

# SECTION C

## GENERAL TERMS AND CONDITIONS

### ARTICLE 1 PRELIMINARY MATTERS

#### 1.1 Contractor's Pre-Start Representative

Contractor represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, county, and local laws, ordinances, rules and regulations that may in any manner affect performance of the work, and represents that he has correlated his study and observations with the requirements of the Contract Documents. Contractor also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the specifications and made such additional surveys and investigations as he deems necessary for the performance of the work in the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents.

#### 1.2 Pre-construction Conference and Project Schedule

After delivery of the executed Agreement by City to Contractor, but before starting the work at the site, a pre-construction conference will be held. In that meeting, the Contractor shall present and submit a project schedule, identifying key milestones. Contractor's performance shall be monitored based upon this schedule.

#### 1.3 Rejection of Subcontractor (See Article 28 of General Conditions of Contract attached as Exhibit "A" for additional terms)

If, prior to the Notice of Award, the City has reasonable objection to and refuses to accept any Subcontractor, person or organization listed, the apparent low Bidder may, prior to Notice of Award either (i) submit an acceptable substitute without an increase in his bid price or (ii) withdraw his bid without forfeiting his bid security.

### ARTICLE 2 CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

2.1 It is the intent of the specifications and drawings to describe a complete project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the City and the Contractor. They may be altered only by a written modification by the City and Contractor. The words "Contract" and "Agreement" shall have the same meaning and are used interchangeably.

In the event of a discrepancy/conflict between the requirements of the drawings and the requirements of the specifications manual or between requirements within any of the contract documents, those requirements which best serve the City shall take precedent. Determination of which requirements best serve the City shall be solely at the discretion of the City. Contractor shall not be entitled to any additional compensation related to City's determination.

2.2 The words "furnish" and "furnish and install", "install", and "provide" or words with similar meaning shall be interpreted, unless otherwise specifically stated, to mean "furnish and install complete in place and ready for service".

- 2.3 The work of all trades under this Contract shall be coordinated by the Contractor in such a manner as to obtain the best workmanship possible for the entire project, and all components of the work shall be installed or erected in accordance with the best practices of the particular trade. All work shall meet the standards and codes of all regulatory agencies having jurisdiction over the Project whether or not mentioned in the Contract Documents. In case of conflict the most stringent standard shall prevail unless approved in advance by the Contract Administrator.
- 2.4 Manufacturer's literature, when referenced, shall be dated and numbered and is intended to establish the minimum requirements acceptable. Whenever reference is given to codes, or standard specifications or other data published by regulating agencies or accepted organizations, including but not limited to the National Electrical Code, applicable State Building Code, Federal Specifications, ASTM Specifications, various institute specifications, and the like, it shall be understood that such reference is to the latest edition including addenda in effect on the date of the bid.
- 2.5 Brand names where used in the technical specifications, are intended to denote the standard or quality required for the particular material or product. The term "equal" or "equivalent", when used in connection with brand names, shall be interpreted to mean a material or product that is similar and equal in type, quality, size, capacity, composition, finish, color and other applicable characteristics to the material or product specified by trade name, and that is suitable for the same use and capable of performing the same function, in the opinion of the Contract Administrator, as the material or product so specified. Proposed equivalent items must be approved by the Contract Administrator before they are purchased or incorporated in the work. (When a brand name, catalog number, model number, or other identification, is used without the phrase "or equal", the Contractor shall use the brand specified).

### **ARTICLE 3 SUBSURFACE CONDITIONS, REFERENCE POINTS**

- 3.1 **Subsurface Conditions (See Article 13 of General Conditions of Contract attached as Exhibit "A" for additional terms)**  
The Contractor acknowledges that he has investigated prior to bidding and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon construction, transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides, water tables or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work on the site or any contiguous site, as well as from information presented by the Drawings and Specifications made part of this Contract, or any other information deemed appropriate by the Contractor for the successful completion the project. Any failure by the Contractor to acquaint himself with the site conditions will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The City assumes no responsibility for any conclusions or interpretations made by the Contractor.
- 3.2 **Differing Site Conditions (See Article 20 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

3.2.1 If during the course of the Work Contractor encounters (1) subsurface or concealed conditions at the Project site that differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract; or (2) unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract, then Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify Contract Administrator and Consultant in writing of the existence of the aforesaid conditions. Consultant and Contract Administrator shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Contract Administrator, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Contract Administrator may recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Contract Administrator and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Consultant for determination in accordance with the provisions of Article 12. No request by Contractor for an equitable adjustment to this Contract under this provision shall be allowed unless Contractor has given written notice to Contract Administrator in strict accordance with the provisions of this article. No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Contract Administrator as the date of Substantial Completion.

### **3.3 Location and Damage to Existing Facilities, Equipment or Utilities**

- 3.3.1 Utility lines in the Project area have been shown on the Plans. However, City does not represent or warrant that all lines are shown, or that the ones indicated are in their true location. Contractor must identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. Contractor will not be entitled to any additional payment or extension of time due to discrepancies between actual location of utilities and Plan location of utilities.
- 3.3.2 Contractor shall notify each utility company with facilities in the Project site, at least thirty (30) days prior to the start of construction, to arrange for positive underground location, relocation, or support of its utility where that utility may be in conflict with or endangered by the Work. The cost of relocation of water mains or other utilities for the convenience of Contractor shall be paid by Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. Contractor will not be entitled to any additional payment or extension of time for utility relocations, regardless of reason for relocation.
- 3.3.3 Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. Contractor will not be entitled to any additional compensation or extension of time for any delay associated with utility relocation or support.
- 3.3.4 Contractor shall protect all overhead, surface, or underground structures and utilities from damage or displacement. Contractor will promptly and completely repair all damage to such structures within a reasonable time. All damaged utilities must be

replaced or fully repaired to the satisfaction of the utility owner. All repairs are to be inspected by the utility owner prior to backfilling. City reserves the right to remedy such damage by making such repairs or causing such repairs to be made at the expense of Contractor. City's expense in causing such repairs shall be deducted from Contractor's next Application for Payment.

**ARTICLE 4 INSURANCE REQUIREMENTS (See Article 7 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

If the Contractor is required to go on to City of Coconut Creek property to perform work or services as a result of contract award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City of Coconut Creek. Throughout the term of this Contract, Successful Bidder and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force insurance as follows:

**4.1 Workers' Compensation**

Statutory Limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Employers Liability with a limit of \$100,000 each accident.

**4.2 General Liability**

Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an "occurrence" based format.

**4.3 Automobile Liability**

Comprehensive or Business Automobile Liability insurance with limits not less than \$500,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage's for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance shall be written in an "occurrence" based format.

**4.4 Builder's Risk Insurance**

Builder's Risk insurance is required in an amount not less than the replacement cost for the construction of the work. Coverage shall be "ALL RISK" coverage for one hundred percent (100%) of the completed value. The City reserves the right to require higher limits depending upon the scope of work under this agreement.

Neither Bidder nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Bidder will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement. Policies shall be "Occurrence" form. Each carrier will give the City sixty (60) days' notice prior to cancellation.

The Bidder's Worker's Compensation carrier will provide a Waiver of Subrogation to the City. The Bidder shall be responsible for the payment of all deductibles and self-insured retentions. The City requires that the Bidder purchase a bond to cover the full amount of the deductible or self-insured retention.

#### **4.5 General**

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the Contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

Auto Liability and General Liability policies shall be endorsed to provide the following:

- (a) Name as Additional Insured the City of Coconut Creek, Broward County, and Consultants and their Officers, Agents, Employees and Commission Members, as applicable.
- (b) That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek  
Procurement Division  
4800 West Copans Road  
Coconut Creek, Florida 33063

The issuing agency shall include full name, address and telephone number in each insurance certificate issued.

Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted with the respondent's bid. If Bidder is Successful Bidder, then prior to commencement of Contract, Bidder must submit revised Certificate of Insurance naming the City of Coconut Creek as Additional Insured for all liability policies.

#### **4.6 Subcontractor Insurance Requirements**

Contractor shall require each Subcontractor to maintain insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that "City of \_\_\_\_\_, Florida," "Broward County," and Consultant are named as additional insureds under the Subcontractors' applicable insurance policies. In the event Contractor or any Subcontractor fails to maintain the insurance required by the Contract Documents, City may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. Contractor shall not permit any Subcontractor to provide services under the Contract unless and until the requirements of this section are satisfied. If requested by City, Contractor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

#### **4.7 Insurance Company and Agent**

All insurance policies herein required of the Successful Bidder shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in said state.

**Note:** Include with your bid response a copy of **any** current Certificate of Insurance.

#### **4.8 Safety (See Article 47 of General Conditions of Contract attached as Exhibit “A” for additional terms)**

##### **Job Site**

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), Florida Department of Labor (DOL), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Successful Bidder’s failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The City reserves the right, but is not obligated to make safety inspections at any time the Contractor is on public property and to ensure safety rules are not being violated. If violation becomes evident, the City may initiate its own action in addition to other government agencies.

#### **4.9 Occupational Health and Safety**

In compliance with Title 29 *CFR (Code of Federal Regulations)*, Section 1910.1200, any Hazardous Chemical items which are delivered from a Contract resulting from this Bid must be accompanied by a Material Safety Data Sheet (MSDS). The MSDS sheets must be maintained by the user agency and must include the following information:

- 4.9.1 The chemical name and the common name of the toxic substance.
- 4.9.2 The hazards or other risks in the use of the toxic substance, including:
  - (a) The potential for fire, explosion, corrosiveness, and reactivity;
  - (b) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
  - (c) The primary routes of entry and symptoms of overexposure.
- 4.9.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- 4.9.4 The emergency procedure for spill, fire, disposal, and first aid.
- 4.9.5 A description in lay terms of the known specific potential health risks posed by the toxic substances intended to alert any person reading this information.
- 4.9.6 The year and month, if available, that the information was compiled and the name, address, and the emergency telephone number of the manufacturer responsible for preparing the information.

ALL TOXIC SUBSTANCES MUST BE LABELED FOR IDENTIFICATION IN ACCORDANCE WITH OSHA STANDARDS.

**4.10 Domestic Partnership Requirement (See Article 53 of General Conditions of Contract attached as Exhibit “A” for additional terms)**

Unless this Contract is exempt under Section 16½-157(c), Broward County Code of Ordinances, Contractor certifies and represents that it will comply with the provisions of Section 16½-157, Broward County Code of Ordinances, for the duration of this Contract, and the contract language referenced in Section 16½-157 is deemed incorporated in this Contract as though fully set forth in this section. The failure of Contractor to comply shall be a material breach of this Contract, entitling City to pursue any and all remedies provided under applicable law including, but not limited to (1) retaining all monies due or to become due Contractor until Contractor complies; (2) termination of this Contract; and (3) suspension or debarment of Contractor from doing business with City.

**4.11 Equal Employment Opportunity and CBE/SBE Compliance (See Article 54 of General Conditions of Contract attached as Exhibit “A” for additional terms)**

4.11.1 No party to this Contract may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Contract, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors.

4.11.2 Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Contract. Failure by Contractor to carry out any of the requirements of this article shall constitute a material breach of this Contract, which shall permit City to terminate this Contract or exercise any other remedy provided under this Contract, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

4.11.3 Contractor will meet the required CBE or SBE goal by utilizing the CBE or SBE firms listed in Exhibit M (or a CBE/SBE firm substituted for a listed firm, if permitted) for forty percent (30%) of total Services under this Contract (the “Commitment”).

4.11.4 In performing the Services, Contractor shall utilize the CBE or SBE firms listed in Exhibit M for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Contract by City, Contractor shall enter into formal contracts with the CBE or SBE firms listed in Exhibit M and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

4.11.5 Each CBE or SBE firm utilized by Contractor to meet the CBE or SBE goal must be certified by OESBD. Contractor shall inform City immediately when a CBE or SBE firm is not able to perform or if Contractor believes the CBE or SBE firm should be replaced for any other reason, so that OESBD can review and verify the good faith efforts of Contractor to substitute the CBE or SBE firm with another CBE or SBE firm. Whenever a CBE or SBE firm is terminated for any reason, Contractor shall provide written notice to OESBD and, upon written approval of the Director of

OESBD, shall substitute another CBE or SBE firm in order to meet the CBE or SBE goal, unless otherwise provided in this Contract or agreed to in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE or SBE firm is available to perform the modified Scope of Services; in which event, Contractor shall notify OESBD, and

OESBD may adjust the CBE or SBE goal by written notice to Contractor. Contractor shall not terminate a CBE or SBE firm for convenience without OESBD's prior written consent, which consent shall not be unreasonably withheld.

- 4.11.6 The Parties stipulate that if Contractor fails to meet the Commitment, the damages to City arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and Broward County determines, in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay City liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by City, such liquidated damages amount shall be either credited against any amounts due from City, or must be paid to City within thirty (30) days after written demand. These liquidated damages shall be City's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by City, or inability to substitute a CBE or SBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.
- 4.11.7 Contractor acknowledges that OESBD may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Contract if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify City in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify City of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.
- 4.11.8 OESBD may modify the Commitment in connection with any amendment, extension, modification, change order, or Work Authorization to this Contract that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Contract price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE or SBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.
- 4.11.9 Contractor shall provide written monthly reports to the Contract Administrator and to the Director of OESBD attesting to Contractor's compliance with the Commitment. In addition, Contractor shall allow City and OESBD to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining Contractor's contractual and CBE or SBE obligations. The Contract Administrator or OESBD shall perform such review and monitoring.

4.11.10 The Contract Administrator may increase allowable retainage or withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers.

The presence of a "pay when paid" provision in a Contractor's contract with a CBE or SBE firm shall not preclude City or its representatives from inquiring into allegations of nonpayment.

## **ARTICLE 5 CONTRACTOR'S RESPONSIBILITIES (See Article 14 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

### **5.1 Supervision and Superintendence**

5.1.1 City's instructions are to be given through Consultant, which instructions Contractor must strictly and promptly follow in every case. Contractor shall keep on the Project a full-time, competent, English-speaking superintendent and any necessary assistants, all of whom must be satisfactory to Consultant. The superintendent shall not be changed except with the written consent of Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor; all instructions given to the superintendent shall be as binding as if given to Contractor, and will be confirmed in writing by Consultant upon the written request of Contractor. Contractor shall provide efficient supervision of the Work, using its best skill and attention.

5.1.2 On a daily basis, Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project site; visitors to the Project site, including representatives of City, Consultant, or regulatory representatives; any event that caused or contributed a delay to the critical path of the Project; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in ink, unless otherwise approved by Consultant. The daily log shall be kept on or accessible from the Project site and shall be available at all times for inspection and copying by City and Consultant.

5.1.3 The Contract Administrator, Contractor, and Consultant shall meet at least every two (2) weeks (or as otherwise determined by the Contract Administrator) during the course of the Work to review and agree upon the Work performed to date and to establish the controlling items of Work for the next two (2) weeks. Consultant shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

5.1.4 If Contractor, in the course of performing the Work, finds any discrepancy between this Contract and the physical conditions of the locality, or any errors, omissions, or discrepancies in this Contract, it shall be Contractor's duty to immediately inform Consultant, in writing, and Consultant will promptly review same. Any Work done after such discovery, until authorized, will be done at Contractor's sole risk, without entitlement to reimbursement or compensation.

5.1.5 Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with this Contract. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

**5.2 Labor, Materials and Equipment (See Article 8 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor will provide competent, suitably qualified personnel to lay out the work and perform construction as required by the Contract Documents. He/She will at all times maintain good discipline and order at the site.

**5.3 Contractor Furnishes All Materials (See Article 8 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, local telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the work.

**5.4 Installation Instructions**

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

**5.5 Contractor Responsibilities (See Article 28 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by them. Nothing in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any persons due any Subcontractor or other person or organization, except as may otherwise be required by law. The City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.

**5.6 Subcontractors Terms**

The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the City.

**5.7 Permits (See Article 11 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor shall secure and pay for all maintenance of traffic (MOT), construction permits and licenses, etc. and shall pay for all governmental charges, inspection fees, and fines incurred by Contractor for his negligence, error or omission.

When such charges are normally made by the City and when so stated in the Special Conditions, there will be no charges to the Contractor. The City would assist the Contractor, if possible, in obtaining such permits and licenses. However, the Contractor shall pay all public utility charges or fees to other government agencies, where applicable.

**5.8 Electric Power and Lighting**

Electrical power required during construction shall be provided by the Contractor. This service shall be installed by a qualified electrical contractor approved by the Contract Administrator. Lighting shall be provided by the Contractor in all spaces at all times where necessary for good and proper workmanship, for inspection or for safety. No temporary power shall be used off temporary lighting lines without specific approval of the Contractor.

**5.9 Taxes**

Cost of all sales and other taxes for which the Contractor is liable under the Contract shall be included in the Contract Price stated by the Contractor.

**5.10 Record Drawings (See Articles 21 and 45 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. The Contractor must provide complete set of Record Drawings, on a USB flash drive and one full set of white lines, signed and sealed by a Registered Engineer in the State of Florida for all improvements. Final payment shall not be made to the Contractor unless completed record drawings have been submitted, approved and accepted by the City.

**5.11 Cleaning Up Site (See Article 50 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor shall clean up behind the work as much as is reasonably possible as the work progresses. Upon completion of the work, and before acceptance of final payment for the project by the City, the Contractor shall remove all his surplus and discarded materials, excavated material and rubbish from the roadways, sidewalks, parking areas, lawn and all adjacent properties; shall clean his portion of work involved in any building under this Contract, so that no further cleaning by the City is necessary prior to his occupancy; shall restore all property, both public and private, which has been disturbed or damaged during the prosecution of the work; and shall leave the entire project area in a neat and presentable condition.

**5.12 Cleaning Up General (See Article 50 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

In case of dispute, the City may remove any debris and/or rubbish and charge the cost to the Contractor as the Contract Administrator shall determine to be just.

**5.13 Waste Removal Services**

Any Contractor or Subcontractor performing construction work within the City of Coconut Creek must use the City's franchised hauler for garbage removal services including construction related debris. The City's current franchised hauler is All Service Refuse. Please contact them directly for dumpsters and/or roll offs at:

All Service Refuse  
751 NW 31st Avenue  
Ft. Lauderdale, FL 33311  
(954) 583-1830

**5.14 Public Convenience and Safety (See Article 32 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

The Contractor shall, at all times, conduct the work in such manner as to insure the least

practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. "Street Closed" and other traffic control signs shall be placed immediately adjacent to the work, in a conspicuous position, at such locations as traffic demands and as required by MOT, approved by the City, County and/or State. At any time that streets are required to be closed, the Contractor shall notify law enforcement agencies before the street is closed and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

#### **5.15 Sanitary Provisions**

The Contractor shall provide on-site office, and necessary toilet conveniences, secluded from public observation, for use of all personnel on the work, whether or not in his/her employ. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the Public Authorities having jurisdiction. They shall commit no public nuisance. Temporary field office and sanitary facilities shall be removed by the Contractor at his own expense upon completion of the work, and the premises shall be left clean.

#### **5.16 Work in Street, Highway and Other Rights-of-Way**

Excavation, grading, fill, storm drainage, paving and any other construction or installations in rights-of-way of streets, highways, public carrier lines, utility lines either aerial, surface or subsurface), etc., shall be done in accordance with requirements of the Contract Documents or, if not mentioned, shall be restored to their original condition or better. Upon completion of the work, Contractor shall present to the City certificates, in triplicate, from the proper authorities stating that the work has been done in accordance with their requirements.

#### **5.17 Hurricane Precautions (See Article 51 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

**5.17.1** During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the notice has been given by the City.

**5.17.2** Compliance with any specific storm or hurricane watch/warning or alert precautions before or after such events will not constitute additional work for payment and will be part of Contractor's insurance.

**5.17.3** Any additional time or work beyond the scope of this contract relating to hurricane warning or alert at the Project site will be addressed by a Change Order in accordance with Article 6 - Changes in the Work, if applicable.

**5.17.4** Suspension of the work caused by a threatened or actual hurricane event shall entitle the Contractor to additional contract time as noncompensable, excusable delay, and shall not give rise to a claim for compensable delay.

#### **5.18 Value Engineering (See Article 34 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

Should either party request a substitution that changes the contract such as requesting

substitution of materials, articles, pieces of equipment or any changes that reduce the Contract Price shall make such a request to Contract Administrator in writing. Contract Administrator in consultation with the Consultant will be the sole judge of acceptability and no substitute will be ordered, installed, used or initiated without Contract Administrator's prior written acceptance, which will be evidenced by a Change Order processed with all required approvals and an approved Shop Drawing. However, any substitution accepted by Consultant shall not result in any increase in the Contract Price or Contract Time. If City initiates change, the City will be responsible for any changes initiated on its behalf. By making a request for substitution, Contractor agrees to pay directly to Consultant all Consultant's fees and charges related to Consultant's review of the request for substitution, whether or not the Consultant accepts the request for substitution. Any substitution submitted by Contractor must meet the form, fit, function and life cycle criteria of the item proposed to be replaced and there must be a net dollar savings including Consultant review fees and charges. If a substitution requested by the Contractor is approved, the net dollar savings shall be shared equally between Contractor and City and shall be processed as deductive Change Order. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of the Contract.

**5.19 Public Records (See Article 55 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

Contractor shall keep such records and accounts and require any and all Contractors and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which Contractor expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by City and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries.

City is a public agency subject to Chapter 119, Florida Statutes. To the extent Contractor is a Contractor acting on behalf of the City pursuant to Section 119.0701, Florida Statutes as amended from time to time, Contractor shall comply with all public records laws in accordance with Chapter 119, Florida Statute. In accordance with state law, Contractor agrees to:

- 5.19.1 Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the services.
- 5.19.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statute, or as otherwise provided by law.
- 5.19.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the Contractor does not transfer the records to the City.
- 5.19.4 Upon completion of the services within this Agreement, at no cost, either transfer to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the services. If the Contractor transfers all public records to the City upon completion of the services, the Contractor shall destroy any duplicate public records that are exempt or confidential

and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the services, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

**5.19.5IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

If Contractor does not comply with this Section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

**ARTICLE 6 CHANGES IN THE WORK/CHANGE ORDERS**

- 6.1** Changes in the quantity or character of the Work within the scope of the Project that cannot be accomplished by means of Field Orders or Supplemental Instructions, including all changes resulting in changes to the Contract Price or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the City's Procurement Code, as amended from time to time.
- 6.2** Contractor shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by City. Upon receipt of a Change Order, Contractor shall promptly proceed with the Work set forth in the Change Order.
- 6.3** In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, City may, at its sole option, either terminate this Contract as it applies to the items in question and make such arrangements as City deems necessary to complete the work associated with the disputed item or submit the matter in dispute to Consultant as set forth in Section B: Instructions to Bidders, Item 41 – Bid Protest Process.
- 6.4** Under circumstances determined necessary by City, Change Orders may be issued unilaterally by City. During the pendency of the dispute, and upon receipt of a Change Order from City, Contractor shall promptly proceed with the change in the Work involved and advise Consultant and Contract Administrator in writing within seven (7) days after receipt of the Change Order of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.
- 6.5** On approval of any Contract change increasing the Contract Price, Contractor shall promptly ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased. Contractor will promptly provide City such updated bonds.

- 6.5** The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
- 6.5.1 If the Work involved is covered by unit prices contained in this Contract, by application of unit prices to the quantities of items involved, subject to the provisions of Section 6.12.
  - 6.5.2 By mutual acceptance of a lump sum, which sum Contractor and City acknowledge contains a component for overhead and profit.
  - 6.5.3 On the basis of the “cost of work,” determined as provided in Sections 6.6 and 6.8 , plus a Contractor’s fee for overhead and profit as determined in Section 6.9.
- 6.6** The term “cost of work” means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in Section 6.8.
- 6.6.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by City and Contractor. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized in advance by City.
  - 6.6.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers’ field services required in connection therewith. All cash discounts shall accrue to Contractor unless City deposits funds with Contractor to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery, and the parts thereof, whether rented by Contractor, in accordance with rental agreements approved by City with the advice of Consultant, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. City will not be responsible for the cost of the rental of any such equipment, machinery, or parts when the use thereof is no longer necessary for the Work.
  - 6.6.3 Payments made by Contractor to Subcontractors for work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor, and shall deliver such bids to City who will then determine, with the advice of Consultant, which bids will be accepted. If the subcontract provides that the Subcontractor is to be paid on the basis of cost of the work plus a fee, the Subcontractor’s cost of the work shall be determined in the

same manner as Contractor's cost of the work. All Subcontractors shall be subject to the other provisions of this Contract insofar as applicable.

6.6.4 Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order.

**6.7** Supplemental costs including the following:

6.7.1 All materials, supplies, equipment, machinery, appliances, office and temporary facilities, including transportation and maintenance thereof, at the site and hand tools not owned by the workers used in the performance of the Work, less market value of such items used but not consumed, and which items remain the property of Contractor.

6.7.2 Sales, use, or similar taxes related to the Work, imposed by any governmental authority, for which Contractor is liable.

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

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

**6.8** The term "cost of the work" shall not include any of the following:

6.8.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, schedulers, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office, for general administration of the Work that are not specifically included in the agreed-upon schedule of job classifications referred to in subsection 39.2.1, all of which payroll costs and other compensation are to be considered administrative costs covered by Contractor's fee.

6.8.2 Expenses of Contractor's principal and branch offices other than Contractor's field office at the Project site.

6.8.3 Any part of Contractor's capital expenses, including but not limited to interest on Contractor's capital employed for the Work as well as charges against Contractor for delinquent payments.

6.8.4 Cost of premiums for all bonds and for all insurance, whether Contractor is required by this Contract to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.

6.8.5 Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be

liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and repairing or remedying any damage to property.

6.8.6 Other overhead or general expense costs of any kind.

**6.9** Contractor's fee for overhead and profit shall be determined as follows:

6.9.1 A mutually acceptable fixed fee, or if no fixed fee can be agreed upon;

6.9.2 A fee based on the following percentages of the various portions of the cost of the Work:

(a) For costs incurred under subsections 6.6 (a) and 6.6 (b), Contractor's fee shall not exceed ten percent (10%).

(b) For costs incurred under subsection 6.6(c), Contractor's fee shall not exceed seven and one-half percent (7.5%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and

(c) No fee shall be payable on the basis of costs itemized under subsections 6.6(d) and 6.7(except subsection 6.7(c)) and Section 6.8.

**6.10** The amount of credit to City for any change that results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any. Contractor shall not be entitled to claim lost profits for any Work not performed.

**6.11** Whenever the cost of any Work is to be determined pursuant to Sections 6.6 and 6.8, Contractor will submit in a form acceptable to Consultant an itemized cost breakdown together with the supporting data.

**6.12** If the quantity of any item of the Work covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in this Contract, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

**6.13** Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to Consultant and Contract Administrator.

6.13.1 Such cost estimate shall include a breakdown listing the quantities and unit prices for materials, labor, equipment and other items of cost.

6.13.2 Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.

**6.14** Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or “cost of the work.”

**6.15** Notification and Claim for Change of Contract Time or Contract Price

6.15.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Contract Administrator and to Consultant within five (5) days of the commencement of the event giving rise to the claim or Contractor’s knowledge of the claim, and the notice shall state the general nature and cause of the claim. Thereafter, within twenty (20) days after the termination of the event giving rise to the claim or Contractor’s knowledge of the claim, Contractor shall submit written notice of the extent of the claim with supporting information and documentation to the Contract Administrator and Consultant (hereinafter “Claim Notice”). The Claim Notice shall include Contractor’s written notarized certification that the adjustment claimed is the entire adjustment to which Contractor has reason to believe it is entitled as a result of the occurrence the event giving rise to the claim. If the Contract Administrator and Contractor cannot resolve a claim for changes in the Contract Time or Contract Price within twenty (20) days after receipt of the Claim Notice by the Contract Administrator and Consultant, then Contractor shall submit the claim to Consultant within five (5) days from the date of impasse in accordance with Section B: Instructions to Bidders, Item 41 – Bid Protest Process. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

6.15.2 The Contract Time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim for an extension in accordance with Item 6.15(a). Such delays shall include, but not be limited to, acts, omissions, or neglect by any separate contractor employed by City, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

**ARTICLE 7 TIME FOR COMPLETION, LIQUIDATED DAMAGES AND CHANGE OF CONTRACT TIME (See Article 3 of the Contract and Articles 40,41, and 42 of the General Conditions of the Contract attached as Exhibit “A” for additional terms)**

**7.1** The time for completion of the work shall be two hundred and eighty (280) calendar days, which is an essential condition of the Contract Documents and the work embraced shall be commenced on a date specified in the Notice to Proceed.

**7.2** Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by City’s Director of Purchasing and two or more Notices to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order will not be issued until Contractor’s submission to City of all required documents and after execution of this Contract by both Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall commence within ten (10) days after the date of the first Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract Drawings from Consultant to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all additional Work. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind during the permitting process. The Work to be performed pursuant to the second Notice to Proceed shall commence within ten (10) days after the

Project Initiation Date specified in the second Notice to Proceed.

- 7.3** Time is of the essence throughout this Contract. Contractor must obtain Substantial Completion of the Work within 120 days from the Project Initiation Date specified in the Second Notice to Proceed, and Final Completion within 60 days from the date of Substantial Completion.
- 7.4** Upon failure of Contractor to obtain Substantial Completion within the deadline stated in Section 7.3, as extended by any approved time extensions, Contractor shall pay to City the sum of five hundred Dollars (\$500.00) for each day after the deadline for Substantial Completion, as extended by any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Contractor fail to complete the remaining Work within the deadline stated in Section 3.2, as extended by approved time extensions thereof, Contractor shall pay to City the sum of five hundred Dollars (\$500.00) for each day after the deadline for Final Completion, as extended by any approved extensions, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to City for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties based on (1) a mutual recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by City as a consequence of Contractor's failure to timely obtain Substantial Completion; and (2) both Parties' desire to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete this Contract on time. These liquidated damages shall apply separately to each portion of the Project for which a deadline for completion is given.
- 7.5** City may deduct liquidated damages from monies due to Contractor for the Work under this Contract or as much thereof as City may, in its sole discretion, deem just and reasonable.
- 7.6** Contractor shall reimburse City, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion dates specified above, as extended by any approved time extensions. Consultant construction administration costs shall be in the amounts set forth in the contract between City and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit Change Orders issued by City as costs are incurred by Consultant and agreed to by City

**7.7 No Damages for Delay**

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against City by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising from delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith, or active interference on the part of City or its Consultant.

**7.8 Excusable Delay; Compensable; Non-Compensable**

7.8.1 Excusable Delay. Delay that extends the completion of the Work and that is caused by circumstances beyond the control of Contractor or its Subcontractors, suppliers, or vendors are Excusable Delay. Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Section 6.15 hereof. Failure of Contractor to comply with Section 6.15 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment, or relinquishment of any and all claims resulting from that particular event of delay. Excusable Delay may be compensable or non-compensable, as provided below.

7.8.2 Compensable Excusable Delay. Excusable Delay is compensable when (i) the delay extends the Contract Time; (ii) is caused by circumstances beyond the control of Contractor or its Subcontractors, suppliers or vendor; and (iii) is caused solely by fraud, bad faith or active interference on the part of City or its agents. In no event shall Contractor be compensated for interim delays that do not extend the Contract Time.

Contractor shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by Contractor shall be limited to the actual additional costs allowed pursuant to Article 6 hereof.

7.8.3 City and Contractor recognize and agree that the amount of Contractor's precise actual indirect costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of this Contract, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by Contractor shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Contractor for all indirect costs caused by a Compensable Excusable Delay, and shall include, but not be limited to, lost profits, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor. The amount of liquidated indirect costs recoverable shall be Five Hundred Dollars (\$500.00) per day for each day this Contract is delayed due to a Compensable Excusable Delay.

7.8.4 Non-Compensable Excusable Delay. When Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers and vendors; (ii) is caused by circumstances beyond the control of City or Consultant; or (iii) is caused jointly or concurrently by Contractor or its Subcontractors, suppliers or vendors and by City or Consultant, then Contractor shall be entitled only to a time extension and no further compensation for the delay.

**ARTICLE 8 WARRANTY/GAURANTEE PERIOD (See Articles 24 and 26 of General Conditions of Contract attached as Exhibit "A" for additional terms)**

8.1 The warranty and defective work shall also be governed by Contract Articles 24 and 26. Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of acceptance of the project and/or system. The Contractor warrants and guarantees for a period of one (1) year from the date of acceptance that the completed project and/or system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The City will give notice of observed defects with

reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or the work that may be made necessary by such defects, the City may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period. This Article shall be governed by the City's Code.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 Supplemental Wage Requirements**

- 9.1.1 This Project is not federally funded. If the price of this Contract is in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), the following sections shall apply.
- 9.1.2 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as the most recently published in the Federal Register.
- 9.1.3 All mechanics, laborers, and apprentices, employed or working on the site of the Work shall be paid in accordance with the above referenced wage rates. Contractor shall post this section of the Contract (Supplemental Wage Requirements) at the site of the Work in a prominent place where it can be easily seen by the workers.
- 9.1.4 If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices that will be used on the Work site, the Contract Administrator shall submit the question, together with its recommendation, to the City Manager for final determination, which shall be binding.
- 9.1.5 In the event the Contract Administrator determines that any laborer or mechanic or apprentice employed by Contractor or any Subcontractor on the site of the Work has been or is being paid wages less than the rate of wages required by the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended, the Contract Administrator may (1) by written notice to Contractor direct Contractor to terminate the Work or such part of Work for which there has been a failure to pay said required wages; and (2) contract with another party perform the Work or portion thereof to completion. Whereupon, Contractor and its Sureties shall be liable to City for any all costs incurred by City to complete such Work to the extent such costs exceed any amounts that Contractor would be due for performance of such Work.
- 9.1.6 Contractor shall maintain payrolls and basic records relating thereto during the course of the Work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Work. Such records shall contain the name and address of each such employee; the employee's current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
- 9.1.7 Contractor shall submit, with each application for payment, a signed and sworn "Statement of Compliance" (007500-8) attesting to compliance with the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended.
- 9.1.8 The Contract Administrator may withhold or cause to be withheld from Contractor so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and guards employed by

Contractor or any Subcontractor on the work, the full amount of wages required by this Contract.

- 9.1.9 If Contractor or any Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Work all or part of the wages required by this Contract, the Contract Administrator may, after written notice to Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

## **9.2 Progress Payments**

- 9.2.1 Contractor may make an application for payment (“Application for Payment”), at intervals of not more than once a month, for Work completed during the Project. Contractor shall, where the Project involves CBE or SBE Subcontractors, make Application for Payment, at monthly intervals, for Work completed by such Subcontractors during the Project. Contractor’s applications shall show a complete breakdown of the Project components, the quantities completed, and the amount of payment sought, together with such supporting evidence as may be required by Consultant or Contract Administrator. Contractor shall submit with each Application for Payment: an updated progress schedule acceptable to Consultant as required by the Contract Documents; a Certification of Payments to Subcontractors Form (Form 9); a statement indicating the cumulative amount of CBE or SBE participation to date; and a release of claims relative to the Work that was the subject of previous applications or consent of surety relative to the Work that is the subject of the Application for Payment. If Contractor has not made payment to a Subcontractor, the Certification of Payments to Subcontractors Form shall be accompanied by a copy of the notification sent to each Subcontractor (listed in Item 2 of the Form) to whom payment has not been made, explaining the good cause why payment was not made. When applicable, an Application for Payment shall be accompanied by a completed Statement of Wage Compliance Form (Form 8A or 8B). Each Application for Payment shall be submitted in triplicate to the Contract Administrator for approval as follows:

Randall Blanchette, Engineering Manager  
City of Coconut Creek  
Utilities & Engineering Department  
5295 Johnson Road  
Coconut Creek, FL 33073

All Applications for Payment shall be stamped as received on the date on which they are delivered in the manner specified above. Payments of Applications for Payment shall be subject to approval as specified hereinbefore, and if approved shall be due twenty-five (25) business days after the date on which the Application for Payment is stamped received. At the end of the twenty-five (25) business days, Contractor may send the Contract Administrator an overdue notice. If the Application for Payment is not rejected within four (4) business days after delivery of the overdue notice, the Application for Payment shall be deemed accepted, except for any portion of the Application for Payment that City determines to be fraudulent or misleading. If the Application for Payment does not meet the requirements of this Contract, City shall reject the Application for Payment within twenty (20) business days after the date stamped received and said rejection shall specify the deficiency and the action necessary to cure that deficiency. If Contractor submits a request that corrects the deficiency, the corrected Application for Payment must be paid or rejected within ten business days after the corrected Application for Payment is

stamped as received.

- 9.2.2 City may withhold retainage on each progress payment as set forth in Section 255.078, Florida Statutes, as may be amended during this Contract. Any reduction in retainage below the maximum amount set forth in Section 255.078, Florida Statutes, shall be at the sole discretion of the Contract Administrator, as may be recommended by Consultant. Any interest earned on retainage shall accrue to the benefit of City.
- 9.2.3 City may withhold, in whole or in part, payment with respect to any Application for Payment to such extent as may be necessary to protect itself from loss on account of:
- (a) Defective work not remedied.
  - (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or City relating to Contractor's performance.
  - (b) Failure of Contractor to make payments properly to Subcontractors or for material or labor.
  - (d) Damage to another contractor not remedied.
  - (e) Liquidated damages and costs incurred by Consultant for extended construction administration.
  - (f) Failure of Contractor to provide documents required by the Contract Documents.

When the above grounds are removed or resolved to the satisfaction of the Contract Administrator, any withheld payment shall be made to the extent otherwise due.

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