

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: April 4, 2016

RE: **Construction Agreement with Strickland Construction, Inc. for Redevelopment of the former Salvation Army Complex at 820-830 N. Massachusetts Avenue, 835 N. Kentucky Avenue and 306 E. Parker Street**

Attached for your consideration is a Construction Agreement with Strickland Construction, Inc. for the redevelopment and rehabilitation of the former Salvation Army property located at 820/830 N. Massachusetts Avenue, 835 N. Kentucky Avenue and 306 E. Parker Street. The property is 1.6 acres in size and contains four buildings that total 29,092 square feet.

By way of brief background, the City Commission, acting as the Community Redevelopment Agency (CRA), approved a lease with Your Pro Kitchen for a shared commercial kitchen and culinary incubator and a lease with Neighbors of Lakeland, LLC for a 12-unit apartment complex on the property in the fall of 2015. CRA staff is in the process of negotiating leases for 820 N. Massachusetts Avenue, which will result in the 15,600 square foot building being divided into a 7,500 square foot event space in the eastern half of the building and art studios and exhibition/gallery space in the western half, with a public area in between. The gallery/studio space will be operated by Artifacts, LLC, whose proposal was recommended for approval by the CRA Advisory Board on September 3, 2015. The event space will be operated by Ashton Events, which will also be leasing the remaining 4,800 square feet of 830 N. Massachusetts as a business office for the event space and shared office space for various "creatives" who work with Ashton Events on a regular basis. These last two lease proposals were recommended for approval by the CRA Advisory Board on March 3, 2016.

At its November 5, 2015 meeting, the CRA Advisory Board recommended that staff proceed with the redevelopment and renovation of the property in accordance with site plans produced by Jon Kirk of KMCH Architects. The final plans for the property include bringing the buildings up to current building code standards, interior renovation of 820 and 830 N. Massachusetts Avenue, the demolition of 835 N. Kentucky Avenue, site and exterior improvements for all of the buildings, including the apartment complex, increased parking, and the creation of outdoor event space between 820 and 830 N. Massachusetts Avenue. 820 N. Massachusetts Avenue will also have a new storefront and roof installed. The plans were put out to bid by

the City of Lakeland Purchasing Department on January 4, 2016 (Bid No. 6034). Ten prospective bidders attended a mandatory pre-bid meeting. Two bids were submitted by the due date of February 3, 2016, but only one was deemed responsive. The bids were from Strickland Construction Inc. of Lakeland, Florida at \$2,554,870 and New Vista Builders Group, LLC of Tampa, Florida at \$2,116,700. The bid from New Vista was disqualified due to the lack of a required bid bond.

At their February 4 meeting, the CRA Advisory Board recommended that Strickland Construction Inc.'s bid be approved. The attached Construction Agreement has been prepared accordingly. Under the attached Agreement, Strickland Construction, Inc. will provide all labor, equipment, materials and supplies necessary to construct the improvements at a not-to-exceed cost of \$2,554,870. The Agreement requires substantial completion within 270 days of commencement and final completion within a total of 330 days. Strickland Construction will indemnify the City and CRA and provide commercial general liability insurance of \$1,000,000 and excess liability coverage of no less than \$1,000,000, naming the City and the CRA as additional insureds.

It is recommended that the City Commission, acting as the Community Redevelopment Agency, award Bid No. 6034 to Strickland Construction, Inc. and authorize the appropriate CRA officials to execute the attached Construction Agreement.

PCD

attachments

CONSTRUCTION AGREEMENT
Bid No. 6034

THIS AGREEMENT is by and between the Community Redevelopment Agency of the City of Lakeland, Florida ("Owner") and Strickland Construction, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - ARCHITECT

2.01 The Project has been designed by Kirk Curtis Mundy Hunnicutt Associates Architects Inc., Lakeland, Florida ("Architect"), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Architect in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 270 days after the date when the Contract Times commence to run as provided in Paragraph 3.3.1 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.8 of the General Conditions within 330 days after the date when the Contract Times commence to run.

3.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 13 of the General Conditions. The parties

also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$750.00** for each day that expires after the time specified in Paragraph 3.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$750.00** for each day that expires after the time specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 4.01.A below:

- A. For all Work, at the prices stated in Contractor's Bid, a **total Contract Price** not to exceed \$2,554,870.00.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Architect as provided in the General Conditions.

5.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraphs 5.02.A.1 and 5.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 3.5.5 of the General Conditions or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Architect may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.4 of the General Conditions:
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Architect, and if the character and progress of the Work have been satisfactory to Owner and Architect, subsequent progress payments shall be reduced to 5 percent retainage for the amount of Work completed; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage). If the Work has been 50 percent completed as determined by Architect, and if the character and progress of the Work have been satisfactory to Owner and Architect, subsequent progress payments shall be reduced to 5 percent retainage for the amount of Work completed.
2. Upon Substantial Completion, the Owner may reduce the remaining retainage withheld to an amount not to exceed 150 percent of the estimated total costs to complete punch list items.

5.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.9 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Architect as provided in said Paragraph 15.9.

ARTICLE 6 - INTEREST

- 6.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions, if any, as provided in Article 5 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Article 5 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations,

investigations, explorations, tests, studies, and data with the Contract Documents.

- I. Contractor has given Architect written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Architect is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Construction Agreement.
 - 2. Bid and Public Construction Bonds.
 - 3. General Conditions.
 - 4. Supplementary Conditions, if any.
 - 5. Plans, Specifications, Drawings and Permits.
 - 6. Bid Documents, including, without limitation:
 - a. Invitation to Bid.
 - b. All Addenda issued by Owner.
 - c. Contractor's Proposal.
 - c. Documentation submitted by Contractor prior to Notice of Award.
 - 7. The following, which may be delivered or issued on or after the Effective Date of the Agreement:
 - a. Notice to Proceed.

- b. Construction Change Directives.
 - c. Change Order(s).
 - d. Certificates of Insurance
- B. There are no Contract Documents other than those listed above in this Article 8.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 4.3 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions, if any.

9.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to

replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Contractor's Certifications

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

"collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 Access to Records/Audit

A. Contractor shall retain all records relating to this Contract for a period of five (5) years after final payment is made. Contractor shall maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoice amounts to the Owner. Owner reserves the right to audit such records upon notice to the Contractor.

B. Contractor shall comply with all public records laws of the State of Florida, including Chapter 119, Florida Statutes. Contractor shall specifically:

1. Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service.
2. Provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner.

9.07 Prohibition of Contingent Fees

- A. Prohibition of Contingent Fees. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making of this Contract. In the event of breach of this provision, the Owner shall have the right to terminate this Contract without further liability and, in its sole discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid as a result of said breach.

9.08 Ownership of Documents

- A. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda and other documents, instruments, information and material prepared or accumulated by the Contractor or its subcontractors in rendering services pursuant to this Contract shall be the sole property of the Owner, which may have access to the reproducible copies at no additional cost other than printing. In no event shall Contractor be liable or responsible to anyone for the Owner's use of any such information or material in another project or following termination of this Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor.

This Agreement will be effective on _____, 2016 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

Lakeland Community Redevelopment Agency

Strickland Construction, Inc.

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

Lakeland Community Redevelopment Agency

228 S. Massachusetts Avenue

Lakeland, Florida 33801-5086

License No.: _____

(Where applicable)

Agent for service or process: _____

GENERAL CONDITIONS OF THE CONTRACT
Bid No. 6034

GENERAL CONDITIONS

ARTICLE 1 - CONTRACT DOCUMENTS

1.0 The Contract Documents comprise the entire contract between the City and the Contractor and shall consist of the following:

- 1.1 Construction Agreement
- 1.2 Plans, Specifications, Permits and Drawings
- 1.3 Instructions and Invitation to Bidders
- 1.4 General Conditions
- 1.5 Supplementary Conditions, if any
- 1.6 Bid Proposal, including documentation submitted by Contractor prior to Notice of Award
- 1.7 Bid and Public Construction Bonds
- 1.8 All Addenda issued by the City
- 1.9 Certificates of Insurance (including endorsements)
- 2.0 Notice of Award
- 2.1 Any Change Order or Construction Change Directive duly delivered after execution of Contract
- 2.2 Notice to Proceed

ARTICLE 2 - DEFINITIONS

2.0 Whenever used in any of the Contract Documents, the following meaning shall be given to the terms herein defined:

2.1 The term “**Addendum**” or “**Addenda**” means any changes, revisions or clarifications of the Contract Documents which have been duly issued by the City to prospective Bidders prior to the time of receiving Bids.

2.2 The term “**Allowance Authorization Release**” means the written pre-approval forms signed by the City Manager for all allowance work.

2.3 The term “**Allowance Work**” means work that may not have been in the specifications and is deemed by the City to be necessary.

2.4 The term “**Application for Payment**” means the pay request accepted by Professional which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

2.5 The term “**Bid Proposal**” means the offer or proposal of the Bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

2.6 The term “**Bonds**” means the Bid and Public Construction Bond and other instruments of security furnished by the Contractor and its Surety in accordance with the Contract Documents.

2.7 The term “**City**” means the Community Redevelopment Agency of the City of Lakeland, Florida, and its authorized designees, agents or employees.

2.8 The term “**Change Order**” means any change that requires the City’s approval and either includes change in work or change in contract time.

2.9 The term “**Contract**” means the Contract executed by the City and the Contractor, and shall include the contract documents.

2.10 The term “**Contractor**” means the person, firm or corporation entering into the Contract with the City to construct and install the improvements embraced in this Contract.

2.11 The term “**Contract Documents**” means the documents specified in Article 1 of these General Conditions.

2.12 The term “**Contract Time**”, unless otherwise provided, means the period of time including adjustments by Change Order, allotted in the Contract Documents for completion of the work.

2.13 The term “**County**” means Polk County, a political subdivision in the State of Florida, and its authorized designees, agents, or employees.

2.14 The term “**Day**” may be either working day or calendar day as defined in the bid documents. If a calendar day shall fall on a legal holiday that day will be omitted from the computation of days for total contract time. Legal Holidays: New Year’s Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day and the following Friday, and Christmas Day.

2.15 The term “**Drawings**” means the Drawings or plans listed in the bid documents.

2.16 The term “**Effective Date of the Contract**” means the date on which the contract has been signed in behalf of the City.

2.17 The term “**Field Order**” means a written direction to the Contractor from the **Professional** that modifies Drawings and Specifications without changing Contract Price or Contract Time.

2.18 The term “**Notice of Award**” means the written notice issued by the City to the successful bidder.

2.19 The term “**Notice to Proceed**” means a written notice issued by the Purchasing Division to the Contractor fixing the date on which the Contract Time will commence and the Contractor shall start to perform the obligations under the Contract Documents, unless otherwise specified in the Notice to Proceed. The actual Start Date shall be within ten (10) days of Notice to Proceed date or when all applicable permits have been secured, unless otherwise stated.

2.20 The term “**Professional**” means the architectural/engineering firm or individual retained by the City or in-house licensed person designated to perform the design and/or resident engineer services for the Work. The Professional can also serve as the Project Manager.

2.21 The term “**Project Area**” means the area within which are the specified Contract Limits of the improvements contemplated to be constructed in whole or in part under this Contract.

2.22 The term “**Project Manager**” means City representative in charge, employed by said City, for the purpose of directing or having in charge the work embraced in this Contract.

2.23 The term “**Purchasing Director**” means the Director of City Purchasing Division or its authorized representatives.

2.24 The term “**Start Date**” means the date of commencement of the work.

2.25 The term “**Technical Reports**” means the reports issued by the City or Project Manager consisting of written technical material.

2.26 The term “**Technical Specifications**” means that part of the Contract documents which describes, outlines, and stipulates: Special Conditions, the quality of the materials to be furnished; the quality of workmanship required; and the methods to be used in carrying out the construction work to be performed under this Contract.

2.27 The term “**Work**” means the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment in the construction and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

ARTICLE 3 - PRELIMINARY MATTERS

3.1 Delivery of Bonds

3.1.1 When the **Contractor** delivers the executed Contract to the **City**, the **Contractor** shall also deliver to the **City** such Bonds as may be required in accordance with these Contract Documents.

3.2 Copies of Documents

3.2.1 After the award of the Contract, the **City** shall furnish the **Contractor**, at no cost, a maximum of five (5) sets of plans and Contract Documents for execution of the work.

3.3 Commencement of Contract Times; Notice to Proceed

3.3.1 The Contract Time shall commence as established in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Contract.

3.4 Starting the Work

3.4.1 The **Contractor** shall begin the Work on the date the Contract Time commences. No Work shall be done prior to the date on which the Contract Time commences. Any Work performed by the **Contractor** prior to date on which Contract Time commences shall be at the sole risk of the **Contractor**.

3.5 Before Starting Construction

3.5.1 Before undertaking each part of the Work, the **Contractor** shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The **Contractor** shall promptly report in writing to the **Professional** any conflict, error, ambiguity or discrepancy which the **Contractor** may discover and shall obtain a written interpretation or clarification from the **Professional** before proceeding with any Work affected thereby. The **Contractor** shall be liable to the **City** for failure to report any conflict, effort, ambiguity or discrepancy in the Contract Documents, if the Contractor knew or reasonably should have known thereof.

3.5.2 Within fifteen (15) working days after the Notice to Proceed (unless otherwise specified in the General Requirements), the **Contractor** shall submit to the **Professional** and the **Project Manager** for review and ultimate approval the following:

3.5.2.1 a preliminary schedule of the Shop Drawing and Sample Submittals which will list each required Submittal and the times for submitting, reviewing and processing such Submittal.

3.5.2.2 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction or a schedule with sufficient breakdown of lump sum prices to identify items of work. Such amounts will include an appropriate amount of overhead and profit applicable to each item of work.

3.5.3 Prior to the effective date of the Contract, the **Contractor** shall deliver to the **City** with copies to each additional insured identified in the Supplementary Conditions, an original policy or certified copies of each insurance policy (and other evidence of insurance which the **City** may reasonably request) which the **Contractor** is required to purchase and maintain in accordance with Article 6.

3.5.4 Before any Work at the site is started, a conference attended by the **Contractor**, **Project Manager**, **Professional** and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in 3.5.2, procedures for handling Shop Drawings and other submittals, processing applications for payment and maintaining required records.

3.5.5 Unless otherwise provided in the Contract Documents, at least ten (10) calendar days before submission of the first Application for Payment a conference attended by the **Contractor**, **Project Manager**, **Professional** and others as appropriate will be held to review for acceptability to the **Professional** the schedules submitted in accordance with 3.5.2. **Contractor** shall have an additional ten (10) calendar days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the Contractor until the schedules have been submitted to and are accepted by the **Professional**. The progress schedule will be acceptable to the **Professional** as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on the **Professional** responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve the **Contractor** from **Contractor's** full responsibility therefor. The **Contractor's** schedule of Shop Drawing and Sample submissions will be acceptable to the **Professional** as providing a workable arrangement for reviewing and processing the required submittals. The **Contractor's** schedule of values shall be approved by the **Professional** as to form and substance.

3.5.5.1 The **Contractor**, in addition to preparing an initially acceptable schedule, shall be responsible for maintaining the schedule, including updating the schedule. Schedule updates shall include progression of work as compared to scheduled progress on work. Schedule updates shall accompany each pay request. The schedule shall be in sufficient detail to identify all material activities and have a clearly defined and identifiable critical path.

ARTICLE 4 - CONTRACT DOCUMENTS, INTENT, DISCREPANCIES, AMENDING, AND REUSE

4.1 Precedence

4.1.1 The Contract Documents comprise the entire agreement between the **City** and the **Contractor** concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Laws of the State of Florida; Venue shall be Polk County or the U.S. District Court for the Middle District of Florida, Tampa Division.

4.1.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases not otherwise defined by the contract documents shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by the **Professional**.

4.1.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in 4.3.1 or 4.3.2, 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 the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents) and the provisions of any such Laws or Regulations application 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).

4.1.4 Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

4.2 Conflicts

4.2.1 If, during the performance of the Work, the **Contractor** discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in 7.2, the **Contractor** shall report it to the **Professional** in writing at once, and, **the Contractor** shall not proceed with the Work affected thereby (except in an emergency as authorized by 7.12) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in 4.3.1 or 4.3.2; provided, however, that **Contractor** shall not be liable to the **City** for failure to report any such conflict, error, ambiguity or discrepancy unless the **Contractor** knew or reasonably should have known thereof.

4.2.2 No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of the **City**, **Contractor** or **Professional**, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the **City**, **Professional** or any of the **Professional's** Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of 10.7.1 or any other provision of the Contract Documents.

4.3 Amending

4.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions to the Work or to modify the terms and conditions thereof by a Change Order or an Allowance Authorization.

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

4.3.2.1 a Field Order

4.3.2.2 **Professional's** written interpretation or clarification

4.4 Reuse of Documents

4.4.1 The **Contractor**, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the **City** shall not have or acquire any title to or ownership rights in any of the Drawings Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the **Professional** or **Professional's** consultant, and shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of the **City** and specific written verification or adaption by the **Professional**.

ARTICLE 5 - PROJECT CONDITIONS

5.1 Availability of Lands

5.1.1 The **City** shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the **Contractor**. The **City** shall identify any encumbrances or restrictions not of general application, but specifically related to use of lands so furnished with which the **Contractor** will have to comply in performing the Work. Necessary easements or rights-of-way will be obtained and expenses will be borne by the **City**. If the **Contractor** and the **City** are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in the **City's** furnishing these lands, rights-of-way or easements, the **Contractor** may make a claim therefor as provided in Articles 12 and 13. The **Contractor** shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.2 Subsurface and Physical Conditions

5.2.1 Reference is made to the Supplementary Conditions for identification of those reports of exploration and tests of subsurface conditions at or contiguous to the site that have been utilized in preparing the Contract Documents, and those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized in preparing the Contract Documents.

5.3 Limited Reliance by Contractor Authorized Technical Data

5.3.1 The **Contractor** may rely upon the general accuracy of the "technical data" contained in such reports and drawings if such reliance is reasonable. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", the **Contractor** may not rely upon or make any claim against the **City**, **Professional**, or any of **Professional's** Consultants with respect to:

5.3.1.1 the completeness of such reports and drawings for the **Contractor's** purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the **Contractor** and safety precautions and programs incident thereto, or

5.3.1.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

5.3.1.3 any **Contractor** interpretation of or conclusion drawn from any “technical data” or any such data, interpretations, opinions or information.

5.4 Unknown or Concealed Conditions

5.4.1 If conditions are encountered, excluding existing utilities, at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the **Contractor** shall give the **City** notice, through the **Professional**, thereof promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.

5.4.2 The **Project Manager** and **Professional** shall promptly investigate such conditions, and, if they differ materially and cause an increase or decrease in the **Contractor's** cost of, or time required for, performance of any part of the Work, the **Project Manager** and **Professional** shall recommend an equitable adjustment in the Contract Price or Contract Time, or both. If the **Project Manager** and **Professional** determine that the conditions at the site are not materially different from those indicated in the Contract Documents or are not materially different from those ordinarily found and that no change in the terms of the Contract is justified, the **Professional** shall notify the **Contractor** of the determination in writing. The Work shall be performed after direction is provided by the **Professional**.

5.5 Physical Conditions - Underground Facilities

5.5.1 The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the **City** or the **Professional** by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

5.5.1.1 The **City** and **Professional** shall not be responsible for the accuracy or completeness of any such information or data; and

5.5.1.2 The cost of all of the following will be included in the Contract Price and the **Contractor** shall have full responsibility for (i) verifying the accuracy of all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in 7.11 and repairing any damage thereto resulting from the Work.

5.5.2 If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, the **Contractor** shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by 7.12, identify the owner of such Underground Facility and given written notice to that owner and to the **City** through the **Professional**. The **Project Manager** and **Professional** will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If the **Project Manager** concludes that a change in the Contract Documents is required, a Change Order will be issued as provided in Article 11 to reflect and document such consequences. During such time, the **Contractor** shall be responsible for the safety and protection of such Underground Facility as provided in 7.11. The **Contractor** shall be

allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that the **Contractor** did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the **City** and the **Contractor** are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Time, the **Contractor** may make a claim, therefor as provided in Articles 12 and 13. However, the **City** and the **Professional** shall not be liable to the **Contractor** for any claims, costs, losses or damages incurred or sustained by the **Contractor** on or in connection with any other project or anticipated project.

5.6 Reference Points

5.6.1 The **City** shall provide the **Contractor** surveys to establish reference points for construction, which in the **City's** judgment are necessary to enable the **Contractor** to proceed with the Work. The **Contractor** shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the **City**. The **Contractor** shall report to the **Professional** whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

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

5.7.1 The **City** shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. The **City** shall not be responsible for any such materials brought to the site by the **Contractor**, Subcontractor, Suppliers or anyone else for whom **Contractor** is responsible.

5.7.2 The **Contractor** shall immediately: (i) stop all work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by 7.12), and (ii) notify the **City** and the **Professional** (and thereafter confirm such notice in writing). The **City** shall promptly consult with the **Professional** concerning the necessity for the **City** to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. The **Contractor** shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after the **City** has obtained any required permits related thereto and delivered to the **Contractor** special written notice (I) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If the **City** and the **Contractor** cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by the **Contractor** to be resumed, either party may make a claim therefor as provided in Articles 12 and 13.

5.7.3 If after receipt of such special written notice, the **Contractor** does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the **Contractor** may order such portion of the Work that is in connection with such hazardous conditions or in such affected area to be deleted from the Work. If the **City** and the **Contractor** cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 12 and 13. The **City** may have such deleted portion of the Work performed by the **City's** own forces or others in accordance with Article 8.

5.7.4 The provisions of 5.2 and 5.5 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 6 - BONDS, INSURANCE, INDEMNIFICATION

6.1 Public Construction Bond and Other Bonds:

6.1.1 The **Contractor** shall furnish a Public Construction Bond in accordance with Florida Statute 255.05, unless otherwise stated in the Invitation to Bid in an amount equal to the total bid price as security for the faithful performance and payment of all the **Contractor's** obligations under the Contract Documents. This Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. The **Contractor** shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, and A.M. Best rated A-8 or better.

6.1.2 The Contractor shall be required to furnish additional coverage for added work.

6.1.3 If the surety on any bond furnished by the **Contractor** is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state, or it ceases to meet the requirements of 6.1.1, the **Contractor** shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to the **City**.

6.2 Licensed Sureties and Insurers; Certificates of Insurance

6.2.1 All bonds and insurance required by the Contract Documents to be purchased and maintained by the **Contractor** shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Florida to issue bonds or insurance policies for the limits and coverages so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

6.2.2 The **Contractor** shall deliver to the **City**, with copies to each additional insured identified in 6.3.1, an original or a certified copy of the complete insurance policy for each policy required, certificates of insurance (and other evidence of insurance requested by the **City** or any other additional insured) which the **Contractor** is required to purchase and maintain in accordance with 6.3.1.

6.3 Insurance Requirements

6.3.1 The **Contractor** shall procure and maintain insurance in accordance with all insurance requirements specified in the Contract Documents, including the insurance requirements attached to the Invitation to Bid. Both the City of Lakeland and the Community Redevelopment Agency of the City of Lakeland shall be named as additional insureds on all required insurance policies with the exception of workers' compensation and professional liability insurance policies.

6.4 Hold Harmless/Indemnification

6.4.1 To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order or Contract, the **Contractor** shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but

not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by the **Contractor**, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the **Contractor**, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the **Contractor** or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the **Contractor**, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute. For purposes of this indemnification, both the City of Lakeland and the Community Redevelopment Agency of the City of Lakeland, Florida shall be entitled to indemnification by the **Contractor**.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.1 Supervision and Superintendence

7.1.1 The **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. The **Contractor** shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the **Contractor** shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. The **Contractor** shall be responsible to see that the completed Work complies accurately with the Contract Documents.

7.1.2 The **Contractor** shall keep on the Work at all times during its progress a competent resident superintendent whose sole duty is to plan and supervise the overall progression of the work by employees of the Contractor and all sub-contractors. The resident superintendent will also coordinate with utility companies relocating their facilities within the limits of the project.

The resident superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. It shall not be distracted from its responsibilities as outlined above by performing other duties while the work is progressing.

The resident superintendent shall not be replaced without written notice to the **City**, through the **Professional**, except under extraordinary circumstances. The superintendent will be the **Contractor's** representative at the site and shall have authority to act on behalf of the **Contractor**. All communications to the superintendent shall be as binding as if given to the **Contractor**.

7.2 Labor, Materials, and Equipment

7.2.1 The **Contractor** shall provide and pay for competent, suitable, qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The **Contractor** shall at all times maintain good discipline and order on the site.

7.2.2 The **Contractor** shall furnish and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals whether temporary or permanent necessary for the execution, testing, initial operation, and completion of the Work as required by the Contract Documents.

7.2.3 All materials and equipment shall be new and of good quality, except as otherwise provided in the Contract Documents. If required by the **Professional**, the **Contractor** shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.2.4 All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise provided in the Contract Documents.

7.3 **Substitute Materials or Equipment**

7.3.1 If the **Contractor** wishes to furnish or use a proposed substitute after the award of the Contract, it shall within thirty (30) calendar days after Notice to Proceed make written application to the **Professional** and **Project Manager** for consideration of such substitute, certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance or quality to that specified, and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the prior written approval of the **Professional**. The application shall also contain an itemized estimate of all costs that may result directly or indirectly from acceptance of such substitute, including costs of redesign, delays, maintenance, and claims of other contractors affected by the resulting change, all of which shall be considered by the **Project Manager** and **Professional** in evaluating the proposed substitute. Approval of any change in costs or schedule as a result of acceptance of the substitute by the **Professional** shall be by Change Order.

7.3.2 This paragraph applies to any cost reduction proposal (hereinafter referred to as a Value Engineering Change Proposal or VECPs) initiated and developed by the **Contractor** for the purpose of refining the contract documents so as to contribute to design cost effectiveness or significantly improve the quality of the end result. VECPs must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. The Contractor must state that it is submitting a VECP proposal. The VECP shall be submitted to the **City** through the **Professional**. The **City** reserves the right to reject at its discretion any VECP submittals. As a minimum, the following information shall be submitted by the **Contractor** with each VECP:

1) A description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages;

2) Separate detailed cost estimates for both the existing contract requirement and the proposed change.

If a VECP is approved by the **City**, the **Contractor** may be entitled to share in the savings up to fifty (50) percent.

7.4 Concerning Subcontractors

7.4.1 The **Contractor** shall be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent as if they were employed by the **Contractor**. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the **City** or any obligation on the part of the **City** to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. The **City** may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the **Contractor** for specific Work done.

7.4.2 The **Contractor** shall identify and provide information on Subcontractors, Suppliers and other persons or organizations that shall be used by the **Contractor** in accordance with requirements of the Contract Documents.

7.4.3 The divisions and sections of the Specifications and the identifications of any Drawings shall not control the **Contractor** in dividing work among Subcontractor or delineating the Work to be performed by any specific trade.

7.4.4 The **Contractor** agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents, including but not limited to the General Conditions and Supplemental Conditions, for the benefit of the **City**.

7.4.5 All Work performed for the **Contractor** by a Subcontractor shall be pursuant to an appropriate written agreement between the **Contractor** and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the **City** as trustee. The **Contractor** shall pay each Subcontractor an appropriate amount, determined by value of the Work, of any insurance monies received by the **Contractor** under this insurance.

7.5 Patent Fees and Royalties

7.5.1 The **Contractor** shall pay all license fees and royalties and assume all costs incident to the use of any invention, design, process, or device which is the subject of patent rights or copyrights held by others. The **Contractor** shall indemnify and hold harmless the **City** and its employees and agents from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

7.6 Permits

7.6.1 The **Contractor** shall obtain and pay for all construction permits, licenses, governmental charges and inspection fees, and all public utility charges shall be included in the base bid. Those permits listed as reimbursable in the Supplemental Conditions shall be reimbursed to the **Contractor** when invoices for these permits are presented for payment. Permits, which are provided and paid for by the **City**, are also listed in the Supplementary Conditions. Any delays associated with the permitting process will be considered for time extensions only and no damages or additional compensation for delay will be allowed.

7.7 Laws and Regulations

7.7.1 The **Contractor** shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the **Contractor** observes that any of the Contract Documents are contradictory to such laws, rules, and regulations, it will notify the **Professional**

promptly in writing. Any necessary changes shall then be adjusted by an appropriate Change Order. If the **Contractor** performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations and without such notice to the **Professional**, it shall bear all related costs.

7.8 Taxes

7.8.1 The **Contractor** shall pay all sales, consumer, use and other similar taxes required to be paid by the **Contractor** in accordance with the Laws and Regulations of the place of the project that are applicable during the performance of the Work.

7.9 Use of Premises

7.9.1 The **Contractor** shall confine its equipment, the storage of materials and equipment, and the operations of its workers to the areas permitted by law, ordinances, permits, or the requirements of the Contract Documents. The **Contractor** shall not unreasonably encumber the site with materials and equipment. Any loss or damage to the **Contractor's** or any Subcontractor's equipment is solely at the risk of the **Contractor**.

7.9.2 During the progress of the Work, the **Contractor** shall keep the premises free from accumulations of waste materials, rubbish and other debris or contaminants 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. The **Contractor** shall leave the site clean and ready for occupancy by the **City** at substantial completion of the Work. The **Contractor** shall restore to original condition all property so designated for alteration by the Contract Documents.

7.9.3 The **Contractor** shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure. The **Contractor** shall not subject any part of the Work or adjacent property to stresses or pressures that will endanger them.

7.10 Record Documents

7.10.1 The **Contractor** shall keep at the site and in good order one record copy of the Contract Documents and all Drawings and Specifications. These documents shall be annotated on a continuing basis to show all changes made during the construction process. These shall be available to the **Professional** and the **Project Manager** and shall be submitted with the Application for Final Payment.

7.11 Safety and Protection

7.11.1 The **Contractor** is responsible for observing all OSHA regulations and shall self inspect to ensure this is accomplished. The **Contractor** shall ensure that all personnel are properly trained and shall be able to provide documentation for their personnel that have attended training courses. Examples of such training courses are: Hazard Communications, Traffic Work Zone Safety, Personal Protective Equipment, First Aid/CPR, Permit Required Confined Space, Lock out/Tag out of hazardous energy.

7.11.2 A **City** representative may periodically monitor work site safety. Should there be safety and/or health violations, classified as Serious, Willful, or Criminal/Willful Violations, the **City's** representative may have the authority, but not the duty, to require the **Contractor** to correct the violation in an expeditious manner. Inspections shall be based on requirements contained in 29 CFR 1926. The definitions of serious, willful and criminal/willful violations are as follows:

 Serious Violation: A serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm

could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not, with the exercise of reasonable diligence, know of the presence of the violation.

Willful Violation: May exist where evidence shows that the employer committed an intentional and knowing violation of the Act.

Criminal/Willful Violation: A repeat violation of a previously cited willful violation.

Violation of Serious, Willful or Criminal violation may have the following consequences:

First violation: Correction may be a verbal warning and the correction shall be done the same day. The **City** may maintain written documentation and the violation may result in work stoppage until the violation is corrected. The work stoppage shall not entitle the **Contractor** to additional contract time, compensation or delay damages. Liquidated damages provision will remain in full force and effect.

Second violation: This may constitute a breach of contract for safety violations and may result in termination of the contract at the sole discretion of the **City** without liability to the **City**.

7.11.3 Should the work site be in a hazardous area, the **City** may furnish the **Contractor** with information concerning hazards such as types or identification of known toxic material, machine hazards, Material Safety Data Sheets, or any other information that would assist the **Contractor** in the planning of a safe work site.

7.11.4 The **Contractor** shall be aware that while working for the **City**, representatives from agencies such as the United States Department of Labor, Occupational Safety and Health Administration (OSHA), and the Division of Safety, State of Florida, are invitees and need not have warrants or permission to enter the work site. These agencies, as well as the City Safety Officer, enter at the pleasure of the **City**.

7.11.5 The **Contractor** shall designate a competent person of its organization whose duty shall be the prevention of accidents at the site. This person shall be the **Contractor's** superintendent unless otherwise designated in writing by the **Contractor** to the **Professional**. All communications to the superintendent shall be as binding as if given to the **Contractor**.

7.11.6 The responsibility for traffic control and signage shall rest with the contractor. The contractor shall follow FDOT guidelines for maintenance of traffic including flagmen during day and night as recommended by FDOT. If a conflict between FDOT guidelines and the plans the contractor shall notify the Professional and Project Manager immediately. The contractor shall procure a safe storage area for materials and equipment and use proper safety precautions.

7.11.7 Safety Requirements

The **Contractor** shall comply with the SPECIFICATION SAFETY REQUIREMENTS as indicated in the Special Provisions.

7.12 Emergencies

7.12.1 In emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the **Contractor**, without special instructions or authorization from the **Professional** if time or circumstances do not permit, is obligated to prevent or mitigate threatened damage, injury, or loss. The **Contractor** shall give the **Professional** written notice that the

emergency provision has been invoked and shall state the reasons therefore within twenty-four (24) hours of the incident. If the **Contractor** believes the emergency results in additional Work, a claim for a Change Order may be submitted in accordance with the procedures set forth herein.

7.12.1.1 The **Contractor** shall immediately notify the **Professional** of all events involving personal injuries to any person on the site, whether or not such person was engaged in the construction of the Project, and shall file a written report on such person(s) and any other event resulting in property damage of any amount within five (5) calendar days of the occurrence.

7.12.1.2 If the **Professional** determines that a change in the Contract Documents is required because of the action taken by the **Contractor** in response to such an emergency, a Change Order will be issued to document the consequences of such action.

7.13 Submittals and Samples

7.13.1 After checking and verifying all field measurements, the **Contractor** shall promptly submit to the **Professional** for approval, in accordance with the accepted schedule of submittals, all submittals and samples required by the Contract Documents. All submittals and samples shall have been checked by and stamped with the approval of the **Contractor** and identified as the **Professional** may require. The data shown on or with the submittals will be complete with respect to dimensions, design criteria, materials and any other information necessary to enable the **Professional** to review the submittals as required. At the time of each submission, the **Contractor** shall give notice to the **Professional** of all deviations that the submittals or samples may have from the requirements of the Contract Documents.

7.13.1.1 The **Professional** shall review and approve submittals and samples. The **Professional's** review and approval shall be only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The **Contractor** will make any corrections required by the **Professional** and resubmit the required number of corrected copies until approved. The **Contractor's** stamp of approval on any submittals or samples shall constitute its representation to the **Professional** and the **City** that the **Contractor** has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that each submittal or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents.

7.13.1.2 No Work requiring a submittals or sample submission shall commence until the **Professional** has approved the submission. A copy of each approved submittal and each approved sample shall be kept in good order by the **Contractor** at the site and shall be available to the **Professional** and the **City** staff. Any delays associated with the submittal process will be considered for time extensions only, and no damages or additional compensation for delay will be allowed.

7.13.1.3 The **Professional's** approval of submittals or samples shall not relieve the **Contractor** from responsibility for any variation from the requirements of the Contract Documents unless the **Contractor** has in writing called the **Professional's** attention to each such variation at the time of submission and the **Project Manager** has given written approval to the specific deviation; any such approval by the **Professional** shall not relieve the **Contractor** from responsibility for errors or omissions in the submittals.

7.13.1.4 Where a shop drawing or sample is required by the Contract Documents or the schedule of shop drawings and sample submissions accepted by the **Professional** as required, any related work performed prior to **Professional's** review and approval of the pertinent submittals will be at the sole expense and responsibility of the **Contractor**.

7.14 Cleaning Up

7.14.1 The **Contractor** shall maintain the site free from accumulations of waste materials, rubbish, and other debris or contaminants resulting from the work on a daily basis or as required. At the completion of the work, the **Contractor** shall remove all waste materials, rubbish, and debris from the site as well as all tools, construction equipment and machinery, and surplus materials and will leave the site clean and ready for occupancy by the **City**. All disposal shall be in accordance with applicable laws and regulations. In addition to any other rights available to the **City** under the Contract Documents, the **Contractor's** failure to maintain the site may result in withholding of any amounts due the **Contractor**. The **Contractor** will restore to original condition those portions of the site not designated for alteration by the Contract Documents. If the **Contractor** fails to meet the cleanup criteria the **City** may, at the **Contractor's** expense, complete cleanup requirements.

ARTICLE 8 - OTHER WORK

8.1 The **City** may perform additional work related to the Project with its own forces or may let other direct contracts. The **Contractor** shall provide the other contractors who are parties to such direct contracts, including but not limited to the other contractor's employees, agents, subcontractors, and suppliers (or the **City's** forces performing the additional work), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate its Work with theirs. The **Contractor** shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The **Contractor** shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the **Professional** and the others whose work will be affected. **Contractor** is not entitled to exclusive use of the site.

8.1.1. If any part of the **Contractor's** work depends (for proper execution or results) upon the work of any such other contractor (or the **City**), the **Contractor** will inspect and promptly report to the **Professional** in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. The **Contractor's** failure to report shall constitute an acceptance of the other work, except as to defects and deficiencies that may appear in the other work after the execution of its Work.

ARTICLE 9 - CITY'S RESPONSIBILITIES

9.1 Except as otherwise provided in these General Conditions, the **City** shall issue all communications to the **Contractor** through the **Professional**.

9.1.1 The **City** shall furnish the data required under the Contract Documents and shall make payments to the **Contractor** when due as provided in Article 15.

9.1.2 The **City's** responsibilities for providing lands, easements, and engineering surveys to establish reference points are set forth in Article 5.

ARTICLE 10 - PROFESSIONAL'S STATUS DURING CONSTRUCTION

10.1 City's Representative

10.1.1 The **Professional** shall be a representative of the **City** during the construction period. The duties, responsibilities, and limitations of authority of the **Professional** as the **City's** representative during construction are set forth in these General Conditions.

10.2 Visits to the Site

10.2.1 The **Professional** shall make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

10.3 Clarifications and Interpretations

10.3.1 The **Professional** shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by the **Contractor**, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the **Contractor** believes that a written clarification and interpretation entitles it to an increase in the Contract Price, and/or Contract time, the **Contractor** may make a claim as provided for in Article 11, 12, and 13.

10.4 Rejecting Defective Work

10.4.1 The **Professional** has the authority to disapprove or reject Work that is defective. The **Professional** also has authority to require special inspection or testing of the Work at the **Contractor's** expense, as provided in Article 14, whether or not the Work is fabricated, installed, or completed.

10.5 Resident Engineer or Architect

10.5.1 The **Professional** may furnish a full or part-time Resident Engineer or Architect and other personnel to assist them in carrying out services at the site. The duties, responsibilities, and limitations of authority of any such Resident Engineer or Architect and other personnel are set forth in the Supplemental Conditions, if applicable.

10.6 Decisions on Disagreements

10.6.1 The **Professional** shall interpret the requirements of the Contract Documents and determine the acceptability of the Work. If the **Contractor** disagrees with the **Professional's** opinion, the **Contractor** shall refer claims, disputes, and other matters relating to the acceptability of the Work or their interpretation of the requirements of the Contract Documents initially to the **Professional** in writing with a request for a formal decision. The **Professional** will render in writing its opinion concerning the **Contractor's** request for a formal decision and shall submit same to the **Project Manager**. After receipt of the **Professional's** written opinion and all information requested from the **Contractor**, the **Project Manager** shall render a formal decision in writing, which shall then be conveyed to the **Contractor** by the **Professional**. Written notice of each such claim, dispute, and other matter shall be delivered by the **Contractor** to the **Professional** within seven (7) calendar days of the occurrence first happening. Written supporting data will be submitted to the **Professional** within fifteen (15) calendar days after such occurrence unless the **Professional** allows additional time. If the **Contractor** fails to strictly comply with these notices and submittal time periods, the **Contractor** shall be deemed to have waived its right to assert a claim the **Contractor** might otherwise have had concerning such matter.

10.7 Limitation on Professional's Responsibilities

10.7.1 Neither the **Professional's** authority to act under this Article or elsewhere in the Contract Documents, nor any decision made in good faith to exercise such authority shall give rise to any duty or responsibility of the **Professional** to the **Contractor**, any Subcontractor, any of their agents or employees.

10.7.1.1 The **Professional** shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. The **Professional** shall not be responsible for the **Contractor's** failure to perform the Work in accordance with the Contract Documents.

10.7.1.2 The **Professional** shall not be responsible for the acts or omissions of the **Contractor**, any subcontractors, any agents or employees, or any other persons performing any of the Work.

ARTICLE 11 - CHANGES IN THE WORK

11.1 Changes

11.1.1 Without invalidating the Contract, the **City** may at any time or from time to time order additions, deletions, or revisions in the Work. The **Professional** shall provide the **Contractor** with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt, the **Contractor** shall promptly submit a written proposal for the changed work prepared in accordance with Articles 12 and 13. If the proposal request calls only for the deletion of Work, the **Professional** may order the partial suspension of any Work related to the proposed deletion, in which case the **Contractor** must cease performance as directed; the **Contractor** shall not be entitled to claim lost profits on deleted work. All changed Work shall be executed under the applicable conditions of the Contract Documents.

11.1.2 Additional Work performed by the **Contractor** without authorization of a Change Order or Allowance Authorization will not entitle the **Contractor** to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 7. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.

11.1.3 Upon agreement as to changes in the Work to be performed, Work performed in an emergency as provided in Article 7, and any other claim of the **Contractor** for a change in the Contract Time or the Contract Price, the **Professional** will prepare a written Change Order to be signed by the **Professional** and the **Contractor** and submitted to the **City** for approval.

11.1.4 It is the **Contractor's** responsibility to notify its Surety of any changes affecting the general scope of the Work, Contract Price, or Contract Time.

11.1.5 In the absence of an agreement as provided in 11.1.3, the **City** may, at its sole discretion issue a Construction Change Directive to the **Contractor**. Pricing of the Construction Change Directive will be in accordance with Section 12.1.3. The Construction Change Directive will specify a price, and if applicable a time extension, determined to be reasonable by the **City**. If the **Contractor** fails to sign such Construction Change Directive, the **Contractor** may submit a claim in accordance with Articles 11, 12, and 13, but the **Contractor** shall nevertheless be obligated to fully perform the work as directed by the Construction Change Directive.

11.1.6 The **Contractor** shall proceed diligently with performance of the Work as directed by the **City**, regardless of pending claim actions, unless otherwise agreed to in writing.

ARTICLE 12 - CHANGE OF CONTRACT PRICE

12.1 The Contract Price

12.1.1 The Contract Price constitutes the total compensation (subject to written authorized adjustments) payable to the **Contractor** for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by **Contractor** shall be at the **Contractor's** expense without change in the Contract Price.

12.1.2 The Contract Price may only be increased or decreased by a written Change Order or Construction Change Directive. Any claim for an increase shall be in writing and delivered to the **Professional** within seven (7) calendar days of the occurrence first happening. Written supporting data will be submitted to the **Professional** within fifteen (15) calendar days after such occurrence unless the City allows additional time.

12.1.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined by the following procedures:

12.1.3.1 When it is determined by the **City** that an addition, deletion, or revision to the Work as defined in these Contract Documents is required and affects the quantities required for items designated in the Bid Proposal as unit price items, the **Contractor** and the **City** agree that the compensation payable to the **Contractor** for such unit price items shall be adjusted accordingly by a Change Order based upon the application of the appropriate unit prices shown in the Bid Proposal to the quantity of the unit price item required to complete the Work as defined in the Contract Documents.

12.1.3.2 Other Unit Prices

For items not designated in the Bid Proposal as unit prices, the **City** and the **Contractor** may establish unit prices as agreed on by Change Order.

12.1.3.3 Lump Sum

When it is determined by the **City** that an addition, deletion or revision to the Work is required which results in a change in Work designated in the Bid Proposal as a lump sum item, the amount of increase or decrease in the lump sum price shall be established by mutual agreement of the parties.

12.1.4 If the pricing methods specified in 12.1.3 are inapplicable, or if the parties are unable to agree on a price for the changed work, a reasonable price for the same shall be established by the **City** in accordance with 12.2. The **City** shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with 1.1.5. The **Contractor** shall perform the Work as directed in the Change Order.

12.1.5 Failure on the part of the **Contractor** to construct any item to plan or authorized dimensions within the specification tolerances shall result in: reconstruction to acceptable tolerances at no additional costs to the **City**; acceptance at no pay; or acceptance at reduced final pay quantity or reduced unit price, all at the discretion of the **City**. Determinations of aggregate monetary change for items identified as lump sum quantities shall be made by the **City** based upon an analysis of the scope of the **Contractor's** failure to construct to plan or authorized dimensions.

12.2 Cost of Work

12.2.1 The term, "Cost of Work", for the purpose of Change Orders, means the costs necessarily incurred and paid by the **Contractor** in the proper performance of the Change Order Work. Except as may be agreed to in writing by the **Professional**, such costs shall be in amounts no higher than those prevailing in the area of the Work and may include the following categories:

12.2.1.1 Labor (payroll, taxes, fringe benefits, worker's compensation, health and retirement benefits, sick leave):

12.2.1.2 Owned Equipment (at lowest applicable equipment rate manual rate)

12.2.1.3 Rented Equipment (at actual rental rate)

12.2.1.4 Materials

12.2.1.5 Supplies

12.2.1.6 Subcontractors' Costs

12.2.1.7 Bonds and Insurance

12.2.1.8 Contractor's Fee (per 12.3)

12.2.1.9 Permit Fees

12.2.2 The **Contractor** shall require all subcontractors and suppliers to comply with all requirements of, and provide itemizations of all claims in accordance with this Article.

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

12.2.3.1 Payroll costs and other compensation of the **Contractor’s** officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the **Contractor** whether at the site or in its principal or a branch office for general administration of the Change Order Work and not specifically included in the agreed upon schedule of job classifications, all of which are to be considered administrative costs covered by the **Contractor’s** fee.

12.2.3.2 Extraordinary fringe benefits not specifically identified in Article 12.2.1.1.

12.2.3.3 Expenses of **Contractor’s** principal and branch offices other than the **Contractor’s** office at the site.

12.2.3.4 Any part of the **Contractor’s** capital expenses, including interest on the **Contractor’s** capital used for the Change Order Work and charges against the **Contractor** for delinquent payments.

12.2.3.5 Cost of premiums for all bonds and insurance whether or not the **Contractor** is required by the Contract Documents to purchase and maintain the same (except for additional bonds and insurance required because of changes in the Work).

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

12.2.3.7 Overhead or general expense costs of any kind (other than as provided in 12.3).

12.3 Contractor’s Fee

12.3.1 The maximum percentage allowed for the **Contractor’s** combined overhead and profit shall be as follows:

12.3.1.1 For all such Change Order Work done a fixed percentage of the total adjustment to the Contract Price shall be negotiated and shall not exceed ten (10) percent.

12.3.2 For all changes, the **Contractor** shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the **Professional**. When a credit is due, the amount of credit to be allowed by the **Contractor** to the **City** for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the **Professional**, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

ARTICLE 13 - CHANGE OF CONTRACT TIME

13.1 The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to the **Professional** within seven (7) calendar days of the occurrence first happening and resulting in the claim. Written

supporting data will be submitted to the **Project Manager** within fifteen (15) calendar days after such occurrence unless the **Professional** allows additional time. All claims submitted by the **Contractor** for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay and clearly indicate why the subject delay was beyond the **Contractor's** control or fault. Failure to comply constitutes a waiver of **Contractor's** right to make a claim.

13.1.1 If the **Contractor** is delayed at any time in the performance, progress, commencement, or by any separate contractor employed by the **City**, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by the completion of the Work by any act or neglect of the **City** or the **Professional**, or by an employee of either, the **Contractor** using reasonable diligence, or any causes beyond the **Contractor's** control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as the **City** may determine. The **Contractor** shall be entitled to an extension of time for such causes only for the number of days of delay which the **City** may determine to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if the **Contractor** shall have strictly complied with all the requirements of the Contract Documents. Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which the **City** or the **Professional** may be responsible in whole or in part, shall relieve **Contractor** of its duty to perform or give rise to any right to damages or additional compensation from the **City**. The **Contractor's** sole and exclusive remedy against the **City** for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein. The Contractor shall not be entitled to an increase in the contract sum or payment or compensation of any kind from the City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, cost of acceleration or efficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance by reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. To the extent there is a delay caused by the **City** which is a concurrent delay to that caused by the **Contractor**, **City** shall not be liable to the **Contractor** for any associated delay damages, as the parties recognize that even had **Contractor's** performance not been delayed, there would still have been a delay in the overall schedule.

ARTICLE 14 - WARRANTY AND GUARANTEE: ACCEPTANCE OF DEFECTIVE WORK

14.1 Warranty and Guarantee

14.1.1 The **Contractor** warrants and guarantees to the City that all materials and equipment will be new unless otherwise specified and that all work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract Documents and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract Documents or such inspections, tests, approvals, or all applicable building, construction and safety requirements shall be considered defective. The **Project Manager** shall give notice of all defects to the **Contractor**. All defective work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article.

14.1.2 If, after approval of final payment and prior to the expiration of one year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work or materials are found to be defective, incomplete, or otherwise not in accordance with the Contract Documents, the **Contractor** shall promptly, without cost to the **City** and in accordance with the **City's** written

instructions, either correct such defective Work, or if it has been rejected by the **City**, remove it from the site and replace it with non-defective Work. If the **Contractor** does not promptly comply with the terms of such instructions, the **City** may have the defective Work corrected, removed, or replaced. The **Contractor** will pay all direct and indirect costs of such action.

14.2 Tests and Inspections

14.2.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the **Contractor**, the **Contractor** shall give the **Professional** timely notice of readiness therefore. The testing firm(s) (if assigned by the **City** to this Work) and all such inspections, tests, or approvals provided for by the **City** shall be identified in writing by the **Professional** to the **Contractor**. All other inspections, tests or approvals shall be at the **Contractor's** expense including additional expenses for inspection and tests required as a result of delays by the **Contractor** or hours worked in excess of 40 hours per week. For all required inspections, tests, and approvals on any Work prepared, performed, or assembled away from the site, the **Contractor** will furnish the **Professional** with the required Certificates of Inspection, testing, or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. Materials or Work in place that fail to pass acceptability tests shall be retested at the direction of the **Professional** and at the **Contractor's** expense.

14.2.2 Neither observations by the **Professional** or **Project Manager** nor inspections, tests, or approvals by persons other than the **Contractor** shall relieve the **Contractor** of its obligations to perform the Work in accordance with the requirements of the Contract Documents.

14.3 Access to the Work

14.3.1 For the duration of the Work, the **Professional** and its representatives, other designated representatives of the **City**, and authorized representatives of any regulatory agency shall at all times be given access to the Work. The **Contractor** shall provide proper facilities for such access and observation of the Work and also for any inspection or testing by others.

14.4 Uncovering the Work

14.4.1 If any Work required to be inspected, tested or approved is covered prior thereto without the prior written approval of the **Professional**, or if any Work is covered contrary to the request of the **Project Manager**, the Work shall, if requested by the **Professional**, be uncovered for observation, inspection, testing or approval and replaced at the **Contractor's** expense.

14.4.2 If any Work has been covered which either the **Professional** or the **Project Manager** has not specifically requested to observe, or if the **Professional** or the **Project Manager** considers it necessary or advisable that covered Work be inspected or tested by others, the **Contractor**, upon written request of the **Professional**, shall uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such work is defective, the **Contractor** shall bear the expense of such uncovering, exposure, observation, inspection, testing, and satisfactory reconstruction. If, however, such Work is not found to be defective, the **Contractor** shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, if it makes a claim as provided in Articles 11, 12 and 13.

14.5 Stop Work

14.5.1 When Work is defective or when the **Contractor** fails to supply sufficient skilled workmen or suitable materials or equipment, or make prompt payments to subcontractors for labor, materials, or equipment, or if the **Contractor** violates any provisions of these Contract Documents, the **City** may order the **Contractor** to stop the Work until the cause for such order has been eliminated. However, this right of the **City** to stop the Work shall not give rise to any duty on the part of the **City** to exercise this right for the benefit of the **Contractor** or any other party. The **Contractor** shall have no right to claim an increase in the Contract Price or Contract Time or other damages for a stop work order under this paragraph.

14.6 Correction or Removal of Defective Work

14.6.1 When directed by the **Professional**, the **Contractor** shall promptly, without cost to the **City** and as specified by the **Professional**, either correct the defective Work whether fabricated, installed, or completed, or remove it from the site and replace it with non defective Work. If the **Contractor** does not correct such defective Work or remove and replace such defective Work within a reasonable time, all as specified in a written notice from the **Professional**, the **City** may have the deficiency corrected. All direct and indirect costs of such correction shall be paid by the **Contractor** or deducted from payment to **Contractor**. The **Contractor** will also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the defective Work.

14.7 Acceptance of Defective Work

14.7.1 If, instead of requiring correction or removal and replacement of defective Work, the **City** prefers to accept it, the **City** may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price, shall be issued. If the acceptance occurs after approval of final payment, the **Contractor** shall pay to the **City** an appropriate sum to compensate for the defect in the Work.

14.8 Neglected Work by Contractor

14.8.1 If the **Contractor** neglects to execute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the **Professional** may direct the **Contractor** to submit a recovery plan and take specific corrective actions including, but not limited to, employing additional workmen, and/or equipment, and working extended hours and additional days, all at no cost to the **City** in order to put the Work back on schedule. If the **Contractor** fails to correct the deficiency or take appropriate corrective action, the **City** may terminate the contract or **Contractor's** right to proceed with that portion of Work and have the Work done by others. The cost of completion under such procedure shall be charged against the **Contractor**. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments due the **Contractor** are not sufficient to cover such amount, the **Contractor** shall pay the difference to the **City**.

14.8.2 Should the **Contractor** work overtime, weekends or holidays to regain the schedule, all costs to the **City** of associated inspection, construction management and resident engineering shall be identified to the **Contractor** and the Contract Price reduced by a like amount via Change Order.

ARTICLE 15 - PAYMENT AND COMPLETION

15.1 Schedule of Values

15.1.1 The schedule of values established as provided in 3.5.5 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to

the **Professional** and the **Project Manager**. Progress payments on account of Unit Price Work will be based on the number of units completed.

15.2 Application for Progress Payment

15.2.1 At least twenty (20) calendar days before the date established for each progress payment (but not more often than once a month), **Contractor** shall submit to the **Professional** for review an application for Payment filled out and signed by the **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 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**. Payment is subject to a ten percent (10%) retainage that will be held until the final payment or acceptance by the **City**.

15.3 Contractor's Warranty of Title

15.3.1 **Contractor** warrants and guarantees that title to the work, materials and equipment covered by any Application for Payment, whether incorporated in the Work or not, will pass to the **City** no later than the time of payment free and clear of all liens.

15.4 Approval of Payments

15.4.1 The **Professional** will, within ten (10) calendar days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the application to the **City**, or return the application to **Contractor** indicating in writing **Professional's** reasons for refusing to recommend payment. In the latter case, **Contractor** may make the necessary corrections and resubmit the application. The **City** shall, within 31 calendar days of presentation to them of the application for payment with **Professional's** recommendation of the amount for payment, pay **Contractor** amount recommended, unless the **City** has reasons to refuse or contest the amount of the Application for Payment.

15.4.2 The **Professional's** recommendation of any payment requested in an Application for Payment will constitute a representation by the **Professional** to the **City** based on the **Professional's** review of the Application for Payment and the accompanying data and schedules, that to the best of **Professional's** knowledge, information and belief:

The Work has progressed to the point indicated.

The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon substantial completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work and to any other qualifications stated in the recommendation), and

The conditions precedent to the **Contractor's** being entitled to such payment appear to have been fulfilled in so far as it is the **Professional's** responsibility to observe the Work.

15.4.3 By recommending any such payment, the **Professional** will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the **Professional** in the Contract Documents or (ii) that there may not be other matters or issues

between the parties that might entitle the **Contractor** to be paid additionally by the **City** or entitle the **City** to withhold payment to the **Contractor**.

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

15.4.5 The **Professional** may refuse to recommend the whole or any part of any payment if, in the **Professional's** opinion, he/she is unable to make the representation that the Application is acceptable to the **City**. The **Professional** may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in **Professional's** opinion to protect the **City** from loss because:

The Work is defective.

The Contract Price has been reduced by Change Order.

The **City** has been required to correct defective Work or complete Work in accordance with Article 14.

Claims have been filed against the **City** for which the **Contractor** may be liable.

The Work was executed unsatisfactorily, or the **Contractor** failed to clean up as required in Article 7, or otherwise is not in compliance with these Contract Documents.

15.4.6 The **City** will give the **Contractor** immediate notice stating the reasons for such action and promptly pay the **Contractor** the amount so withheld, or any adjustment thereto agreed to by the **City** and the **Contractor**, when **Contractor** corrects to the **City's** satisfaction the reasons for such action.

15.5 Substantial Completion

15.5.1 Substantial Completion is the stage in the progress of the Work when the Work or specified portion thereof is sufficiently complete in accordance with the Contract Documents so the **City** can occupy or utilize the Work for its proposed use.

15.5.2 When the **Contractor** considers that the Work, or a specified portion thereof, which the **City** agrees to accept separately, is substantially complete, the **Contractor** shall prepare and submit to the **Professional** a thorough and inclusive list of items to be completed or corrected. The **Contractor** shall proceed promptly to complete and correct items on the list. Failure to include an item on this list does not relieve the **Contractor** of the responsibility to complete all Work in accordance with the Contract Documents. Upon receipt of the **Contractor's** list, the **Professional** and **Project Manager** will visit the site to determine whether the Work or designated portion thereof is substantially complete. If the **Professional's** and the **Project Manager's** visit discloses any item, whether or not included on the **Contractor's** list, which is not in accordance with the requirements of the Contract Documents, the **Contractor** shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the **Professional**. The **Contractor** shall then submit a request for another visit by the **Professional** to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the **Professional** will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, and shall fix the time within

which the **Contractor** shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the **Contractor** for their written acceptance and then to the **City** for acceptance and issuance.

15.5.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the **Contractor** and certification by the **Professional**, the **City** shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

15.5.4 The **City** shall have the right to exclude the **Contractor** from the Work after the date of Substantial Completion, but the **City** shall allow the **Contractor** reasonable access to complete or correct items on the list.

15.6 Beneficial Occupancy

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

15.6.2 The **City** at any time may request the **Contractor** in writing to permit the **City** to use any such part of the Work which the **City** believes to be ready for its intended use and substantially complete. If the **Contractor** agrees that such part of the Work is substantially complete, the **Contractor** will certify to the **City** and the **Professional** in writing that the **Contractor** considers any such part of the Work ready for its intended use and substantially complete and request the **Professional** to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the **City**, **Contractor** and **Professional** shall make an inspection of that part of the Work to determine its status of completion. If the **Professional** does not consider that part of the Work to be substantially complete, the **Professional** will notify the **City** and the **Contractor** in writing giving the reasons therefor. If the **Professional** considers that part of the Work to be substantially complete, the provisions of 15.5 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

15.6.3 The **City** may, at its discretion, reduce the amount of retainage subject to Beneficial Occupancy.

15.7 Final Inspection

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

15.8 Final Application for Payment

15.8.1 After the **Contractor** has completed all such corrections to the satisfaction of the **Professional** and the **City** and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by 6.2, certificates of inspection, marked-up record documents and other documents, the **Contractor** may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied

(except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to **City**) of all liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of liens and as approved by **City**, **Contractor** may furnish receipts, a full and final release of the **City** and an affidavit of the **Contractor** that affirms that (i) the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which **City** or **City's** property might in any way be responsible have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish such a release or receipt in full, **Contractor** may furnish a bond or other collateral satisfactory to the **City** to indemnify **City** against any lien.

15.8.2 No application for final payment will be accepted by the **City** and **City** shall be under no obligation to pay any portion of the final payment until as-built documents by the **Contractor** are accepted and approved by the **Professional**.

15.8.3 Notwithstanding any other provision of these contract documents to the contrary, the **City** and the **Professional** are under no duty or obligation whatsoever to any vendor, materials provider, subcontractor, laborer or other party to ensure that payments due and owing by the **Contractor** to any of them are or will be made. Such parties shall rely only on the **Contractor's** surety bonds for remedy of nonpayment by it. The **Contractor** agrees to defend and resolve all claims made by subcontractors, indemnifying the **City** and the **Professional** for all claims arising from or resulting from subcontractor or supplier or material men or laborer services in connection with this project.

15.8.4 General Indemnity: the **Contractor** shall indemnify the **City** and **Professional** for any damages sustained including lost profits resulting from the **Contractor's** failure or refusal to perform the work required by these contract documents.

15.9 Final Payment and Acceptance

15.9.1 If, on the basis of the **Professional's** observation of the Work during construction and final inspection, and the **Professional's** review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the **Professional** is satisfied that the Work has been completed and the **Contractor's** other obligations under the Contract Documents have been fulfilled, the **Professional** will, within ten (10) working days after receipt of the final Application for Payment, indicate in writing the **Professional's** recommendation of payment and present the Application to the **City** for payment. At the same time the **Professional** will also give written notice to the **City** and the **Contractor** that the Work is acceptable subject to the provisions of 15.10. Otherwise, the **Professional** will return the application to the **Contractor**, indicating in writing the reasons for refusing to recommend final payment, in which case the **Contractor** shall make the necessary corrections and resubmit the Application. After the presentation to the **City** of the application and accompanying documentation, in appropriate form and substance and with the **Professional's** recommendation and notice of acceptability, the amount recommended by the **Professional** will become due and will be paid by the **City** to the **Contractor**.

15.9.2 If, through no fault of the **Contractor**, final completion of the Work is significantly delayed and if the **Professional** so confirms, the **City** shall, upon receipt of the **Contractor's** final Application for Payment and recommendation of the **Professional**, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the **City** for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required in Article 6, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the **Contractor** to the **Professional** with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

15.9.3 The remainder of the Contract Price will be approved for payment upon final completion of the work, acceptance of the work by the **City**, and settlement of all claims.

15.10 Waiver of Claims

15.10.1 The making and acceptance of final payment will constitute a waiver of all claims by the **Contractor** against the **City** other than those previously made in writing and still unsettled.

15.10.1.1 A waiver of all claims by the **City** against the **Contractor**, except claims arising from unsettled liens, from defective Work appearing after final inspection pursuant to 15.7 from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from the **Contractor's** continuing obligations under the Contract Documents; and

15.10.1.2 A waiver of all claims by the **Contractor** against the **City** other than those previously made in writing and still unsettled.

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

16.1 Suspension of Work

16.1.1 At any time and without cause, the **City** may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the **Contractor** and the **Professional** which will fix the date on which Work will be resumed. The **Contractor** shall resume the Work on the date so fixed. The **Contractor** shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if the **Contractor** makes any approved claim therefor as provided in Articles 12 and 13.

16.2 Termination For Cause

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

If the **Contractor** fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established;

If the **Contractor** disregards Laws, Regulations or Permits of any public body having jurisdiction;

If the **Contractor** disregards the lawful authority or reasonable instructions of the **Professional** or **Project Manager** or;

If the **Contractor** otherwise violates in any substantial way any provisions of the Contract documents;

If the **Contractor** is adjudged a bankrupt or insolvent;

If the **Contractor** makes a general assignment for the benefit of any of its creditors;

If a trustee or receiver is appointed for **Contractor** or for any of its property;

If the **Contractor** files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;

If the **Contractor** shall fail to obtain a vacation or stay of any involuntary bankruptcy proceedings within 30 Days after the filing thereof;

If the **Contractor** fails to make prompt payments to Subcontractors for labor, materials or equipment;

If any representation of **Contractor** made in this Agreement or other instrument furnished in connection with this Agreement shall prove false or misleading in any material respect;

If any bond or insurance provided hereunder is cancelled, repudiated or otherwise terminated without being replaced within three Business Days in form and substance and from a company acceptable to the **City**;

If there is a material adverse change in the financial condition of the company providing any bond or insurance, and within five Business Days after such change in financial condition, **Contractor** has not provided **City** with a substitute in form and substance satisfactory to the **City**; or

If the **Contractor** is otherwise in default, beyond the expiration of applicable grace or cure periods, if any, under any term or terms of the Contract Documents, including, without limitation, that **Contractor** has assigned this Agreement, in whole or in part without the consent of the **City**, has abandoned this Contract, suspended the progress of the Work, not executing the Work in accordance with this Contract, failing to diligently proceed with the Work, or neglecting to carry out its obligations under the Contract so as to affect adversely the carrying out of the Work.

the **City** may, after giving the **Contractor** (and the surety, if any) seven (7) working days' written notice, terminate the services of the **Contractor**, exclude the **Contractor** from the site and take possession of the Work and of all the **Contractor's** tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the **Contractor** (without liability to the **Contractor** for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the **City** has paid the **Contractor** but which are stored elsewhere and finish the Work as City may deem expedient. In such case, the **Contractor** shall not be entitled to receive any further payment beyond an amount equal to the value of the work actually completed and the value of materials and equipment not incorporated in the work but delivered and suitably stored, less the aggregate of payments previously made. If the direct and indirect costs of completing the work exceed the unpaid balance of the contract price, the **Contractor** shall pay the difference to the **City**. Such costs incurred by the **City** shall be verified by the **Professional** and incorporated in a change order, but in finishing the work the **City** shall not be required to obtain the lowest figure for the work performed. The **Contractor's** obligations to pay the difference between such costs and such unpaid balance shall survive termination of the agreement.

16.2.2 In the event the **City** terminates the contract for cause and it is subsequently judicially determined that there was no cause for termination, the termination for convenience provision shall be the sole means for disposition of the balance of the contract obligations.

16.2.3 Notwithstanding the foregoing, **City** may avail itself of such other remedies that may be available at law or in equity in the event **City** terminates for cause in accordance with Article 16.2.

16.3 Termination for Convenience

16.3.1 Upon seven (7) working days' written notice to the **Contractor** and the **Professional**, the **City** may, without cause and without prejudice to any other right or remedy of the **City**, elect to terminate the Contract. In such case, the **Contractor** shall be paid (without duplication of any items):

For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

For direct expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

For all reasonable claims, costs, losses and damages incurred in settlement of terminated contracts with subcontractors, suppliers and others; and

For reasonable expenses directly attributable to termination.

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

16.3.2 If through no act or fault of the **Contractor**, the Work is suspended for a period of more than ninety (90) calendar days by the **City** or under an order of court or other public authority, or the **Professional** fails to act on any Application for Payment within thirty (30) calendar days after it is submitted or the **City** fails for thirty-one (31) calendar days to pay the **Contractor** any sum finally determined to be due, then the **Contractor** may upon seven (7) working days written notice to the **City** and the **Professional** and provided the **City** or the **Professional** did not remedy such suspension or failure within that time, terminate the Agreement and recover from the **City** payment on the same terms as provided in 16.2.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if the **Professional** has failed to act on an Application for Payment within thirty (30) calendar days after it is submitted, or the **City** has failed for thirty-one (31) calendar days to pay the **Contractor** any sum finally determined to be due, the **Contractor** may upon seven (7) days written notice to the **City** and the **Professional** stop the Work until payment of all such amounts due the **Contractor**, including interest thereon. The provisions of this paragraph are not intended to preclude the **Contractor** from making claim under Articles 12 and 13 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to the **Contractor's** stopping Work as permitted by this paragraph.

16.4 Force Majeure

Force Majeure means:

- (a) war, hostilities (whether war be declared or not), disease, epidemic, invasion, terrorism, or act by foreign enemies;
- (b) pressure waves caused by aircraft or other aerial devices traveling at sonic or subsonic speeds;
- (c) rebellion, revolution, insurrection, military or usurped power or civil war;
- (d) riot, civil commotion or disorder;
- (e) acts of God, fire, flood, lightning, windstorm, tornadoes, hurricane, extraordinary breakdown of or damage to the **City's** affiliate; and

- (f) any circumstances beyond the reasonable control of either of the Parties.

Inclement and severe weather which is typical within central Florida through the period the Work is anticipated and shall not entitle a party to claim relief by Force Majeure or for delay damages.

16.5 Notice of Force Majeure

If either party is prevented or delayed from or in performing any of its obligations under this Contract Document by Force Majeure, then it shall notify the other party of the circumstances constituting the Force Majeure and the obligations which are delayed or prevented, and the party giving the notice shall thereupon be excused from the performance or punctual performance and any damages (whether liquidated or otherwise), as the case may be, of such obligation for so long as the circumstances of prevention or delay may continue. The Performance Schedule shall be extended for a like period of time as that of the Force Majeure event.

Both Parties will be responsible for its own costs during a period of Force Majeure.

16.6 Termination for Force Majeure

Notwithstanding that the **Contractor** may have been granted under Article 13 (Change of Contract Time) an extension of the Time for Completion of the Work, if by virtue of Article 16.5 (Notice of Force Majeure) either party shall be excused the performance of any obligation for a continuous period of thirty (30) days, then either party may at any time thereafter, and provided that such performance or punctual performance is still excused, by notice to the other terminate this Contract Document.

16.7 Payment on Termination for Force Majeure

If this Agreement is terminated pursuant to Article 16.6 (Termination for Force Majeure), the **Professional** shall instruct, and the **City** shall pay to the **Contractor** in so far as the same shall not have been included within previous invoices paid by the **City** or be subject of an advance payment, the Contract Value of the Work completed prior to the date of termination.

The **Contractor** shall also be entitled to have included in the final invoice of payment fees and to be paid:

- (a) The cost of materials or goods reasonably ordered for the Work or for use in connection with the Work which has been delivered to the **Contractor** or of which the **Contractor** is legally liable to accept delivery of, and may not be returned. Such materials or goods shall become the property of the **City** when paid for by the **City**. (The **City** shall be entitled to withhold payment in respect thereof until such goods of materials have been delivered to, or to the order of, the **City**);
- (b) The amount of any other expenditure which under the circumstances was reasonably incurred by the **Contractor** in the expectation of completing the whole of the Work; and
- (c) The reasonable cost of removal of the **Contractor**'s equipment and the return thereof to the **Contractor** or any other destination at no greater cost.
- (d) All amounts retained under Article 15.2.

ARTICLE 17 - DISPUTES

17.1 All disputes arising under this Contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) working days of the commencement of the dispute be presented by the **Contractor** to the **City** for decision referencing this Article 17. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the **Contractor** shall proceed with the Work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) working days of its commencement, the claim will be considered only for a period commencing ten (10) working days prior to the receipt by the **City** of notice thereof. Each decision by the **City** will be in writing and will be mailed to the **Contractor** by registered or certified mail, return receipt requested, directed to its last known address.

17.1.1 If the **Contractor** does not agree with any decision of the **City**, it shall seek mediation by a certified circuit court civil mediator who will be agreed to by the parties or, if the parties cannot agree to a mediator within thirty (30) calendar days of the request for mediation, said mediator will be chosen by the **City**. The parties will cooperate in good faith with the mediator with the cost of the mediator split equally between the parties, if the mediator is agreed upon, and by the **Contractor** if agreement on the mediator cannot be reached.

17.1.2 If the **Contractor** does not agree with any decision of the **City**, or the mediation is unsuccessful, it shall in no case allow the dispute to delay the Work but shall notify the **City** promptly that it is proceeding with the Work under protest and may then except the matter in question from the final release.

ARTICLE 18 - MISCELLANEOUS

18.1 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

18.2 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. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

18.3 Should the **City** or the **Contractor** suffer injury or damage to its person or property because of any error, omission, or act of the other or of any of their employees, agents, or others for whose acts they may be legally liable, claim should be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

18.4 All representations, warranties, and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract. Also the obligation of the **Contractor** to maintain the work until initiation of operation shall survive final payment, termination or completion of this Contract.

18.5 The **Contractor** shall keep adequate records and supporting documentation applicable to this Work and Contract. Said records and documentation shall be retained by the **Contractor** for a minimum of five (5) years from the date of final completion or termination of this Contract. The **City** shall have the right to audit, inspect, and copy all such records and documentation as often as the **City** deems necessary during the period of the Contract and for a

period of five (5) years thereafter provided, however, such activity shall be conducted only during normal business hours. The **City**, during this period of time, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the **Contractor** as concerns the aforesaid records and supporting documentation.

18.5.1 Davis-Bacon Act. In accordance with USC 40 276a to 276a-7, all laborers and mechanics employed by **Contractors** or **Subcontractors** to work on construction contracts in excess of \$2,000 financed by Federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates). In addition, CFR 29 part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," requires non-Federal entities include in their contracts a clause that the **Contractor** or **Subcontractor** is subject to Davis-Bacon Act and the DOL regulations. This includes a requirement for the contractor or subcontractor to submit to the non-Federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and statement of compliance.

ARTICLE 19 - ALLOWANCES

19.1 Allowance Work

19.1.1 When the **City** determines, at its sole discretion, that it wishes to include an Allowance in the Contract, said amount shall be included in the Contract Price, Article 2 of the Contract.

19.1.2 Allowance Work in the amount of five percent (5%) of the engineer's/architect's estimate or \$50,000, whichever is less, may be included in the Contract Price. No individual allowance request shall be greater than \$5,000 without approval of the City Manager. The Contract Work and all Allowance Work shall be performed in full compliance with all requirements of the Contract Documents. The sum of all approved Allowance Work performed pursuant hereto shall not exceed the amount of the Allowance. Any balance of the original Allowance remaining at the completion of all Work shall be deducted from the Contract Price by an approved Change Order.

19.1.3 The number of calendar days specified in the Contract for performance of the Work shall include a total time allowance of no more than 30 days or ten percent (10%) of the time specified at the time of contract award for final completion of the project, whichever is less, for performance of Allowance Work. Any time set aside for Allowance Work remaining at the completion of all Work shall be deducted from the Contract Time by an approved Change Order.

19.1.4 Upon a determination by the City Manager or its designee that certain construction work for which detailed specifications were not prepared or the scope of such work was not fully established at the time the City entered into a contract and upon determining that, for the purposes of expediency and efficiency, it would be in the **City's** best interest to have said work completed by the project's contractor, the City Manager or its designee will take appropriate action pursuant to the "Allowance" provision established under the Contract for that project.

19.1.5 All charges and time for Allowance Work must be pre-approved in writing by the City Manager or its designee. Said written pre-approval shall be in the form of an Allowance Authorization Release (AAR), which shall describe in detail the Allowance Work to be performed, the price for the Allowance Work, and the time, if any, allocated for performance of the Allowance work, as well as containing the authorizing signature of the City Manager or its designee. The Contractor shall not be authorized to perform any Allowance Work without the required AAR.

ARTICLE 20 – LIMITATION OF LIABILITY

In no event will either party have any liability to the other for any incidental, special, indirect or consequential damages, or for any loss of profits, overhead, or revenue. The **City's** aggregate liability arising out of or resulting from this Contract will not exceed the Contract price as the same may be changed by the parties in accordance with this Contract. This limitation of liability will apply to any damages, however caused, and on any theory of liability, whether for breach of contract, tort (including without limitation negligence), delay, or otherwise, regardless of whether the limited remedies available to the **Contractor** fail for their essential purpose.