



# City of South Pasadena

7047 SUNSET DRIVE SOUTH  
SOUTH PASADENA, FLORIDA 33707  
PH: (727) 347-4171 FAX: (727) 345-0518  
WWW.MYSOUTHPASADENA.COM

## A G E N D A

SPECIAL COMMISSION MEETING  
SOUTH PASADENA, FLORIDA

TUESDAY, APRIL 18, 2017  
COMMISSION CHAMBERS 9:00 A.M.

CALL TO ORDER  
INVOCATION  
PLEDGE OF ALLEGIANCE  
ROLL CALL

## DISCUSSION ITEM

- MOTION - TO AWARD CONTRACT FOR THE BIGNONIA AVENUE ALLEYWAY RECONSTRUCTION PROJECT TO SUNCOAST DEVELOPMENT OF PINELLAS COUNTY, INC. AT A BID PRICE OF \$328,049.

ADJOURN

This meeting is open to the public. Ordinances may be inspected by the public in the office of the City Clerk at City Hall from 8:00 a.m. to 4:00 p.m. Monday through Friday with the exception of holidays. Any person who decides to appeal any decision of the City Commission with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of South Pasadena is committed to providing reasonable accommodation for access for the disabled. In accordance with the Americans with Disabilities Act and F.S. 286.26, anyone needing assistance with regard to this meeting should contact the City Clerk's Office in writing at least 48 hours prior to the meeting. For more information or assistance please contact the City Clerk's office at 727-347-4171.



**ADVANCED**  
**ENGINEERING & DESIGN, INC.**  
CIVIL • MUNICIPAL • SITE DESIGN • PERMITTING • PLANNING  
3931 68th Avenue North • Pinellas Park, FL • tel. 727-526-9158 • fax. 727-527-9683

February 20, 2017

Mr. Garry Anderson  
Public Works Director  
City of South Pasadena  
6940 Hibiscus Avenue  
South Pasadena, Florida 33707

RE: Bignonia Avenue Alleyway Reconstruction  
Recommendation of Award

Dear Mr. Anderson:

Pursuant to your request, Advanced Engineering & Design, Inc. reviewed the six (6) bids received on February 16, 2017. Proposal prices ranged from \$328,049.00 to \$642,570.00 with Suncoast Development of Pinellas County, Inc. identified as the apparent low bidder.


All of the six bids were submitted with a Bid Bond (one bidder only provided a 5% Bid Bond), the Florida Trench Safety Act Acknowledgment form and the Public Entity Crime Statement. Further, Advanced Engineering & Design, Inc. evaluated (numerically) the proposals provided and confirmed that no mathematical errors were present.

Advanced Engineering & Design, Inc. has worked with Suncoast Development of Pinellas County, Inc. in the past and have found that they are quite capable of performing the necessary work elements of this project.

In conclusion, Advanced Engineering & Design, Inc. recommends that the City of South Pasadena award the Bignonia Avenue Alleyway Reconstruction contract to Suncoast Development of Pinellas County, Inc. for \$328,049.00.

As discussed in prior correspondence, it is recommended that the City allocate an additional 10% of the project costs for unforeseen field conditions and/or additional work.

Sincerely,  
Advanced Engineering & Design, Inc.



Justin V. Keller, P.E.  
Project Engineer

Attachment: Bid Tabulation

City of South Pasadena															
Bignonia Avenue Alleyway Reconstruction															
Bid Tabulation															
Item No.	Description	Unit	Quantity	Suncoast Development of Pinellas County, Inc.		Kamminga Roodvoets, Inc		MTM Contractors, Inc.		Rowland, Inc.		Ajax Paving Industries of Florida, LLC.		Kloote Contracting, Inc.	
				Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
<b>G</b>	<b>GENERAL</b>														
G-1	Mobilization	LS	1	\$ 25,000.00	\$ 25,000.00	\$ 33,000.00	\$ 33,000.00	\$ 35,000.00	\$ 35,000.00	\$ 40,690.00	\$ 40,690.00	\$ 45,000.00	\$ 45,000.00	\$ 85,000.00	\$ 85,000.00
G-2	Maintenance of Traffic (Pedestrian & Vehicular)	LS	1	\$ 12,000.00	\$ 12,000.00	\$ 3,500.00	\$ 3,500.00	\$ 2,500.00	\$ 2,500.00	\$ 9,770.00	\$ 9,770.00	\$ 16,000.00	\$ 16,000.00	\$ 15,000.00	\$ 15,000.00
G-3	Erosion & Sediment Control	LS	1	\$ 1,800.00	\$ 1,800.00	\$ 3,500.00	\$ 3,500.00	\$ 9,500.00	\$ 9,500.00	\$ 9,560.00	\$ 9,560.00	\$ 3,000.00	\$ 3,000.00	\$ 10,000.00	\$ 10,000.00
<b>RW</b>	<b>ROADWAY</b>														
RW-1	Demolition / Clearing & Grubbing	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 25,000.00	\$ 25,000.00	\$ 15,550.00	\$ 15,550.00	\$ 11,580.00	\$ 11,580.00	\$ 16,000.00	\$ 16,000.00	\$ 75,000.00	\$ 75,000.00
RW-2	Alleyway Reconstruction	SY	915	\$ 45.50	\$ 41,632.50	\$ 35.00	\$ 32,025.00	\$ 45.00	\$ 41,175.00	\$ 52.00	\$ 47,580.00	\$ 65.00	\$ 59,475.00	\$ 96.00	\$ 87,840.00
RW-3	Fill & Grade to Drain (Southern Single Family Properties) / Ditch Abandonment (Grade to Slotted Inlet)	SY	1100	\$ 12.00	\$ 13,200.00	\$ 8.00	\$ 8,800.00	\$ 20.00	\$ 22,000.00	\$ 17.75	\$ 19,525.00	\$ 28.00	\$ 30,800.00	\$ 24.00	\$ 26,400.00
RW-4	FDOT Type "F" Grated Inlet	EA	3	\$ 4,100.00	\$ 12,300.00	\$ 3,800.00	\$ 11,400.00	\$ 4,595.00	\$ 13,785.00	\$ 3,200.00	\$ 9,600.00	\$ 3,773.00	\$ 11,319.00	\$ 5,874.00	\$ 17,622.00
RW-4A	Nyloplast Drain Basin & 12" PVC Piping	EA	1	\$ 3,500.00	\$ 3,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,825.00	\$ 2,825.00	\$ 2,850.00	\$ 2,850.00	\$ 3,400.00	\$ 3,400.00	\$ 5,482.00	\$ 5,482.00
RW-5	FDOT Type "F" Grated Inlet (w/Slots)	EA	1	\$ 5,100.00	\$ 5,100.00	\$ 4,500.00	\$ 4,500.00	\$ 4,895.00	\$ 4,895.00	\$ 3,300.00	\$ 3,300.00	\$ 3,800.00	\$ 3,800.00	\$ 6,002.00	\$ 6,002.00
RW-6	FDOT Type "P-7T" Manhole	EA	3	\$ 3,400.00	\$ 10,200.00	\$ 5,000.00	\$ 15,000.00	\$ 3,995.00	\$ 11,985.00	\$ 2,790.00	\$ 8,370.00	\$ 4,400.00	\$ 13,200.00	\$ 5,398.00	\$ 16,194.00
RW-7	FDOT Type "P-7T" Manhole (Doghouse)	EA	1	\$ 5,600.00	\$ 5,600.00	\$ 10,000.00	\$ 10,000.00	\$ 4,250.00	\$ 4,250.00	\$ 6,375.00	\$ 6,375.00	\$ 4,800.00	\$ 4,800.00	\$ 6,179.00	\$ 6,179.00
RW-8	Construct 15" RCP Storm Drain	LF	310	\$ 51.50	\$ 15,965.00	\$ 100.00	\$ 31,000.00	\$ 75.00	\$ 23,250.00	\$ 115.00	\$ 35,650.00	\$ 68.00	\$ 21,080.00	\$ 134.00	\$ 41,540.00
RW-9	Construct 18" RCP Storm Drain	LF	210	\$ 61.50	\$ 12,915.00	\$ 105.00	\$ 22,050.00	\$ 85.00	\$ 17,850.00	\$ 120.00	\$ 25,200.00	\$ 95.00	\$ 19,950.00	\$ 143.00	\$ 30,030.00
RW-10	Construct Riprap Swale	LF	140	\$ 15.00	\$ 2,100.00	\$ 50.00	\$ 7,000.00	\$ 120.00	\$ 16,800.00	\$ 135.00	\$ 18,900.00	\$ 105.00	\$ 14,700.00	\$ 44.00	\$ 6,160.00
RW-11	Bypassing of Stormwater Flows	LS	1	\$ 25,000.00	\$ 25,000.00	\$ 2,500.00	\$ 2,500.00	\$ 6,500.00	\$ 6,500.00	\$ 6,200.00	\$ 6,200.00	\$ 5,700.00	\$ 5,700.00	\$ 30,000.00	\$ 30,000.00
RW-12	Tree Protection / Root and Limb Pruning	LS	1	\$ 1,500.00	\$ 1,500.00	\$ 13,000.00	\$ 13,000.00	\$ 4,500.00	\$ 4,500.00	\$ 3,200.00	\$ 3,200.00	\$ 1,300.00	\$ 1,300.00	\$ 5,000.00	\$ 5,000.00
RW-13	Utility Pole Support	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
RW-14	Unsuitable Material Removal & Replacement	CY	50	\$ 50.00	\$ 2,500.00	\$ 50.00	\$ 2,500.00	\$ 55.00	\$ 2,750.00	\$ 80.00	\$ 4,000.00	\$ 122.00	\$ 6,100.00	\$ 125.00	\$ 6,250.00
<b>UT</b>	<b>UTILITIES</b>														
UT-1	Sanitary Sewer Removal & Replacement (8" Ductile Iron)	LF	40	\$ 98.50	\$ 3,940.00	\$ 120.00	\$ 4,800.00	\$ 95.00	\$ 3,800.00	\$ 185.00	\$ 7,400.00	\$ 215.00	\$ 8,600.00	\$ 177.00	\$ 7,080.00
UT-2	Sanitary Lateral Removal & Replacement (4" / 6" PVC)	LF	120	\$ 21.00	\$ 2,520.00	\$ 50.00	\$ 6,000.00	\$ 80.00	\$ 9,600.00	\$ 60.00	\$ 7,200.00	\$ 180.00	\$ 21,600.00	\$ 73.00	\$ 8,760.00
UT-3	Sanitary Lateral Conflict Structure (4'-Diameter)	EA	6	\$ 3,500.00	\$ 21,000.00	\$ 3,000.00	\$ 18,000.00	\$ 3,500.00	\$ 21,000.00	\$ 3,450.00	\$ 20,700.00	\$ 4,750.00	\$ 28,500.00	\$ 2,056.00	\$ 12,336.00
UT-4	Adjust Sanitary Sewer Manhole	EA	2	\$ 750.00	\$ 1,500.00	\$ 700.00	\$ 1,400.00	\$ 1,250.00	\$ 2,500.00	\$ 1,150.00	\$ 2,300.00	\$ 1,700.00	\$ 3,400.00	\$ 956.00	\$ 1,912.00
UT-5	6" Reclaimed Water Main Adjustment	EA	4	\$ 2,500.00	\$ 10,000.00	\$ 1,850.00	\$ 7,400.00	\$ 1,975.00	\$ 7,900.00	\$ 4,250.00	\$ 17,000.00	\$ 5,800.00	\$ 23,200.00	\$ 3,871.00	\$ 15,484.00
UT-6	6" PVC Reclaimed Water Main (Including Fittings)	LF	140	\$ 24.50	\$ 3,430.00	\$ 30.00	\$ 4,200.00	\$ 39.00	\$ 5,460.00	\$ 35.00	\$ 4,900.00	\$ 83.00	\$ 11,620.00	\$ 50.00	\$ 7,000.00
UT-7	Construct New Reclaimed Water Service (1")	EA	11	\$ 375.00	\$ 4,125.00	\$ 275.00	\$ 3,025.00	\$ 695.00	\$ 7,645.00	\$ 650.00	\$ 7,150.00	\$ 1,570.00	\$ 17,270.00	\$ 398.00	\$ 4,378.00
<b>R</b>	<b>RESTORATION</b>														
R-1	Private Asphalt Drive Reconstruction / Restoration	SY	495	\$ 50.50	\$ 24,997.50	\$ 35.00	\$ 17,325.00	\$ 38.00	\$ 18,810.00	\$ 35.00	\$ 17,325.00	\$ 45.00	\$ 22,275.00	\$ 66.00	\$ 32,670.00
R-2	Concrete Slab Reconstruction / Restoration	SF	565	\$ 7.10	\$ 4,011.50	\$ 7.00	\$ 3,955.00	\$ 6.50	\$ 3,672.50	\$ 15.50	\$ 8,757.50	\$ 9.00	\$ 5,085.00	\$ 10.00	\$ 5,650.00
R-3	Dumpster Slab Reconstruction	LS	1	\$ 2,100.00	\$ 2,100.00	\$ 3,500.00	\$ 3,500.00	\$ 850.00	\$ 850.00	\$ 7,900.00	\$ 7,900.00	\$ 3,100.00	\$ 3,100.00	\$ 3,500.00	\$ 3,500.00
R-4	Rock Drive Reconstruction	SF	250	\$ 10.00	\$ 2,500.00	\$ 7.50	\$ 1,875.00	\$ 7.00	\$ 1,750.00	\$ 7.50	\$ 1,875.00	\$ 8.00	\$ 2,000.00	\$ 10.00	\$ 2,500.00
R-5	Remove & Reset Existing Fencing (Type Varies)	LF	525	\$ 17.50	\$ 9,187.50	\$ 20.00	\$ 10,500.00	\$ 35.00	\$ 18,375.00	\$ 56.00	\$ 29,400.00	\$ 22.00	\$ 11,550.00	\$ 30.00	\$ 15,750.00
R-6	Construct New Wooden Fencing (6')	LF	150	\$ 31.50	\$ 4,725.00	\$ 25.00	\$ 3,750.00	\$ 25.00	\$ 3,750.00	\$ 66.00	\$ 9,900.00	\$ 22.00	\$ 3,300.00	\$ 15.00	\$ 2,250.00
R-7	Restore Incidental Parkway Features	LS	1	\$ 4,200.00	\$ 4,200.00	\$ 2,500.00	\$ 2,500.00	\$ 1,900.00	\$ 1,900.00	\$ 5,395.00	\$ 5,395.00	\$ 3,800.00	\$ 3,800.00	\$ 20,000.00	\$ 20,000.00
R-8	Remove & Reset Existing Signage	LS	1	\$ 1,500.00	\$ 1,500.00	\$ 500.00	\$ 500.00	\$ 1,500.00	\$ 1,500.00	\$ 2,700.00	\$ 2,700.00	\$ 435.00	\$ 435.00	\$ 2,867.00	\$ 2,867.00
R-9	Adjust Surficial Utilities (Excluding Sanitary Sewer Manholes)	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,100.00	\$ 2,100.00	\$ 5,395.00	\$ 5,395.00	\$ 1,090.00	\$ 1,090.00	\$ 5,734.00	\$ 5,734.00
R-10	Sodding	SF	20000	\$ 0.40	\$ 8,000.00	\$ 0.60	\$ 12,000.00	\$ 0.70	\$ 14,000.00	\$ 0.60	\$ 12,000.00	\$ 0.25	\$ 5,000.00	\$ 1.00	\$ 20,000.00
	<b>TOTAL</b>				\$ 328,049.00		\$ 335,505.00		\$ 364,727.50		\$ 434,647.50		\$ 452,449.00		\$ 642,570.00



Agreement between the parties hereto and supercedes any prior negotiations, representations, agreements, or understandings, either written or oral.

2. Intent of Contract Documents

Execution of the Contract by the CONTRACTOR is a representation that the CONTRACTOR has become familiar with the Contract Documents and field conditions under which the Work is to be performed within the requirements of Work specified by the Contract Documents, all of which are incorporated herein by reference.

The headings of the sections of this Agreement and capitalization's are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

3. Definitions

Definitions are provided in Appendix 1 of this Agreement.

## **ARTICLE 2 - SCOPE OF WORK**

The CONTRACTOR shall execute the entire Work described in the Contract Documents.

## **ARTICLE 3 - COMMENCEMENT DATE**

The Commencement Date shall be established by the CITY and communicated to the CONTRACTOR in a Notice to Proceed (NTP) sent by registered mail to the CONTRACTOR's place of business not later than 30 calendar days following execution of the Contract, or receipt of proper permits from regulatory agencies having jurisdiction over the project, whichever is later.

The CONTRACTOR will not commence Work on the project until receiving a Notice to Proceed from the CITY.

## **ARTICLE 4 - SUBSTANTIAL COMPLETION DATE**

The CONTRACTOR shall commence work within 15 days from the date of Notice to Proceed. The CONTRACTOR shall achieve Substantial completion of Work not later than 120 consecutive calendar days after the date specified by the Notice to Proceed, subject to adjustments of the Contract Time as provided in the Contract Documents. The CONTRACTOR shall achieve Final Completion of the Work not later than 15 days after reaching Substantial Completion.

Time limits herein stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the CONTRACTOR confirms that the Contract Time is a reasonable period for performing the Work.

## **ARTICLE 5 - CONTRACT AMOUNT**

The CITY shall pay the CONTRACTOR the sum of \$328,049.00, subject to additions and deductions as provided in the Contract Documents for all Work described in Article 2.

## **ARTICLE 6 - LIQUIDATED DAMAGES**

The CONTRACTOR and CITY mutually agree that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the CONTRACTOR and CITY, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing.

If the said CONTRACTOR shall neglect, fail or refuse to complete the work within the time specified, or any proper extension thereof granted in accordance with this Agreement, then the CONTRACTOR does hereby agree, as a part of consideration for the award of this contract, to pay the CITY the amount of \$200 for each calendar day beyond the Substantial Completion Date not as a penalty but as liquidated damages for such breach of Contract. Furthermore, the CONTRACTOR agrees to pay the CITY the amount of \$200 for each calendar day the Work remains incomplete after the date established for Final Completion.

The said amount is fixed and agreed upon by and between the CONTRACTOR and CITY because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the CITY would in such event sustain, and said amount is agreed to be the amount of damages which the CITY would sustain. However said liquidated damages shall not be construed to limit the CITY's damages for any claim for CONTRACTOR's negligence, defective performance or their other breach of this contract. Also, failure to meet requirements for substantial or final completion shall subject the CONTRACTOR to reinspection fees as set forth in Section 9-C-16.

Both Liquidated Damages and Reinspection Fees shall be implemented using a Deductive Change Order or Construction Change Directive.

## **ARTICLE 7 - PAYMENTS**

### **1. Progress Payments**

Based upon Applications for Payment submitted to the Project Engineer by the CONTRACTOR and Certificates for Payments issued by the Project Engineer, the CITY shall make progress payments on account of the Contract Amount to the CONTRACTOR as provided below and elsewhere in the Contract Documents.

The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

Provided an Application for Payment is received by the Project Engineer not later than the 15<sup>th</sup> day of the month, the CITY shall make payment to the CONTRACTOR not later than the last day of the month. If a valid Application for Payment is received by the Project Engineer after the Application date fixed above, payment shall be made 30 days after the Project Engineer received the Application for Payment.

Each Application for Payment shall be based upon the Schedule of Values submitted by the CONTRACTOR in accordance with the Contract Documents.

Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application of Payment.

Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

Take that portion of the Contract Amount properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Amount allocated to that portion of the Work in the Schedule of Values, less retainage of 10%.

Subtract the aggregate of previous payments made by the CITY.

The progress payment shall be further modified under the following circumstances:

Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to 90% of the Contract Amount less such amounts as the Project Engineer and CITY shall be determined for incomplete Work and unsettled claims.

2. Final Payment

Final payment, comprising the entire unpaid balance of the Contract Amount, shall be made by the CITY to the CONTRACTOR when the Contract has been fully performed and accepted by the CITY. Furthermore, payment shall be made within 30 days of the CITY receiving a final Certificate of Payment from the Project Engineer.

3. Certifying a Schedule of Values

If the Bid Proposal does not contain a Schedule of Prices, within 10 days after award of the Contract, the CONTRACTOR shall submit to the Project Engineer a Schedule of Values allocating the values of various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Project Engineer or CITY may require. The Schedule of Values shall be reviewed by the Project Engineer and approved by the CITY, and shall be used as the basis for reviewing the CONTRACTOR's Applications for Payment.

The Schedule of Values shall include a cost breakdown indexed per the Sections of the Specifications, which shall clearly set forth labor as distinct from materials and from equipment.

4. CONTRACTOR Applications for Payment

By the 15<sup>th</sup> of each month the CONTRACTOR shall submit to the City's Representative an itemized Application for Payment in accordance with the Schedule of Prices. Such application shall be supported by data substantiating the CONTRACTOR's right to payment as the CITY or Project Engineer may require. Payment shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation into work. If approved in writing by the CITY, payment may similarly be made for materials and equipment suitably stored off the site.

Applications for Payment not include:

- Payments on account of changes in the Work which have not been approved by the CITY in a Change Order; and
- Payment of amounts the CONTRACTOR does not intend to pay to a SubCONTRACTOR or Supplier because of a dispute or other reason.

The CONTRACTOR warrants that the title to all Work covered by an Application for Payment will pass to the CITY no later than the time of payment. The CONTRACTOR further warrants that all work, equipment and materials included in the Application for Payment are to the best of the CONTRACTOR's knowledge, information and belief, free from liens, claims, security interests or encumbrances.

5. Certification of Payment Requests

Within seven (7) days after receipt of a CONTRACTOR's Application for Payment, the Project Engineer, in consultation with the CITY, will issue a Certificate for Payment for an amount the Project Engineer and CITY determines is due, or notify the CONTRACTOR in writing of the reasons for withholding certification. A Certificate of Payment shall not constitute acceptance of Work not in accordance with the Contract Documents.

6. Criteria for Withholding a Certificate for Payment

The Project Engineer or CITY may withhold a Certificate for Payment in whole or in part if in the City's opinion, the CONTRACTOR representations to the City are not supported. If the CONTRACTOR and the City cannot agree on a revised amount, the City will promptly issue a Certificate of Payment for the amount to which the City are able to certify payment. Certification may be withheld for these reasons:

- Defective Work not corrected;
- Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
- Damages owed to the CITY or others;
- Evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or estimated Liquidated Damages; or
- Persistent failure to carry out the Work in accordance with the Contract Documents.



When reasons for withholding certification are corrected, the Project Engineer and CITY will certify amounts previously withheld.

## **ARTICLE 8 - TERMINATION OR SUSPENSION OF THE CONTRACT**

### **1. Termination by the CONTRACTOR**

The CONTRACTOR may terminate the Contract if the work is stopped for a period of 60 days or longer only for the following reasons:

- Issuance of a Stop Work Order by a court or regulatory agency having jurisdiction over the project; or
- An act of Government making materials or labor unavailable.

If any one of the reasons stated above exists, the CONTRACTOR shall be compensated as provided in this Agreement only for Work executed in accordance with the Contract Documents.

### **2. Termination by CITY For Cause**

The CITY may terminate the Contract due to the CONTRACTOR's inability to perform for these reasons:

- Refusal or failure to supply properly skilled workers or materials;
- Disregarding the laws, ordinances, or regulations of public authorities having jurisdiction over the Work; or
- Substantially breaching provisions of the Contract Documents.

If such conditions exist, the CITY may, without prejudice of any other rights or remedies of the CITY, after having given the CONTRACTOR and the CONTRACTOR's surety seven days written notice, terminate the Agreement and, subject to any prior rights or the surety:

- Take possession of the site and materials, equipment, tools, and machinery thereon owned by the CONTRACTOR;
- Accept assignment of Subcontracts; and
- Finish the Work by whatever means are available to the CITY

Should the Work be terminated according to this section the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

If the unpaid balance of the Contract Amount exceeds the costs of finishing the work, such excess shall be used to pay the CONTRACTOR amounts due for materials and equipment stored on site and Work completed in accordance with the Contract Documents which has been Certified by the Project Engineer and accepted by the CITY. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the CITY, which obligation for payment shall survive the termination of the Agreement.

The costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional title costs, insurance, additional interest because of delay in completing the Work, and all other direct, indirect, and consequential costs incurred by the CITY by reason of the termination of the CONTRACTOR as stated herein. The CITY shall be entitled to hold all amounts due the CONTRACTOR at the date of termination until all of the CITY's costs have been established, and to apply such amounts to such costs.

Should the CITY's termination of the CONTRACTOR for Cause be challenged, and should such challenge prevail, then the CITY's termination of the CONTRACTOR shall be deemed to have been a termination for Convenience.

3. Termination by the CITY for Convenience

The CITY may, without cause, order the CONTRACTOR in writing to suspend, delay or terminate the Work in whole or in part for such period of time the CITY may determine. The CITY shall adjust the Contract Amount for increases in the cost of performance under the Contract caused by suspension, delay, or interruption.

No change in Contract Amount shall be made where the suspension, delay, or interruption for which the CONTRACTOR is responsible or attributable.

In the event of termination for convenience by the CITY, the CONTRACTOR shall only be entitled to and paid compensation earned through the date of termination and Termination Expenses. Termination Expenses are those directly attributable to termination (such as demobilization costs). CONTRACTOR shall not be entitled to direct, indirect, or consequential damages, or other damages for loss from and including, but not limited to economic loss, loss of anticipated profits, idle equipment expenses, interest or carrying costs, overhead expenses, loss of efficiency, or loss of productivity.

## **ARTICLE 9 - EXECUTION OF THE PROJECT**

### **A. OBLIGATIONS OF THE PROJECT ENGINEER**

1. Project Engineer as CITY's Representative

The Project Engineer will provide project management services as described in the Contract Documents, and will serve as the CITY's representative during construction, and until final payment is certified. The Project Engineer will consult with and advise the CITY. The Project Engineer will have the authority to act on behalf of the CITY only to the extent as provided in the Contract documents.

The Project Engineer specifically assumes no duty or responsibility which may be construed as being for the benefit of and thereby enforceable by other parties providing labor, materials or services in connection with the Work such as, though not limited to, CONTRACTOR, SubCONTRACTORS, Sub-subCONTRACTORS, their agents, employees, or any of their bonding companies, it being understood that the Project Engineer's obligations are to the CITY, and in performing such obligations the Project

Engineer may consequently alter the burdens and expense of such other parties. If the CONTRACTOR claims additional cost or time on account of the Project Engineer performing such obligations, the CONTRACTOR shall give notice as provided in Article 13. The CITY and CONTRACTOR shall communicate through the Project Engineer, communications by and with the Project Engineer and Project Engineer's consultants shall be through the Project Engineer. Communications by and with subCONTRACTORS and suppliers shall be through the CONTRACTOR. Communication by and with other CONTRACTORS working on the site which are not parties to this Agreement shall be through the CITY.

2. Monitoring Progress, Quality and Compliance with Contract Requirements

The Project Engineer will perform site inspections as critical stages of construction to become generally familiar with progress and quality of completed Work to determine if in general the Work is performed in accordance with the Contract Documents. The Project Engineer will have authority to reject work that does not comply with the Contract Documents. Wherever considered necessary, the Project Engineer may require additional inspection or testing of the Work whether the Work is fabricated, installed or completed.

The Project Engineer will not have control over or change of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the CONTRACTOR's responsibility. The Project Engineer will not be responsible for the CONTRACTOR's failure to carry out the Work, since these are solely the CONTRACTOR's responsibility. The Project Engineer will not be responsible for the CONTRACTOR's failure to carry out the Work in accordance with the Contract Documents. The Project Engineer will not have control over, or charge of, and will not be responsible for, acts or omissions of the CONTRACTOR, SubCONTRACTORS, or their agents or employees, or of any other persons performing portions of the Work.

Actions of the Project Engineer undertaken while providing administration of the Contract shall not be construed as either supervision or coordination, since these are solely the CONTRACTOR's responsibility.

3. Review and Approval of CONTRACTOR's Submittals

The Project Engineer will review and approve the CONTRACTOR's Submittals, such as shop drawings and product samples, for the limited purpose of checking for compliance with the Contract Documents. The Project Engineer's review does not relieve the CONTRACTOR of his obligations under the Contract to comply with the plans and specifications.

The Project Engineer's approval of a submittal which contains a deviation which has not been specifically called to the Project Engineer's attention excludes approval of that deviation and shall not serve as a waiver of the rights of the Project Engineer or CITY unless the Project Engineer makes specific written acceptance of said deviation on the

Project Engineer's letterhead or the CITY makes specific written acceptance of said deviation on the CITY's letterhead.

4. Interpret Plans

The Project Engineer will provide interpretations of the Plans and Specifications for compliance with the Contract Documents. The Project Engineer's response to interpretation requests shall be made with reasonable promptness, or a maximum of 15 calendar days from the date of written request.

Interpretations of the Project Engineer will be consistent with the intent of the Contract Documents and will be documented in writing or in the form of plans and drawings.

The Project Engineer may, as the Project Engineer deems desirable, issue additional drawings or information indicating in greater detail the construction or design of the various parts of the Work; such drawings or information may be affected by field order or other notice to the CONTRACTOR, and provided such drawings or information may be affected by field order or other notice to the CONTRACTOR, and provided such drawings or information are reasonable consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or information without additional cost or extension of the Contract Time. If the CONTRACTOR claims additional cost or time on account of such additional drawings or information, the CONTRACTOR shall give the notice provided in Article 13.

5. Approving Non-Substantial Deviations

The Project Engineer will have the authority to order minor changes in the Work not involving adjustments of Contract Amount or Contract Time, and which is not inconsistent with the intent of the contract Documents. Such changes shall be implemented by issuing a Construction Change Directive that shall be immediately binding on the CONTRACTOR upon receipt.

6. Certifying Applications for Payment

Based on the Project Engineer's observations and evaluations of the CONTRACTOR's Applications for Payment, the Project Engineer will review amounts due the CONTRACTOR and will, upon approval by the CITY, issue Certificates for Payments.

7. Preparing Change Orders

The Project Engineer will prepare Change Orders for approval by the CITY.

8. Substantial Completion and Acceptance Reviews

The Project Engineer will conduct inspections, and if the CITY and Project Engineer find Work Substantially Complete, establish the date or dates of Substantial completion and the date of Final Completion. The Project Engineer will receive and forward to the CITY for the CITY's review, project records, written documents required by the Contract and assembled by the CONTRACTOR. The Project Engineer will issue a Final Certificate for Payment upon compliance with requirements of the Contract Documents and acceptance by the CITY.

## **B. OBLIGATIONS OF THE CITY**

1. Project Manager  
The CITY will designate a Project Manager, through which the City will communicate with the Project Engineer and CONTRACTOR.
  
2. Information Provided by CITY  
The CITY shall furnish surveys describing physical characteristics of the site, and utility locations, except those utility .  
  
Information or services under the CITY's control shall be promptly supplied to the CONTRACTOR in order to promote orderly progress of the Work. Such information and services will be provided to the CONTRACTOR free, unless otherwise provided in the Contract Documents.  
  
The CITY will furnish the CONTRACTOR, free of charge, a maximum of ten sets of Construction Documents.
  
3. Permits  
Unless otherwise provided in the Contract Documents, the CITY shall secure and pay for any and all Permits necessary to construct the facilities described by the Contract Documents.
  
4. CITY's Right to Stop Work  
If the CONTRACTOR fails to correct Work that is not in accordance with requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the CITY may order the CONTRACTOR to stop work or any portion thereof until the cause of such order has been eliminated. Such an order must be in writing.
  
5. CITY's Right to Carry Out Work  
If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents, after giving seven (7) days written notice, the CITY may without prejudice to other remedies, correct such deficiencies. In such a case, a Change Order shall be issued deducting from the Contract Amount the cost of correcting such deficiencies, including additional design and administrative costs as may be necessary by default, neglect, or failure.
  
6. Interpretation of Contract Documents and Performance  
In all matters concerning performance under this Agreement and requirements of the Contract Documents, the CITY's interpretation will prevail.
  
7. Approving Substantial Deviations  
The CITY will approve in writing all changes in the Work involving:

- Adjustments to the Contract Amount;
- Contract Time; or
- Work that is inconsistent with the intent of the Contract Documents.

A Change Order signed by the CONTRACTOR, Project Engineer, and the CITY shall effect such changes.

## **C. OBLIGATIONS OF THE CONTRACTOR**

1. Superintendent  
The CONTRACTOR shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The Superintendent shall represent the CONTRACTOR, and communications given to the Superintendent shall be as binding as if given to the CONTRACTOR.
2. Review of Contract Documents  
The CONTRACTOR shall carefully review Contract Documents and information provided by the CITY, and shall at once report to the Project Engineer any errors, omissions, or inconsistencies discovered.

If the CONTRACTOR performs any construction activities with knowledge of an error, omission or inconsistencies in the Contract Documents without such notice to the Project Engineer, the CONTRACTOR shall assume responsibility for such performance.

3. Review of Field conditions  
The CONTRACTOR shall take field measurements and verify field conditions and carefully compare such with the Contract Documents before commencing the Work. Errors, omissions or inconsistencies discovered shall be reported to the Project Engineer at once.
4. Supervision and Construction Procedures  
The CONTRACTOR shall perform the Work in accordance with the Contract Documents and Submittals approved by the Project Engineer.

The CONTRACTOR shall supervise and direct the Work, using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures; and for coordinating all portions of the Work, unless otherwise specified in the Contract Documents.

The CONTRACTOR shall be responsible to the CITY for acts and omissions of the CONTRACTOR's employees, SubCONTRACTORS, Suppliers, and their agents and employees, and other persons performing portions for the Work under a contract with the CONTRACTOR or his SubCONTRACTORS.

The CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Engineer, or the CITY's Project Manager, in administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the CONTRACTOR.

5. Inspection of Work

The CONTRACTOR shall be responsible for inspection of portions of the Work already performed under this Contract to determine if such portions are in proper condition to receive subsequent Work.

6. Labor and Materials

Unless otherwise provided in the Contract Documents, the CONTRACTOR shall provide and pay for labor, materials, equipment, tools, water, electric, other utilities, transportation, taxes and other facilities and services necessary for proper execution and completion of the Work. It is the CONTRACTOR's responsibility to provide these resources whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR's employees and other persons carrying out the Contract. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

7. Warranty

The CONTRACTOR warrants to the CITY that materials, equipment, and skilled labor will be provided in accordance with the Contract Documents, and that the Work, including all work and products provided by CONTRACTOR's sub-contractors, will be free from all defects for a period of one year from final acceptance. Work not conforming to all Contract Document requirements, including substitutions not properly approved and authorized, will be considered defective and a breach of CONTRACTOR's warranty.

8. Construction Schedule

Prior to issuance of a Notice to Proceed, the CONTRACTOR shall prepare and submit to the Project Engineer a Construction Schedule for the Work. The Schedule shall not exceed the time limits established in the Contract Documents. The construction schedule shall document major construction activities and tasks, identifying the estimated beginning and ending dates for each identifiable component of the Work. The Construction Schedule shall also identify time critical activities or events that would most greatly affect the Construction Schedule. The Construction Schedule will be prepared in sufficient detail as may be acceptable to the Project Engineer. The Construction Schedule shall be revised at appropriate intervals as required by conditions of the Work.

9. Project Records

The CONTRACTOR shall maintain the following project records at the project site:

- Construction Schedule;
- Plans and Drawings;
- Specifications;
- Addenda;
- Change Orders;
- Construction Change Directives;
- Shop Drawings;
- Product Data;
- Samples;
- Required Submittals; and
- Superintendent's Log.

Records shall be maintained in good order, and marked to reflect current changes and selections made during the construction process.

Records shall be available to the Project Engineer and CITY and, with the exception of the Superintendent's Log, shall be delivered to the Project Engineer for submittal to the CITY upon completion of the Work.

Additionally, the Superintendent's Log shall be delivered to the Project Engineer for submittal to the CITY upon completion of the Work.

Additionally, the Superintendent's Log shall at a minimum document the dates and times of critical inspections; instructions received from the Project Engineer; and weather conditions including dates, times and amount of rainfall received.

10. Approval of Shop Drawings and Other Submittals

The CONTRACTOR shall review, approve and submit to the Project Engineer, Shop Drawings, Product Data, Samples, and other Submittals required by the Contract Documents for approval by the Project Engineer prior to their implementation. The CONTRACTOR shall perform no portion of the Work requiring submittal and review of these or similar data until approved by the Project Engineer. Such Work shall be accomplished in accordance with approved Submittals.

The CONTRACTOR shall not submit any shop drawing or other submittal that is merely a tracing or other copy of any of the Contract Documents. Each submittal item must be prepared by the CONTRACTOR, or for the CONTRACTOR by a SubCONTRACTOR or Supplier of the CONTRACTOR. The Project Engineer shall have the authority to reject any submittal items that violate this provision, and no extension of Contract Time shall be given on account of such rejection. Project Engineer's review and action on any such Submittals shall not serve as a basis for or give rise to any claim in favor of CONTRACTOR or any third party against the CITY or Project Engineer.

By submitting the materials described above to the Project Engineer for approval, the CONTRACTOR represents that he has determined and verified materials, field measurements, and field construction criteria related to the Submittals and has checked



and verified their compliance with requirements of the Contract Documents. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or other Submittals. The CONTRACTOR shall not be relieved of responsibility for deviations from the requirements of the Contract Documents unless the Project Engineer makes specific written acceptance of said deviations on the Project Engineer's letterhead.

11. Use of the Project Site

The CONTRACTOR shall confine operations to the Site as designated by the CITY, and shall confine operations and activities to those permitted by law, ordinances, permits, and the Contract Documents; and should not unreasonably encumber the site with materials or equipment. The CONTRACTOR is specifically prohibited from the storage of materials, equipment, or supplies not related to the Work on the Project Site.

The CITY will be responsible for resolving disputes between the CONTRACTOR and other CONTRACTORS with which the CITY has a separate Agreement concerning use of the Project Site.

12. Cleanup of Project Site

The CONTRACTOR shall keep the premises and surrounding area reasonably free or rubbish, waste materials, or debris caused by operations of the Contract. At completion of the Work, the CONTRACTOR shall remove from and about the Project Site, waste materials, rubbish, tools, construction equipment, machinery, and surplus materials to the CITY's satisfaction. Should the CONTRACTOR fail to clean up as provided in the Contract Documents, the CITY may do so and the cost charged to the CONTRACTOR through a deductive Change Order or Construction Change Directive.

13. Observations and Inspections

The CONTRACTOR shall provide CITY and Project Engineer access to the Work, wherever located and in whatever stage of construction for the purpose of providing inspections and observations necessary to assess compliance with applicable codes and to identify the quality and quantity of Work performed.

If a portion of the Work is covered contrary to the Project Engineer's request or to the requirements expressed in the Contract Documents, it must be uncovered to allow the requested inspection or observation and replaced at the CONTRACTOR's expense without change in Contract Time.

If a portion of the Work has been covered for which the CITY or Project Engineer as not specifically requested prior to observation, the Project Engineer may request to see such Work and the CONTRACTOR shall uncover it. If such Work has been completed in accordance with the Contract Documents, the cost for uncovering and replacement shall be born by the CITY and implemented through a Change Order recommended by the Project Engineer and approved by the CITY. If such Work was inspected and found not to be in conformance with the Contract Documents, the CONTRACTOR shall pay the cost of uncovering and replacement without a change in Contract Time.

14. Correcting Rejected Work

The CONTRACTOR shall promptly correct Work rejected by the Project Engineer for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The CONTRACTOR shall bear the costs of correcting such Work, including those for additional testing and inspections and compensation for any additional design or necessary administrative costs.

If, within one year after the date of Final Acceptance, or before the expiration of warranties provided by the CONTRACTOR, SubCONTRACTOR, or Suppliers, whichever is greater, or by the terms of a special warranty required by the Contract Documents; any of the Work is found to not be in accordance with the Documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the CITY. This obligation shall survive acceptance of the Work under the contract and Termination of the Contract, if the CITY has exercised such Termination.

If the CONTRACTOR fails to correct nonconforming Work, within a reasonable time, the CITY may complete the work in accordance with the provisions in Article 9-B-5 of this Agreement.

15. Acceptance of Non Conforming Work

The CITY may at his option accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. In such cases the Contract Amount will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

16. Tests & Inspections

Tests, inspections and approvals of portions of the Work required by law, ordinance, rules, regulations, or other orders of public authorities having jurisdiction shall be made at the appropriate time. Unless otherwise provided, the CONTRACTOR will make arrangements for such tests, inspections and approvals, and shall be responsible for paying testing, inspection and reinspection fees.

Other tests, inspections, and approvals required by the Contract Documents shall also be made at the appropriate times. The CONTRACTOR shall make arrangements for such tests, inspections and approvals within the independent testing laboratories or entities designated by the CITY. The CITY shall bear the costs related to these tests, inspections and approvals.

For all tests and inspections conducted under this section, the CONTRACTOR shall give the Project Engineer timely notice of when and where tests and inspections are to be made so that observations may be made.

If tests or inspections reveal failure of portions of the Work to comply with the Contract Documents, or approval is not secured from a public authority having jurisdiction over the project for a portion of the Work covered by the Contract Documents, the CONTRACTOR shall bear all costs made necessary by such failure.

Certificates of testing, inspection or approval shall be secured by the CONTRACTOR and promptly delivered to the Project Engineer.

## **ARTICLE 10 – SUBCONTRACTORS**

### **1. Reporting of Proposed SubCONTRACTORS**

As soon as practical after the issuance of a Notice to Proceed, or as otherwise provided in the Contract Documents, the CONTRACTOR will furnish in writing to the Project Engineer the names of persons or entities, including SubCONTRACTORS, material suppliers, equipment, suppliers, and fabricators proposed for Principal Portions of the Work. After conferring with the CITY, the Project Engineer will promptly inform the CONTRACTOR in writing whether or not there are reasonable objections to any of the proposed persons or entities unto which the CONTRACTOR proposes to enter into an Agreement.

### **2. Rejection of SubCONTRACTORS**

Neither the CONTRACTOR nor the CITY shall be required to Contract with anyone to whom either party has made a reasonable objection; exception instances where the Contract Documents require use of a material, equipment, or other produce for which there is no acceptable alternate supplier or installer.

### **3. Removal of SubCONTRACTORS**

The CONTRACTOR shall not change a SubCONTRACTOR, person or entity previously selected if the CITY makes reasonable objection to such change.

### **4. SubCONTRACTORS Bound by Contract Documents**

By appropriate Agreement, the CONTRACTOR shall require each SubCONTRACTOR, to the extent of the Work to be performed by the SubCONTRACTOR, to be bound to the CONTRACTOR by the terms of the Contract Documents, and to assume toward the CONTRACTOR all obligations and responsibilities which the CONTRACTOR, under this Agreement, assumes toward the CITY.

Each Subcontract shall preserve and protect the right of the CITY under the Contract Documents with respect to the Work to be performed by the SubCONTRACTOR so the Subcontracting thereof will not prejudice such rights and shall allow the SubCONTRACTOR, to the extent provided in the Contract Documents, the benefit of all rights, remedies and redress against the CONTRACTOR that the CONTRACTOR has against the CITY.

In all Contracts between the CONTRACTOR and SubCONTRACTOR(s), suppliers, or fabricators, the CITY will be named as third party beneficiary. The CONTRACTOR will

provide CITY with a copy of each such sub-Contract prior to beginning the WORK, and will further automatically provide CITY with copies of all subContract warranties and invoices for materials and services for the WORK . Failure to timely provide these documents will be considered a material breach of the Contract.

The CONTRACTOR agrees that it shall be deemed to automatically assign all rights to subContract warranties to the CITY, and CONTRACTOR will ensure that all such subContract warranties specifically provide for such warranties to extend to the CITY. Additionally, the CONTRACTOR assigns each Subcontract for a portion of the Work to the CITY as follows:

- Assignment is effective only after termination of the Contract by the CITY for cause pursuant to Article 8-2 of this Agreement.
- Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

## **ARTICLE 11 - CONSTRUCTION BY CITY OR SEPARATE CONTRACTORS**

### **1. CITY's Right to Perform Construction**

The CITY reserves the right to perform construction or operations related to the Project outside the scope of this Agreement with CITY's own forces and to award separate Contracts in connection with other portions of the Project not covered under the scope of this Agreement.

### **2. CITY to Provide Coordination**

The CITY shall provide for coordination of activities of the CITY's own forces and for the CONTRACTOR's under a separate Agreement to provide construction services on the Project Site. If part of the CONTRACTOR's Work depends upon prior Work performed by the CITY or other separate CONTRACTORS, the CONTRACTOR shall, prior to proceeding with that portion of the Work, promptly report to the Project Engineer apparent discrepancies or defects in other such construction that would render it unsuitable for the proper execution and results of the CONTRACTOR's Work. Failure of the CONTRACTOR to so report shall constitute an acknowledgment that the CITY's previously completed construction is fit and proper to receive the CONTRACTOR's Work.

## **ARTICLE 12 - CHANGES IN THE WORK**

### **1. Contract Held Valid**

Changes in the Work may be accomplished after execution of the Contract without invalidating the Contract where they are documented by a Construction Change Directive executed in accordance with this Agreement.

### **2. Construction Change Directive**

A Construction Change Directive prepared and signed by the Project Engineer will direct all changes in the Work. A Construction Change Directive signed by the

CONTRACTOR indicates agreement of the CONTRACTOR with the actions specified in the Directive, including the inclusion or absence of an adjustment in Contract Amount or Contract Time or the method for determining them. Construction Change Directives shall be issued using AIA Form G714.

3. Construction Change Order

In addition to a Construction Change Directive, a Construction Change Order will be required wherever the issuance of a Construction Change Directive would involve a change in:

- Contract Amount;
- Contract Time; or
- The intent of the Contract Documents.

In such instances, the Project Engineer, CONTRACTOR and CITY must sign a Construction Change Order. Construction Change Orders shall be issued using AIA Form G701.

Change Orders may not have typed text altered or additions placed thereon after the signing process has begun. Change Orders with alterations to typed text or additions placed thereon shall not be considered by such, and the original Change Order shall govern. Should alterations or additions to a Change Order be desired, said Change Order shall be re-typed and re-signed, and said Change Order shall be identified as "Revised".

4. Changes in Contract Amount

Only Construction Change Order shall grant changes in Contract Amount. Claims for disputes concerning Contract Amount shall be determined in accordance with Article 13 of this Agreement.

5. Cost of Work

The term "Cost of Work" or "Direct Cost", 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 CITY, such costs shall be in amounts no higher than those prevailing in the area of the project and may include the following categories:

- Labor (payroll, taxes, fringe benefits, worker's compensation, health and retirement benefits, sick leave).
- Owned equipment (at lowest applicable equipment manual rate).
- Rented equipment (at actual rental rate).
- Materials
- Supplies
- SubCONTRACTOR's costs.
- Bonds and insurance.

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.

The term “cost of the Work” or “Direct Cost” shall not include any of the following:

- Payroll costs and other compensation of the CONTRACTOR’s officers, executives, principals (of partnership or sole proprietorships), general managers, Project Managers, Project Engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the CONTRACTOR whether at the site or in it’s principal or 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 allowance for overhead and profit.
- Extraordinary fringe benefits not specifically identified, above.
- Expenses of CONTRACTOR’s principal and branch offices other than the CONTRACTOR’s office at the job site.
- 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.
- 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 for defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

For all changes, the CONTRACTOR shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the Project Engineer. When a credit is due, the amount of the credit to be allowed by the CONTRACTOR to the CITY for any such change which results in a net decrease in direct cost will be the amount of the actual net decrease in direct cost as determined by the Project Engineer plus the actual 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 allowance.

The allowance for combined overhead and profit included in the total cost to the CITY shall be based upon the following schedule:

- For the CONTRACTOR, for Work performed by the CONTRACTOR’s own forces, fifteen percent (15%) of the cost.

- For the CONTRACTOR, for Work performed by the CONTRACTOR's SubCONTRACTOR, seven and one-half percent (7½%) of the amount due to the SubCONTRACTOR.
- For each SubCONTRACTOR or Sub-subCONTRACTOR involved, for Work performed by that SubCONTRACTOR's or Sub-subCONTRACTOR's own forces, fifteen percent (15%) of the cost.
- For each SubCONTRACTOR, for Work performed by the SubCONTRACTOR's Sub-subCONTRACTOR, seven and one-half percent (7½%) of the amount due the SubCONTRACTOR.

6. Changes in Contract Time

Only Construction change Order shall grant changes in Contract Time. Claims for disputes concerning Contract Time shall be determined in accordance with Article 13 of this Agreement.

7. Changes in Contract Time Due to Weather Conditions

The CONTRACTOR shall consider climatic conditions in preparing the construction schedule and shall anticipate therein periods where work may not be practical due to adverse weather conditions.

Weather conditions shall not comprise grounds for extension of Contract Time unless the CONTRACTOR is able to demonstrate that the number of rain days during the entire Contract Time exceeded 120% of that for the same period in the prior year. In making such an assertion, the CONTRACTOR shall use rain data recorded in the Superintendent's Log, which must include the date, duration and volume of rain recorded at the Project Site for each day, as compared to that recorded for the area closest to the Project Site, as reported by the National Weather Service. The CITY shall determine the criteria for establishing "rain days".

8. CONTRACTOR's Obligation to Comply with Construction Change Directives

Upon receipt of a Construction Change Directive, the CONTRACTOR shall promptly proceed with the change in the Work. The CONTRACTOR shall promptly comply with the Construction Change Directive whether or not a Construction Change Order has been executed.

9. Effective Date of Change Orders

Construction Change Orders shall become effective immediately upon execution by the CONTRACTOR, Project Engineer, and CITY.

**ARTICLE 13 - CLAIMS AND DISPUTES**

1. Time Limits on Claims

CONTRACTOR Claims must be made by written notice within 14 calendar days after the occurrence of the event giving rise to such Claim or within 14 calendar days after the CONTRACTOR would have reasonably first recognized the condition giving rise to the

Claim, whichever is later. Claims for additional time and additional compensation must be made in accordance with the conditions of this Article.

Such written notice of CONTRACTOR Claims shall be complete. Written notice which is incomplete and only partially identifies a claim with wording such as “(time or cost) impact to be determined at a later date” or “we reserve the right to claim additional (time or cost) at a later date” will not be considered.

2. Continuing Performance on the Contract

Pending resolution of a Claim, unless otherwise agreed to in writing, the CONTRACTOR shall proceed diligently with performance of the Contract and the CITY shall continue to make payments in accordance with the Contract Documents.

3. Claims for Concealed or Unknown Conditions

If conditions are encountered at the Site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or comprise unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and are generally recognized as inherent in construction activities of the character provided for in the Contract Documents; then the CONTRACTOR shall inform the Project Engineer of the materially different field conditions in writing within 14 days after first observance of the conditions, or within 14 days after the CONTRACTOR would have reasonably first recognized the materially different field conditions.

The Project Engineer will promptly investigate and report to the CITY if field conditions were found to be materially different than those which have been reasonably found given the criteria indicated above. If field conditions are found to be materially different, the CITY shall prepare a Construction Change Order providing an equitable adjustment in Contract Amount and/or Contract Time.

If the CITY determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the contract are justified, the CITY shall so notify the CONTRACTOR in writing stating the reasons.

4. Claims for Additional Time

The CONTRACTOR will make claims for an increase in Contract Time by presenting a “Request for Delay” (RFD) form to the Project Engineer within 14 days of the occurrence giving rise to the claim. All claims for an increase in the Contract Time are waived if not so presented. CITY or Project Engineer will supply RFD forms to the CONTRACTOR.

The sole and exclusive manner of increasing the Contract Time due to some occurrence giving rise to the representation of an RFD form is by Construction Change Order. Timely presentation of an RFD form is the prerequisite for obtaining a Construction Change Order. The Construction Change Order shall address any and all Claims based on said occurrence. With respect thereto, CONTRACTOR agrees that its exclusive remedy for delays in the performance of the Contract caused by events beyond its



control, including delays claimed to be caused by the CITY or the Project Engineer or attributable to the CITY or the Project Engineer, and including Claims based on breach of Contract or negligence, shall be an extension of the Contract Time. CONTRACTOR hereby waives any and all Claims based on said occurrence that are not addressed by the Construction Change Order.

Nothing contained herein will prevent the parties from increasing the Contract Time by mutual agreement.

5. Claims for Additional Compensation

CITYs liability to CONTRACTOR for any Claims other than Claims for extension of Contract Time, as described above, arising out of or related to the subject matter of this Contract, whether in Contract or Tort, including but not limited to, claims for payment by CITY of the costs, damages, or losses because of changed condition under which the Work is to be performed or for additional Work, shall be governed by the following provisions:

- All Claims must be submitted as a Request for Construction Change Order in the manner provided herein;
- CONTRACTOR must submit a Notice of Claim to the CITY and to the Project Engineer within fourteen days (14) of when the CONTRACTOR was, or should have been aware of the occurrence of the event giving rise to the Claim; and
- Within fourteen days (14) of submitting its Notice of Claim, CONTRACTOR shall submit to the Project Engineer and CITY its Request for Construction Change Order using AIA Form G701, which shall include a written statement of details of the Claim, including a description of the Work affected.

CONTRACTOR agrees that the CITY shall not be liable for any Claim the CONTRACTOR fails to submit as a Request for Construction Change Order or as a timely presented RFD form as provided in this Agreement.

After receipt of a Request for Construction Change Order, CITY, in consultation with the Project Engineer, shall deliver to the CONTRACTOR within thirty (30) days after receipt of request its written determination of the Claim.

CONTRACTOR's exclusive remedy for delays in performance of construction caused by delays claimed to be caused by or attributable to the CITY or the Project Engineer including claims based on breach of contract or negligence, shall be a Claim or a RFD form submitted in compliance with this Article.

CONTRACTOR expressly agrees that the conditions established by this Article constitutes its sole and exclusive remedies for delays and changes in such Work and eliminates any other remedies for Claim for increase in the Contract Amount, delays, changes in the Work, damages, losses, or additional compensation.

6. Resolution of Disputes by the CITY

If a Claim has not been resolved after consideration under other terms of this Article, the Project Engineer shall notify the CONTRACTOR in writing that the CITY shall make a determination within seven (7) days, which determination shall be final and binding on the Parties, but subject to litigation in a court having competent jurisdiction. Upon expiration of such time period, the CITY shall render to the parties a written decision relative to the Claim, including any change in Contract Amount and/or Time.

If there is surety and there appears to be a possibility of the CONTRACTOR's default, the CITY may, but is not obligated to, notify the surety and request the surety's assistance in resolving the dispute.

7. Injury or Damage to Person or Property

In any party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or for others whose acts such party is legally liable; written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable amount of time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to the Claim is asserted, it shall be filed as a Claim pursuant to the conditions of the Article.

## **ARTICLE 14 - PROJECT CLOSEOUT**

1. Substantial Completion of a Designated Portion

The CITY may release a Designated Portion of the Work under this Contract upon the issuance of a Certificate of Substantial Completion for the Designated Portion. Subsequent to said release, the CITY may make payment to the CONTRACTOR up to the pro-rated amount of the Contract Amount that is allocable to the value of the Designated Portion of the Work under the Contract. Payment under this provision may be made in full with no retainage, or a lesser retainage, at the sole discretion of the CITY.

Further, the parties agree that in the event the CITY releases a Designated Portion of the Work, whether or not retainage is released for the Designated Portion of the Work, the CONTRACTOR agrees that all insurance required by the Contract Documents will remain in full force and effect until final acceptance of the entire Work by the CITY.

2. Substantial Completion

When the CONTRACTOR considers that the Work or a portion thereof, which the CITY agrees to accept separately, is Substantially Complete, the CONTRACTOR shall prepare and submit to the Project Engineer a comprehensive list of items to be completed and corrected. The CONTRACTOR shall proceed promptly to complete and correct items on the list. Failure to include an item on the 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 Project Engineer will make an inspection, and with the approval of the CITY, determine whether the Work, or designated portion

thereof, is Substantially Complete. If the Project Engineer's inspection 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 Project Engineer.

The CONTRACTOR may request additional inspections by the Project Engineer as may be reasonable to determine when Substantial Completion has been achieved. When the Work or designated portion thereof, is Substantially Complete, the Project Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and shall establish responsibilities of the CITY and CONTRACTOR for:

- Security;
- Maintenance;
- Water, sewer, electric and other utilities;
- Damages to the Work; and
- Insurance Responsibilities

The Certificate shall also establish the time within which the CONTRACTOR shall finish all items on the list of incomplete Work or corrections otherwise necessary to meet the requirements of the Contract Documents.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion, or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the CITY and CONTRACTOR for their written acceptance of responsibilities assigned to each.

Upon Substantial Completion of the Work, or designated portion thereof, and upon application by the CONTRACTOR, certification by the Project Engineer, and approval by the CITY, the CITY shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

### 3. Final Acceptance and Payment

Upon receipt of written notice that the Work is ready for Final Inspection and upon receipt of a Final Application for Payment, the Project Engineer shall promptly inspect the Work. When the Project Engineer and CITY find the Work acceptable under the Contract Documents and the Contract fully performed, the Project Engineer shall issue a Certificate for Final Payment.

Neither final payment or any remaining retainage shall become due until the CONTRACTOR submits to the Project Engineer all information required in the Contract Documents, including, but not limited to, warranties, as-built plans, and operation and maintenance manuals.

Furthermore, final payment, nor any remaining retainage, shall become due until the CONTRACTOR executes and presents to the CITY a “Certificate of Claims Paid” and “Release of all Claims” form in such a form as may be acceptable to the CITY. Acceptance of final payment by the CONTRACTOR shall comprise a release of all claims under the Contract, and receipt of which acknowledges full and complete payment for all Work done, materials and equipment furnished, and damages or claims arising under this Agreement.

## **ARTICLE 15 - PROTECTION OF PERSONS AND PROPERTY**

### **1. Compliance with Federal, State, and Local Laws, Ordinances, and Regulations**

CONTRACTOR agrees to comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not limited to, the following:

- Title VI of the 1964 Civil Rights Act.
- Title VII of the 1964 Civil Rights Act, as amended by the Equal Employment Opportunity that prohibits discrimination in employment.
- Age Discrimination Act of 1973
- Contract Work Hours and Safety Standards Act.
- Section 504 of the Rehabilitation Act prohibiting discrimination in the employment of the handicapped.
- Fair Labor Standards Act.
- Chapter 112, Florida Statutes, prohibiting conflicts of interest in the procurement of contracts with a governmental agency.
- Trench Excavation System & Shoring standards adopted by the Department of Labor and Employment Security and related trenching regulations.
- Construction Work Hours and Safety Act (Construction Safety Act)

### **2. Safety of Employees and Property**

The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- Employees on the Project Site and other persons who may be affected thereby;
- The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the CONTRACTOR or the CONTRACTOR’s SubCONTRACTORS or sub-subCONTRACTORS; and
- Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

When use or storage of explosives or other hazardous materials or equipment or unusual methods is necessary for execution of the Work, the CONTRACTOR shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

The CONTRACTOR shall promptly remedy the damage and loss (other than damage or loss insured under requirements of the Contract Documents) to property referred in this Section caused in whole or in part by the CONTRACTOR, SubCONTRACTOR, Sub-subCONTRACTOR, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the CONTRACTOR is responsible, except damage or loss attributable to acts or omissions of the CITY or Project Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts wither of them may be liable and not attributable to the fault or negligence of the CONTRACTOR.

The CONTRACTOR shall designate a responsible member of the CONTRACTOR's organization at the Site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR's Superintendent unless otherwise designated by the CONTRACTOR in writing to the CITY and Project Engineer.

The CONTRACTOR shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

3. Emergencies

In an emergency affecting safety of persons or property, the CONTRACTOR shall act, at the CONTRACTOR's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the CONTRACTOR on account of an emergency shall be determined as provided in this Agreement.

**ARTICLE 16 - INDEMNIFICATION, INSURANCE AND BONDS**

1. Indemnification

To the fullest extent permitted by law, for Ten and 00/100 Dollars (\$10.00), acknowledged to be included and paid for the Contract Amount, and other good and valuable consideration, the CONTRACTOR shall indemnify, defend and hold harmless from and pay on behalf of the CITY and their agents and employees all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense;

- is attributable to bodily injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from; and
- is caused in whole or in part by any negligent act or omission, of CONTRACTOR, any SubCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts he may be liable, regardless of whether or not it is caused in part by a party indemnification hereunder.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section. Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability the CITY may have under this doctrine of sovereign immunity or Section 768.28, Florida Statutes. The CONTRACTOR's obligations under this Contract under this Article shall not include or extend to the liability of Project Engineer, its agents, or employees arising out of:

- the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; and
- the giving of or the failure to give directions or instructions by the Project Engineer, his agents, or employees providing such, giving or failure to give is the primary cause of the injury or damage.

2. Waiver of Subrogation

The CITY and CONTRACTOR waive all rights against each other for damages caused by perils coverage by insurance provided under this Agreement to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the CITY and the CONTRACTOR as trustees. The CONTRACTOR shall require similar waivers from all subCONTRACTORS and their subCONTRACTORS and suppliers.

The CITY and the CONTRACTOR waive all rights against each other for loss or damage to equipment used in connection with the Project and covered by any property insurance. The CONTRACTOR shall require similar from all subCONTRACTORS and their subCONTRACTORS and suppliers.

The CITY waives subrogation against the CONTRACTOR on all property and consequential loss policies carried by the CITY on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

If the insurance policies referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the CITY of such policies will cause them to be so endorsed; failure to obtain endorsement nullifies the waiver of subrogation.

3. CONTRACTOR's Insurance

The CONTRACTOR shall not commence any Work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the CITY, has named the CITY as an additional insured, except for Worker's Compensation Coverage, nor shall the CONTRACTOR allow any SubCONTRACTOR to commence Work on his subcontract until all similar insurance required of the SubCONTRACTOR has been so obtained.

Such insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State of Florida and be doing business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of at least IV as identified in the latest issue of "Bests Key Rating Guide" unless otherwise accepted by the CITY in writing.

The CONTRACTOR's insurance, and the insurance of any other party bound to the CONTRACTOR, shall be considered primary. The CITY's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnification's insurance, certificates of insurance and any additional insurance provisions of this Agreement.

4. Loss Deductible

The CITY shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the CONTRACTOR.

5. SubCONTRACTOR's Insurance

The CONTRACTOR shall require each of his SubCONTRACTORS to procure and maintain, during the life of the subcontract, insurance of the types specified in this Article or insure the activities of his SubCONTRACTORS in his policy as required in this Article.

6. Certificate of Insurance

The CITY shall be furnished proof of insurance coverage as follows:

- The name of the insured CONTRACTOR, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date;
- Statement that the insurer will mail notice to the CITY and a copy to the Project Engineer at least thirty (30) days prior to any material changes in provisions, cancellation, renewal, or non-renewal of the policy;
- Certification of Insurance shall be in the form as approved by the CITY and such Certificate shall clearly state all the coverage's required in this Article;
- If requested by the CITY, the CONTRACTOR shall furnish complete copies of his and his SubCONTRACTOR's insurance policies, forms and endorsements; and
- Receipt of certificates or other documentation of insurance or policies or copies of policies by the CONTRACTOR or by any of its representatives that indicate less coverage than required by the Contract Documents does not constitute a waiver of the CONTRACTOR's obligations to fulfill the requirements of this Article.

7. Worker's Compensation Insurance

The CONTRACTOR shall take out and maintain, during the life of this Agreement, Workers' Compensation and Employer's Liability Insurance for all his employees connected with the Work of this Project, and in case any Work is sublet, the

CONTRACTOR shall require the SubCONTRACTOR similarly to provide Workers' compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by the CONTRACTOR. Such insurance shall comply with the Florida Workers' compensation Law. In case any class of contract at the Project Site is not protected under the Workers' Compensation statute, the CONTRACTOR shall provide adequate insurance, satisfactory to CITY for the protection of employees not otherwise protected.

8. Liability Insurance

The CONTRACTOR shall take out and maintain, during the life of this Agreement, Commercial General Liability and Commercial Automobile Liability Insurance as shall protect CITY from claims for damages for bodily injury and personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement, whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

Commercial General Liability:

- Minimum Coverage is \$1,000,000 including a separate project aggregate limit of \$2,000,000 for the Contract.
- Coverage shall include premises, operations, products, completed operations, independent CONTRACTORS, contractual liability covering this Agreement, contracts and leases, broad form property damage coverage's, personal injury and bodily injury.
- The CONTRACTOR is required to continue to purchase products and completed operations coverage for Work performed under this Agreement for minimum of three (3) years following Substantial Completion.
- If Umbrella or Excess liability coverage is used to satisfy the requirements of this Section, it shall not be more restrictive than the underlying insurance policy coverage's.

Commercial Automobile Liability:

- Minimum Coverage is \$1,000,000.
- Coverage shall include bodily injury and property damage arising out of CITYship, maintenance or use of any auto, including owned, nonowned and hired automobiles and employee nonCITYship use.

**ARTICLE 17 - COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

1. The Commencement of Statutory Limitation Periods Between the CITY, CONTRACTOR and assignees are as follows:

- **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations



shall commence to turn and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

- **After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the act or failure to act by the CONTRACTOR, pursuant to any warranty provided under the Contract Documents, the date of any correction of the Work or failure to correct the Work by the CONTRACTOR or date of actual commission of any other act or failure to perform any duty or obligation by the CONTRACTOR or CITY, whichever occurs last.

2. Concerning Latent Defects and Fraud

As to latent defects and fraud, the applicable statute of limitations shall commence upon the date of discovery or the date discovery of the defect should reasonably have occurred.

## **ARTICLE 18 - MISCELLANEOUS PROVISIONS**

1. Governing Law

This Agreement shall be governed by the laws of the State of Florida.

2. Successors and Assigns

The CITY and CONTRACTOR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as whole without the written consent of the other. If either party attempts to make such an assignment without such written consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

3. Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

4. Limitation of Liability

The CITY shall be liable only to the extent of its interest in the Project; and no elected official, officer, agent, or employee of the CITY shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include foregoing limitation, which shall be effective if the CITY ever succeeds to the CONTRACTOR's rights or obligations under a Subcontract.

The Project Engineer shall be liable to CONTRACTOR only to the extent of its interest in the Project; and no officer, director, partner, agent, or employee of the Project

Engineer (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable to CONTRACTOR with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation. Nothing contained in this agreement shall be construed as a waiver of the CITY's rights to sovereign immunity or any other defense under F.S. 768.28.

5. Attorneys' Fees and Costs

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, including any appeals, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses, including attorneys' fees, as may be set by the Court.

6. Validity, Severability and Reformation

The validity, interpretation, construction, and effect of this agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this Agreement held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

7. Contracts Public Records

119.0701 Contracts; public records.—

(1) For purposes of this section, the term:

(a) "CONTRACTOR" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. [119.011\(2\)](#).

(b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) In addition to other contract requirements provided by law, each public agency contract for services must include a provision that requires the CONTRACTOR to comply with public records laws, specifically to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the 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 public agency in a format that is compatible with the information technology systems of the public agency.

(3) If a CONTRACTOR does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

## **APPENDIX 1 - DEFINITIONS**

**Allowance** - An amount included in the contract amount to be used exclusively for equipment, materials or some other purpose specified in the Contract Documents and whose use is under the control of the CITY.

**Application for Payment** - A formal written request for payment submitted by the CONTRACTOR to the Project Engineer for payment for work performed pursuant to this Agreement.

**Bid** - A formal solicitation issued by the City of South Pasadena, identifying the scope, terms, conditions, and specifications of goods and services procured from private CONTRACTORS.

**Bid Documents** - The documents either provided or incorporated by reference defining and documenting the scope of services, conditions under which services are to be provided, conditions under which a CONTRACTOR will be selected and the work will be performed, and the technical specifications for the equipment, goods, or services being procured.

**Certificate for Payment** - An application for payment which has been signed by the Project Engineer, who certifies that the pay request is proper and all representations made by the CONTRACTOR are correct.

**Certificate of Substantial Completion** - A form signed by the Project Engineer certifying that the work, or a designated portion of the work, has been completed to such an extent that it may be occupied by the CITY for its intended purpose.

**Change Order** - A form documenting the CONTRACTOR and CITY's agreement to modify the work where the modification involves a change in Contract Amount, Contract Time, or the intent of the Contract Documents.

**Claim** - A demand or assertion by one of the parties to the Agreement for an adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. Claims may also include other disputes between the CITY and CONTRACTOR concerning the manner in which work is being performed.

**Construction Change Directive** - An order signed by the Project Engineer instructing the CONTRACTOR to change the Work.

**Construction Schedule** - An action plan summarizing how the CONTRACTOR proposes to complete the entire work in the Contract Documents within the established Contract Time. The Construction Schedule should identify key tasks and activities necessary to complete the project within the Contract Time.

**Contract/Agreement** - The Agreement between the CITY and the CONTRACTOR as defined by the Contract Documents.

**CONTRACTOR** - The person or entity identified in the Contract Documents as being responsible for performing the work under the Contract.

**Contract Amount** - The stipulated sum to which the CITY agrees to pay the CONTRACTOR for performing the work described in the Contract Documents, as modified by Change Order.

**Contract Documents** - Individual documents which collectively comprise the Contract between the CITY and CONTRACTOR, including 1) The Agreement between the CITY and CONTRACTOR, 2) Bid Documents including the invitation to bid, instructions to bidders and CONTRACTOR bid package, 3) Drawings, Specifications, Plans prepared by the Project Engineer which describe the work to be performed, 4) Addenda issued prior to execution of the Contract, 5) Other documents listed in the Agreement, and 6) Modifications issued after execution of the Contract, including: 1) Written amendments to the Contract signed by both parties, 2) Construction Change Orders, and Construction Change Directives.

**Contract Time** - The period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the work. Contract Time is the time between the Date of Commencement identified in the Notice to Proceed issued by the CITY and the date established in the Agreement for Substantial Completion.

**Date of Commencement** - The date specified in the Notice to Proceed issued by the CITY specifying when the CONTRACTOR may begin work on the Project.

**Day** - As referenced in this Agreement “Day” includes all calendar days including weekends, holidays, and days of inclement weather.

**Drawings & Plans** - Graphic and pictorial portions of the Contract Documents, showing the design, location and dimensions of the work generally including plans, elevations, sections, details, schedules and diagrams.

**Project Engineer** - The design professional retained by the CITY responsible for designing the facilities to be constructed and/or the design professional responsible for providing contract administration during construction services and to assess whether construction services are provided in accordance with the Contract Documents.

**Final Acceptance** - The CITY’s final acceptance of the work performed by the CONTRACTOR as recognized by making final and complete payment for all work intended by the Contract Documents.

**Non-Substantial Deviation** - A change in the work or deviation from the plans, specifications, or other Contract Documents which does not change the Contract Amount, Contract Time, or the intent of the Contract Documents.

**Notice of Claim** - A memorandum or letter presented to the Project Engineer detailing a Claim for additional compensation. The memorandum or letter must be labeled "Notice of Claim" and specifically identify the conditions giving rise to the Claim and the amount of additional compensation being requested.

**Notice to Proceed** - A letter issued by the CITY officially communicating the date when the CONTRACTOR may begin work on the Project or a designated portion of the Project.

**CITY** – The City of South Pasadena, or the City of South Pasadena's authorized representatives.

**Substantial Completion of a Designated Portion** - Declaration by the CITY that a designated portion of the work has been completed.

**Principal Portion of the Work** - Work or equipment provided by a SubCONTRACTOR with which the CONTRACTOR has a direct Contract; and Sub-SubCONTRACTORs or other material or equipment providers as designated by the Project Engineer or Project Manager.

**Project** - All physical improvements planned for a defined site. Work performed under the Contract Documents may comprise the whole work, or part of the work planned for the Project Site.

**Product Data** - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the CONTRACTOR to illustrate materials or equipment for some portion of the work.

**Project Manual** - A volume or volumes usually assembled to describe with work that may include bidding requirements, sample forms, the Contract, and specifications.

**Project Manager** - The City's authorized agent for communication with the Project Engineer and CONTRACTOR and making decisions on the City's behalf as provided in the Contract Documents.

**Project Site** - The physical location identified in the Contract Documents where work is to be accomplished.

**Samples** -Physical examples that illustrate the materials, equipment, workmanship, or application methods by which the work will be judged.

**Schedule of Values** - The amount of money and percentage of the Contract Amount attributable to various components or portions of the work, where prepared in such a form and supported by such data to substantiate its accuracy.

**Shop Drawings** - Drawings, diagrams, schedules and other data specially prepared for the work by the CONTRACTOR or SubCONTRACTOR, manufacturer, supplier, or distributor to illustrate some portion of the work in general detail than is provided in the plans or specifications.

**Specifications** - That portion of the Contract Documents comprising written standards and requirements for materials, equipment, construction systems, and workmanship for the work, and performance of related systems.

**SubCONTRACTOR** - A person or entity that has a direct Contract with the CONTRACTOR to perform a portion of the work.

**Substantial Completion** - The stage of construction where the work or designated portion thereof is sufficiently complete so that the CITY can occupy or use the work for its intended purpose.

**Substantial Deviation** - A change in the work that deviates from the intent of the Contract Documents, Contract Amount, or Contract Time.

**Superintendent** - The CONTRACTOR's authorized representative on the Project Site.

**Supplier** - A person or entity who provides equipment, material, or other resources required by the CONTRACTOR or SubCONTRACTORS to perform the Work.

**Work** - The construction and services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by the CONTRACTOR in fulfillment of obligations under the Contract. The work may constitute the whole Project or part of the Project.

**IN WITNESS WHEREOF the parties have executed the Agreement on the day and date first above written.**

CITY: The City of South Pasadena

\_\_\_\_\_  
Max V. Elson, Mayor

ATTEST:

\_\_\_\_\_  
Carley Lewis, City Clerk

Reviewed for Legal Form and Content by:

\_\_\_\_\_  
David Ottinger, City Attorney

CONTRACTOR:

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

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

WITNESS:

\_\_\_\_\_