

## **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**

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**

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**

- (a) The Contractor shall promptly, and before such conditions are disturbed, notify the City in writing, of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The City shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in

the Contractor's cost of, or the time required for, performance of any part of the work under this contract whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- (b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in writing in (a) above to the Contract Administrator within three (3) calendar days; provided, however, the time prescribed therefore may be extended by the City.
- (c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

**ARTICLE 4 INSURANCE REQUIREMENTS**

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.

**4.5 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.

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.

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

- a) Name as Additional Insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members.
- 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  
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 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.

#### **4.7 Safety**

##### **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.

**4.8 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:

- a) The chemical name and the common name of the toxic substance.
- b) The hazards or other risks in the use of the toxic substance, including:
  - 1) The potential for fire, explosion, corrosiveness, and reactivity;
  - 2) 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
  - 3) The primary routes of entry and symptoms of overexposure.
- c) 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.
- d) The emergency procedure for spill, fire, disposal, and first aid.
- e) 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.
- f) 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.

**ARTICLE 5 CONTRACTOR'S RESPONSIBILITIES**

**5.1 Supervision and Superintendence**

The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain a qualified supervisor or superintendent at the work site who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisors shall be present on each site at all times as required to perform adequate supervision and coordination of the work. (Copies of written communications given to the Superintendent shall be mailed to the Contractor's home office).

**5.2 Labor, Materials and Equipment**

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

**5.3 Contractor Furnishes All Materials**

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**

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 him. 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**

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 Sum stated by the Contractor.

**5.10 Record Drawings**

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**

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**

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 rollofs at:

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

**5.14 Public Convenience and Safety**

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 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**

**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 or not 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 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**

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 Sum 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 Sum 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**

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:

- a) Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the services.
- b) 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.
- c) 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.
- d) 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.
- e) **IF 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**

- 6.1 Without invalidating the Agreement, the City may, at any time or from time to time, order additions, deletions or revisions in the work; these shall be authorized by Change Orders. Upon receipt of a Change Order approved in writing by the Contract Administrator, the Contractor will proceed with the work involved. All such work shall be performed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Sum, payment shall be adjusted or pro-rated by the unit price of the pay items in the Contract or based on mutually accepted price if there are no unit prices. An extension or shortening of the Contract Time may be granted by the City depending upon the changes in the scope of work. A Change Order signed by the

Contractor indicates his agreement therewith.

- 6.2 Additional work performed by the Contractor without written authorization and signed Change Order will not entitle him to an increase in the Contract Sum or an extension of the Contract Time.
- 6.3 It is the Contractor's responsibility to notify his surety of any changes affecting the general scope of the work or change in the Contract Sum and the amount of the applicable bonds shall be adjusted accordingly. The Contractor shall furnish proof of such an adjustment to the City.
- 6.4 In no case shall denial of a change order serve as grounds for Contractor to delay or suspend work, unless directed otherwise in writing by City. City's denial or failure to act upon a change order shall not constitute grounds for suspension of work unless City directs otherwise in writing.
- 6.5 No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of any delays. The Contractor shall not be entitled to an increase in the contract sum or payment or compensation of any kind from the City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs for acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance was avoidable or unavoidable; provided however, that this provision shall not preclude recovery of damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City or its agents. Otherwise, the 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 provided for herein.
- 6.6 In the event, the City and Contractor are unable to come to an agreement for a change order, the City reserves the right to assume the ownership of the scope of work under that change order and complete the work either by its own work-force or its own separate Contractor. The City would be responsible and liable for the work completed by its work-force or its Contractor only. The remaining project shall still be the responsibility of the Contractor along with any liability associated with it. In the event City chooses to assume ownership of any portion of the scope of work, Contractor shall make every reasonable effort to accommodate City's workforce or City's own separate Contractor in the performance of such scope.

**ARTICLE 7 TIME FOR COMPLETION, LIQUIDATED DAMAGES AND CHANGE OF CONTRACT TIME**

- 7.1 The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on a date specified in the Notice to Proceed.
- 7.2 The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the City, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
- 7.3 If the Contractor shall fail to complete the work within the contract time, or extension of time

granted by the City, then the Contractor will pay to the City the amount of five hundred dollars (\$500.00) for liquidated damages for each calendar day that the Contractor shall be in default after the agreed upon completion date.

It is understood and agreed that deductions at the rates stipulated shall be made from the total Contract Sum for each and every calendar day after and exclusive of the day within which completion was required, and up to and including the date of completion and acceptance by the City.

Completion of the work, as mentioned above, shall include startup and testing of portions of the project, unless explicitly excluded.

The amount as set forth as liquidated damages is understood and agreed not to be a penalty; the said sum being specifically agreed upon in advance as the measure of damage to the City resulting from the delay in completion of the work.

The expiration of the time stipulated without the work having been completed shall in itself constitute a default without the necessity of any notice being given by the City to the Contractor.

The Contractor agrees and consents that the Contract Sum reduced by the aggregate of the entire damages so deducted shall be accepted by the Contractor in full satisfaction for work done under the Contract.

- 7.4** The contract time may only be changed by a Change Order approved in writing by the Contract Administrator. Any claim for an extension in the contract time shall be based on written notice delivered to the City within ten (10) days of the occurrence of the event giving rise to the claim.

All claims for adjustment in the contract time shall be determined by the City, if City and Contractor cannot otherwise agree.

- 7.5** The contract time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made therefore as provided in paragraph 7.4. Such delays shall only include those as a result of natural and/or man-made disasters, epidemics, abnormal weather conditions, or acts of God.

- 7.6** No claim for damages 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 Sum or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Otherwise, 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.

## **ARTICLE 8 GUARANTEE**

- 8.1** The 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 Code.

**ARTICLE 9 PAYMENTS AND COMPLETION**

**9.1 Payments to Contractor**

**9.1.1** Payments to the Contractor shall be made on the basis of the Bid Schedule as full and complete payment for furnishing materials, labor, tools, and equipment, and for performing operations necessary to complete the work included in the Contract Documents.

**9.1.2** The prices stated in the Contract Document include costs and expenses for taxes, labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, other costs and expenses for performing and completing the work as shown on the details and specified herein.

1. The Basis of Payment for an item at the price shown in the Bid Schedule form shall be in accordance with its description of the item and as related to the work specified.
2. Unit prices will be applied to the actual quantities furnished and installed in conformance with the Contract Documents.

**9.1.3** At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the Contract Administrator a monthly payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the monthly payment estimate and supported by such data as the Contract Administrator may reasonably require.

**9.1.4** No payment shall be requested on the basis of materials and equipment delivered and suitably stored at or near site. Payment shall be made only after work has been completed and accepted by the Contract Administrator. The Contractor shall replace at his expense any stored materials, which are either damaged or stolen before installation. The Contract Administrator will, within ten (10) days after receipt of each monthly payment estimate, either indicate in writing his approval of payment or return the monthly payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the monthly payment estimate. The City, will within thirty (30) days of presentation of any approved monthly payment estimate, pay the Contractor a progress payment on the basis of the approved monthly payment estimate. A retainage of ten percent (10%) will be deducted from the monthly payment. The City may, at its sole discretion, reduce the retainage to five percent (5%) after successful completion of fifty (50%) of work. Retainage monies will be released upon satisfactory completion and final inspection of the project.

**9.1.5** The quantities listed in the Bid Schedule will not govern final payment.

1. Payment to the Contractor will be made only for actual quantities of Contract items constructed in accordance with the Drawings and Specifications.
2. Upon completion of construction, if the actual quantities show either an increase or decrease from the quantities given in the Bid Schedule, an adjustment in payment will be made.
3. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price.

**9.1.6** Payment will not be made for excess material placed; materials wasted or disposed of in a manner not called for under the Contract.

1. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the plan or payment limit lines.
2. No compensation will be allowed for disposing of rejected or excess material.

## **9.2 Retainage Release**

The Contractor may apply for the return of the retainage held if the Contractor has satisfactorily completed the work in accordance with the Contract and satisfied the requirements of the Contract relating to retainage. The City shall pay the Contractor the amount retained for the Work, less the reasonable value of incorrect or incomplete Work, liquidated damages or both. Final payment of such withheld sum shall be made upon correction or completion of such Work and resolution of all issues, including liquidated damages. The release of retainage shall not become due until all work is one hundred percent (100%) completed and accepted by the Contract Administrator. The requirements of retainage release include the following:

1. Repair and/or replacement of faulty or defective Work.
2. As-built drawings are submitted to and accepted by the Contract Administrator.
3. All Code requirements, inspections, testing and certificates of approval are conformed with, submitted and accepted by the Contract Administrator.
4. The City is satisfied all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the City might in any way be responsible have been paid or otherwise satisfied to the extent and in such form as may be designated by the City.
5. Release of Lien is submitted by Contractor and subcontractor(s) and accepted by the City.
6. The Contractor's completion of Punch List.
7. Warranties are submitted to and accepted by the City.

## **9.3 City's Right to Withhold Payment**

The City may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

1. Defective Work not remedied.
2. Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the Contractor.
3. Failure of the Contractor to make payments to Subcontractors or Suppliers for materials or labor.
4. Damage to another Contractor not remedied.
5. The Contractor has incurred liability for liquidated damages.
6. Reasonable evidence that the Work cannot be completed for the unpaid balance of the contract sum.
7. Reasonable evidences that the Work will not be completed within the Contract time.
8. Failure to carry out the Work in accordance with the Contract Documents.

**9.4 Waiver of Liens**

Prior to Final Payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is subject of the Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release the City from all claims of liability to the Contractor in connection with the Agreement.

**9.5 Contractor's Warranty of Title**

The Contractor warrants and guarantees that title to all work, materials and equipment covered by an Application for Payment, whether incorporated in the project or not, will have passed to the City prior to the making of the Application for Payment, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"); and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing the work at the site or furnishing materials and equipment for the project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

**ARTICLE 10 CONTRACT TERMINATION****10.1 City's Right to Terminate Contract – Cause**

If the Contractor fails to begin the work within ten (10) calendar days from the Notice to Proceed date specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of the work, or shall perform the work unsuitably, or cause it to be rejected as defective and unsuitable, or shall fail to continue the prosecution of the work pursuant to the approved schedule, or if Contractor shall fail to perform any material term set forth in the contract documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Contract Administrator may give notice in writing to the Contractor and its surety (delivered by certified mail, return receipt requested) of such delay, neglect or default, specifying the same. If the Contractor, within a period of ten (10) calendar days after receipt of such notice fails to proceed and perform in a manner satisfactory to the Contract Administrator then the City may terminate the services of the Contractor by issuing Notice of Termination, exclude the Contractor from project site and take the prosecution of the work out of the hands of the Contractor, and appropriate or use any or all materials and equipment on the project site as may be suitable and acceptable. In such case, the Contractor shall not be entitled to receive any further payment until the project is completed. The City may enter into an agreement with another Contractor for the completion of the project according to the terms and provisions of the Contract Documents, or use such other methods as in City's sole opinion shall be required for the completion of the project according to the terms and provisions of the Contract Documents. All damages, costs and charges incurred by the City, together with the costs of completing the work under Contract, shall be deducted from any monies due or which may become due to said Contractor. In case the expense so incurred by the City shall be less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then the said Contractor shall only be entitled to receive remuneration for the work satisfactorily completed notwithstanding the difference. If such costs exceed the unpaid balance, then the Contractor shall be liable and shall pay to the City the amount of said excess immediately upon City's demand of same.

If after Notice of Termination, it is determined for any reason that the Contractor was not in

default, the rights and obligations of the City and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in paragraph below.

**City's Right to Terminate Contract – Convenience**

The performance of work under this Contract may be terminated for convenience in writing by the City upon ten (10) calendar days written notice to the Contractor (delivered by certified mail, return receipt requested). In such case, the Contractor shall be paid for all work executed and expenses incurred prior to the appointed date for termination. Upon written proof of reasonable expenses incurred by the Contractor relating to the commitments, which had become firm prior to the appointed date for termination the City may make such payments, at its sole discretion. For services performed only, payment shall include reasonable profit. No payment shall be made for profit for work/services, which have not been performed.

Upon receipt of Notice of Termination (for cause or convenience) pursuant to paragraphs above, the Contractor shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to City all data, drawings, specifications, reports, purchased materials, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

Where the Contractor's services have been so terminated by the City, said terminations shall not affect any rights of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys by the City due the Contractor shall not release the Contractor from liability.

**10.2 Contractor's Right to Stop Work or Terminate Contract**

If the work should be stopped under order of any court or other public authority for a period of more than thirty (30) days, through no act or fault of the Contractor or of anyone employed by him/her/it, or if the City fails to make its best efforts to pay the Contractor within forty-five (45) days after presentation of a reasonable payment request, which has been corrected as required by the City, then the Contractor may, upon seven (7) days written notice to the City, stop work to terminate this Contract and recover from the City payment for all work executed. The City expressly reserves all other rights and remedies as may exist in law or in equity under the circumstances set forth hereunder.

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## SECTION D

### SPECIAL CONDITIONS AND SUPPLEMENTARY CONDITIONS

1. Normal work hours for this project are 7:00 a.m. to 7:00 p.m. Mondays through Fridays, 8:00 am to 7:00 pm Saturdays and 8:00 am to 6:00 pm Sundays and National Holidays as per City Code, Section 14-28. Any work done outside these hours shall require permission from the City.
2. All work done by the CONTRACTOR or any Sub-Contractor shall be done with minimal disturbance to the residences and businesses of the City. The noise level shall be kept at reasonable levels.
3. All bid prices shall remain in effect until the project is completed. Under extreme circumstances and documented by acceptable proof, the City, at its sole discretion, may agree to price adjustments. Otherwise, all bid prices shall remain firm.
4. All CONTRACTOR personnel and subcontractors shall demonstrate and maintain a courteous and responsible demeanor toward all persons while conducting business within the City. The City reserves the right to have CONTRACTOR permanently remove (from servicing the City) any of CONTRACTOR'S personnel that, in the opinion of the City, is not maintaining a professional, courteous and responsible demeanor at all times.
5. CONTRACTOR understands that building inspections take place during normal business hours between 7:00 am and 6:00 pm Monday through Thursday. CONTRACTOR may request inspections on Fridays however, should City agree to perform such inspection(s), CONTRACTOR will incur additional fees that will be solely at CONTRACTOR'S own expense.
6. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.