_\_\_

END OF SECTION

**SECTION 00660**

**TRENCH SAFETY FORM**

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq*, Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

**Method of Compliance**

**Cost**

Total: \$ \_\_\_\_\_

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et. seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**END OF SECTION**

## **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 ARCHITECT – The individual or firm designated by the CITY to be the CITY’S REPRESENTATIVE on architectural matters during the construction of the Project, if an Architect is required.
- 1.5 Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 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.
- 1.7 Bonds - Bid, performance and payment bonds and other instruments of security, if applicable.
- 1.8 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.
- 1.9 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 A to the Contract.
- 1.10 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.

- 1.11 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.
- 1.12 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.
- 1.13 Contract Time - The number of days or date stated in the Contract for the completion of the work.
- 1.14 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.
- 1.15 Day - A day shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
- 1.16 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.
- 1.17 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.
- 1.18 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.
- 1.19 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.
- 1.20 Field Order - A written order issued by the CITY'S REPRESENTATIVE which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time, substantially in the form of Exhibit B hereto.
- 1.21 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.
- 1.22 Notice of Award - The written notice by CITY to the lowest responsive, responsible Bidder.

- 1.23 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.
- 1.24 Partial Utilization - Use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.
- 1.25 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.
- 1.26 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.
- 1.27 Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.28 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.
- 1.29 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.
- 1.30 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.
- 1.31 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.
- 1.32 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.
- 1.33 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.
- 1.34 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.
- 1.35 Supplementary Conditions - That part of the Contract Documents which amends or supplements these General Conditions.
- 1.36 Supplier - A manufacturer, fabricator, supplier, distributor, material man 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.
- 1.37 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.
- 1.38 Total Base Bid - The sum of all the unit prices times the quantities as provided in the Bid Form.
- 1.39 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.
- 1.40 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.
- 1.41 CITY – The City of Marathon City Council or City Manager, as applicable.
- 1.42 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.
- 1.43 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.
- 1.44 Work Directive Change - A written directive to CONTRACTOR, substantially in the form of Exhibit C hereto, issued on or after the Effective Date of the Agreement and signed by CITY and



recommended by the CITY'S REPRESENTATIVE ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in Section 4.2 or 4.3 or to any emergency circumstances under Section 5.15. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

## 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.
    - 2.3.2.1 For Lump Sum projects, an itemized breakdown is required for schedule of values.
  - 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

- 2.4 Construction Schedules: The CONTRACTOR shall prepare and submit in Critical Path Method, “Bar Format” the progress schedule for review and acceptance. At a minimum, the schedule will include construction milestones, start and completion dates, long lead time material acquisition, and any pertinent activities required to complete the project. A preliminary schedule shall be submitted for review and discussion at the preconstruction meeting. The progress schedule shall be updated by the CONTRACTOR and submitted for review as part of applications for progress payments, through the completion of the work. Failure to update progress schedule may be a basis for rejection of the application for progress payment.

### 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 there from.

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 substantially in the form attached hereto as Exhibit D.
- 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, apply for and secure all Right of Way Use Permits, provide proper notice to jurisdictional agencies, furnish and maintain 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. Per FDOT Standard Index 600 series. The CONTRACTOR is responsible for all maintenance of traffic throughout the duration of the project. CONTRACTOR and all Subcontractors shall take all necessary precautions to guard against and eliminate all possible fire hazards and prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. Open flames including the use of flambeaux are strictly prohibited. No additional payment will be made for signs, barricades, lights, flags, watchmen, flagmen, required fire extinguishing apparatus and personnel, and other protective devices. CONTRACTOR shall not use explosives on the site, nor allow explosives of any type or nature to be brought upon the site of the construction, without the express written approval of City Manager. When the use of explosives is authorized by the City Manager, CONTRACTOR shall exercise the utmost care in handling and usage of such explosives for the protection of life and property. All explosives shall be stored in a safe manner and storage places shall be clearly marked - "DANGEROUS - EXPLOSIVES" and placed in the care of competent watchmen. When such use of explosives becomes necessary, CONTRACTOR shall furnish to CITY, proof of insurance coverage, adequately providing public liability and property damage insurance as a rider attached to CONTRACTOR'S policies unless otherwise included.
- 5.14.4 For work in any right-of-way, CONTRACTOR shall provide the CITY a Certification for Advanced Maintenance of Traffic (MOT) training and a 24-hour telephone number where the CITY may contact the Advanced MOT Specialist if problems are encountered. The

Advanced MOT Specialist shall be available on the job site with 45 minutes notice.

5.14.5 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.

5.21 Construction Layout, Red-lined Asbuilts and Certified Construction As-builts

5.21.1 The CONTRACTOR is to establish and maintain all horizontal and vertical control



necessary to construct the work in conformity with the contract documents by a qualified person to perform the work. Provide all grade stakes, offset stakes, reference points stakes and other markers or points necessary to provide line and grades for construction of the project.

5.21.2 The CONTRACTOR will maintain on a clean set of construction plans, "RED-LINED" As-builts on a daily basis on-site and available to the City and City Representative. A copy of the Red-lined AS-builts shall be submitted with each application for payment. The Original is to be turned over to the City upon completion of the project.

5.21.3 The CONTRACTOR shall provide a Certified As-Built of the project, incorporating the "Red-Lined" As-builts by a Licensed Land Surveyor. This As-built is to be submitted in electronic copy of PDF and AutoCAD for review and acceptance. Final retainage will not be released until the As-builts are reviewed and accepted by the City.

## 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.

8.13 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.

- 8.14 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.
- 8.15 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.
- 8.16 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 there under. 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 fifteen percent (15%) for profit and 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 fifteen percent (15%) of the sum of all costs in Sections 10.4.1, 10.4.2 and 10.4.3 and five percent (5%) of the sum of all costs in Section 10.4.4 for overhead and 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.

10.4.4 Cost of Subcontractors and Consultants:

10.4.4.1 Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If Required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fees.

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

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 no 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 therefore. 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 there under.

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 to the following:

CONTRACTOR:

The business address of CONTRACTOR is:

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**Attention:**

**Phone:**

**Fax:**



CITY:

The business address of CITY is:

**City of Marathon**  
\_\_\_\_\_  
**9805 Overseas Highway**  
**Marathon, FL 33050**  
\_\_\_\_\_  
**Attention: City Manager**  
\_\_\_\_\_  
**Phone: 305-743-0033      Fax: 305-743-3667**

Copy to CITY ATTORNEY:

The business address of CITY ATTORNEY is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Attention: City Attorney**  
\_\_\_\_\_  
**Phone**

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.

16.1.3. 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 "D" 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 coverage's for insurance as required by Exhibit "E" 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.

## ARTICLE 23 – ADVERTISING

23.1 No advertising shall be permitted upon any part of the site or structures located on the site. News or press releases pertaining to the services, work product(s), or performance of CONTRACTOR under this Contract or the Project to which it relates shall be at the sole discretion of CITY.

**EXHIBIT A**  
**Application for Payment**  
**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:	\$ _____
<b>8.</b>	<b>DUE THIS APPLICATION (6 MINUS 7):</b>	<b>\$ _____</b>

~~Accompanying Documentation:~~

**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 \_\_\_\_\_, 2018

\_\_\_\_\_  
 Notary Public  
 My Commission expires: \_\_\_\_\_  
 Payment of the above AMOUNT DUE THIS APPLICATION is recommended.  
 Dated \_\_\_\_\_

\_\_\_\_\_  
 ENGINEER

## 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.

Application No. \_\_\_\_\_

Date: \_\_\_\_\_

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
1.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
21.								
22.								
23.								
24.								
25.								
<b>TOTAL</b>			\$		\$		\$	\$

Note: Total Schedule of Values Amount should equal the current Contract Price.



EXHIBIT B  
 Form of Field Order

(CONTRACTOR)	(ENGINEER)
ENGINEER'S SUPPLEMENTAL INSTRUCTIONS/FIELD ORDER	INSTRUCTION/ORDER #
PROJECT NUMBER:	DATE OF ISSUANCE:
PROJECT:	
OWNER:	
<p>THE WORK SHALL BE CARRIED OUT IN ACCORDANCE WITH THE FOLLOWING SUPPLEMENTAL INSTRUCTIONS ISSUED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS WITHOUT CHANGE IN CONTRACT SUM OF CONTRACT TIME. PRIOR TO PROCEEDING IN ACCORDANCE WITH THESE INSTRUCTIONS, INDICATE YOUR ACCEPTANCE OF THESE INSTRUCTIONS FOR MINOR CHANGE TO THE WORK AS CONSISTENT WITH THE CONTRACT DOCUMENTS AND RETURN A COPY TO THE ENGINEER.</p>	
<p>DESCRIPTION:</p>	

ATTACHMENTS: (HERE INSERT LISTING OF DOCUMENTS THAT SUPPORT DESCRIPTION)	
ISSUED: CITY OF MARATHON	RECOMMENDED: THE WEILER ENGINEERING CORP.
BY: (CITY)	BY: (ENGINEER)
ACCEPTED:	
BY: (CONTRACTOR)	

**EXHIBIT C**  
**Form of Work Directive Change**

**WORK DIRECTIVE CHANGE**

No. \_\_\_\_\_

DATE OF ISSUANCE \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Contract: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_ ENGINEER's Project No. \_\_\_\_\_

You are directed to proceed promptly with the following change(s):

Description:

Purpose of Work Directive Change:

Attachments: (List documents supporting change)

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in

Contract Price:

Unit Prices

Lump Sum

Cost of the Work \_\_\_\_\_

Estimated increase (decrease) in Contract Price:  
\$ \_\_\_\_\_.

If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:

Substantial Completion: \_\_\_\_\_ days;

Ready for final payment: \_\_\_\_\_ days.

RECOMMENDED:

AUTHORIZED:

\_\_\_\_\_

\_\_\_\_\_

ENGINEER

OWNER

By: \_\_\_\_\_

By: \_\_\_\_\_

EJCDC No. 1910-8-F (1996 Edition)

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

## **WORK DIRECTIVE CHANGE**

### **INSTRUCTIONS**

#### **A. GENERAL INFORMATION**

This document was developed for use in situations involving changes in the Work which, if not processed expeditiously, might delay the Project. These changes are often initiated in the field and may affect the Contract Price or the Contract Times. This is not a Change Order, but only a directive to proceed with Work that may be included in a subsequent Change Order.

For supplemental instructions and minor changes not involving a change in the Contract Price or the Contract Times a Field Order should be used.

#### **B. COMPLETING THE WORK DIRECTIVE CHANGE FORM**

Engineer initiates the form, including a description of the items involved and attachments.

Based on conversations between Engineer and Contractor, Engineer completes the following:

**METHOD OF DETERMINING CHANGE, IF ANY, IN CONTRACT PRICE:** Mark the method to be used in determining the final cost of Work involved and the estimated net effect on the Contract Price. If the change involves an increase in the Contract Price and the estimated amount is approached before the additional or changed Work is completed, another Work Directive Change must be issued to change the estimated price or Contractor may stop the changed Work when the estimated time is reached. If the Work Directive Change is not likely to change the Contract Price, the space for estimated increase (decrease) should be marked "Not Applicable".

Once Engineer has completed and signed the form, all copies should be sent to Owner for authorization because Engineer alone does not have authority to authorize changes in Price or Times. Once authorized by Owner, a copy should be sent by Engineer to Contractor. Price and Times may only be changed by Change Order signed by Owner and Contractor with Engineer's recommendation.

Section 1.44 of the General Conditions requires that a Change Order be initiated and processed to cover any undisputed sum or amount of time for Work actually performed pursuant to this Work Directive Change.

Once the Work covered by this directive is completed or final cost and times are determined, Contractor should submit documentation for inclusion in a Change Order.

**THIS IS A DIRECTIVE TO PROCEED WITH A CHANGE THAT MAY AFFECT THE CONTRACT PRICE OR CONTRACT TIMES. A CHANGE ORDER, IF ANY, SHOULD BE CONSIDERED PROMPTLY.**

## **EXHIBIT D 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 Coverage's;
  - (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 Insured's" 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 Two Million Dollars (\$2,000,000).

4. Business Automobile Liability with minimum limits of Two Million Dollars (\$2,000,000.00) 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 insured's, 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.