Memorandum

Date: October 6, 2023

To: Department Directors

From: Danielle Levine Cava
Mayor

Subject: The Amended Standard Construction General Contract Conditions

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Pursuant to Implementing Order 3-57 (I.O. 3-57), the Office of Small Business Development (SBD), is responsible for the updating Standard Construction General Contract Conditions (known as "the Standard Construction Contract"). The Standard Construction Contract language is inserted in Miami-Dade County (County) construction project documents.

In 2021, I directed SBD to conduct a comprehensive review of construction general contract conditions and update the Standard Construction Contract to incorporate elements from my "Four E's Initiative," which highlight the importance of equity, economy, engagement, and the environment. SBD updated the Standard Construction Contract through a collaborative effort with the major capital user departments, construction organizations such as the National Association of Black Women in Construction, the Associated General Contractors of America, the Latin Builders Association, the Engineering Contractor's Association of South Florida Inc., Community Small Business Enterprises Association, Inc., and the Small Business Enterprises-Construction Advisory Board. SBD received a substantial number of comments from these contributors which were all reviewed and discussed with the County Attorney's Office for legal sufficiency. Many of the comments received were incorporated into the document to address ambiguity in the contract language and to expand the legal definition of various construction terms. The document also incorporates recent industry changes, Board policies and new legislative requirements from the state and federal governments.

Attached is the updated Standard Construction Contract for all capital construction projects for the County. As the County continues to move forward with this comprehensive standardization approach, it is expected that this effort will simplify the industries' understanding of the County's policies and procedures when providing construction services to the County, thereby reducing claims, associated costs, conflicts, and misrepresentation by all parties. The highlighted changes to the amended Standard Construction Contract are as follows:

- Section 1
  - Definitions - expanded and added terms.
- Section 2
  - Interpretations – clarified various terms.
- Sections 3 and 4:
  - Updated to clearly identify the roles of the Architect/Engineer, Field Representative and Owner.
- Section 5:
  - Key Personnel - the Contractor shall notify the Owner of any changes of key personnel and all replacement personnel prior to assigning them to the jobsite.

- Section 6:
    - Subcontractors – Updated language to restate the approval process for all subcontractors and specifically noting Sections 2-8.1 and 10-33.02 of the Code governing the Small Business Enterprise Program requirements.
- Section 8:
    - Contract Time, and Section 9, 9 B, Progress Payments – Amended both sections to address compensable and non-compensable project delays and the means and methods to address construction cost escalation.
- Section 9 (B):
    - Added Tax Exempt Owner Purchased Material

Standard Construction Contract

- Section 2-10.7 of the Code - Owner Direct Purchases Procedures.
- Section 12 C – Governing Law – Include Florida Fire Prevention Code.

Section 14 – Miscellaneous Provisions (Paragraph N)

- The Contractor shall be responsible for and acknowledge the County's Recycling Programs when hauling materials that meets the requirement for a commercial business establishment. Please contact the Department of Solid Waste Management at www.dswm@miamidade.gov or visit www.earth911.com to search for recycling or disposal options and locations.

Any unique requirements needed by individual departments (e.g., security and federal requirements at Miami International Airport, state and federal requirements for Public Housing and Community Development) shall be addressed through Special Provisions to supplement the Standard Construction Contract. The Special Provisions shall be prepared and maintained by each managing department. In cases where there is a conflict between the Special Provisions and the Standard Construction Contract, the Special Provisions shall take precedence. A copy of each department's special provisions and any updates thereof shall be provided to SBD for record keeping. The Standard Construction Contract, along with each Department's Special Provisions will be available in the Capital Infrastructure Information System (CIIS) and on the Small Business Development's webpage accessible to all County departments.

It is intended that this Standard Construction Contract be used for all construction projects to include projects processed under the County's expedited process within the Miscellaneous Construction Contracts (MCC) Programs 7040 and 7360 Plans. All construction projects advertised after October 1st, 2023, will incorporate the attached Standard Construction Contract in the projects' specifications. All projects not awarded but advertised should issue the attached as an addendum to replace the 2012 Standard Construction Contract. In all cases where this is not feasible, the contracting department will be required to submit to the Office of Small Business Development, in writing, the project name, project number and a brief description of why this directive cannot be accomplished.

Although this phase of construction contract standardization initiative is complete, SBD will continue to work with the capital departments to develop standard construction forms to include but not be limited to standard instructions to bidders, invitations to bid, bid forms, change order forms, and invoice forms. SBD will also continue working with INFORMS and the Information Technology Department to develop a universal electronic platform that will be used Countywide for sourcing construction projects.

If you have any questions, please contact Gary Hartfield, Director, Office of Small Business Development.

Attachments: Amended STANDARD CONSTRUCTION GENERAL CONTRACT CONDITIONS

C: Geri Bonzon-Keenan, County Attorney
Gerald K. Sanchez, First Assistant County Attorney
Jess M. McCarty, Executive Assistant County Attorney
Office of the Mayor Senior Staff
Gary T. Hartfield, Director, Office of Small Business Development

STANDARD CONSTRUCTION
GENERAL CONTRACT CONDITIONS
TABLE OF CONTENTS

[NOTE: THIS STANDARD CONSTRUCTION GENERAL CONTRACT CONDITIONS HAVE BEEN PREPARED FOR USE IN ALL CONSTRUCTION (DESIGN-BID-BUILD) CONTRACTS AND OTHERWISE IN ACCORDANCE WITH IMPLEMENTING ORDER 3-57.

Page

Article and Title

1. DEFINITIONS 3
2. INTERPRETATION 12
3. ARCHITECT/ENGINEER 15
4. OWNER 18
5. CONTRACTOR 19
6. SUBCONTRACTORS 21
7. PROSECUTION OF THE WORK 23
   - A. Workmanship and Unauthorized Work
   - B. Material
   - C. Methods of Sampling and Testing
   - D. Meetings
   - E. Permits and Compliance with Laws
   - F. Coordination and Access
   - G. Rights in Land and Improvements
   - H. Interference with Existing Utilities
   - I. Protection of Existing Facilities, Vegetation, Structures, Utilities and Improvements
   - J. Damage to the Work and Responsibility for Materials
   - K. Emergencies
   - L. Accident Prevention
   - M. Warranty of Work
8. CONTRACT TIME 37
   - A. Notice to Proceed
   - B. Schedules
   - C. Extensions of Time and Classification of Types of Delays
   - D. Substantial Completion and Final Acceptance
   - E. Use and Possession
   - F. Liquidated Damages/Liquidated Indirect Costs
9. PROGRESS PAYMENTS 46
   - A. Payments
   - B. Taxes
   - C. Payments to Subcontractors and Suppliers

DRAFT

D. Contract Prices - Bid Form
E. Final Payment

10. CHANGES 55

A. Changes
B. Allowance Accounts
C. Deletion or Addition of Work
D. Increased or Decreased Quantities (Unit Prices)
E. Extra Work
F. Differing Site Conditions
G. Force Account
H. Contractor Proposals - General
I. Value Engineering Change Proposals

11. CLAIMS AND DISPUTES..... 65

A. Notice of Claims
B. Claim Submittals
C. Disputes
D. Termination

12. MISCELLANEOUS PROVISIONS 76

A. No Third Party Beneficiary
B. Venue
C. Governing Laws
D. Successors and Assigns
E. Written Notice
F. Indemnification
G. Audit Rights
H. Severability
I. Payment and Performance Bond
J. Insurance
K. Conflict of Interest
L. Rights in Shop Drawings
M. Patent and Copyright
N. Historical, Scientific and Archaeological Discoveries
O. Use of Owner's Name in Contractor Advertising or Public Relations
P. Accounts Receivable Adjustments
Q. User Access Program (UAP)
R. Residents-First Training and Employment Program
S. Employ Miami-Dade Program
T. Public Records and Contracts for Services Performed on Behalf of Miami-Dade County

13. APPLICABLE LEGISLATION..... 86

14. SPECIAL PROVISIONS 89

DRAFT

1. DEFINITIONS

Addendum/Addenda: A modification or clarification of the Contract Documents distributed to prospective Bidders prior to the opening of Bids.

Administrative Orders/Implementing Orders (AO/IO): a list of Miami-Dade County Administrative Orders and Implementing Orders is available online at: http://www.miamidade.gov/ao/home.asp?Process=completelista Advertisement for Bids: The public notice inviting the submission of Bids for the Work.

Allowance Account (Contingency Account): Account in which a stated maximum dollar amount is included in the Contract for the purpose of funding, at the sole discretion of the Owner, unforeseen and/or changed conditions or extra work arising during the prosecution of the Work or any other changes issued by the Owner. The scope and limitations regarding use of the Allowance Account are contained in the Contract Documents. The performance of any work under this Allowance Account, shall be authorized by a written Work Order issued by the Owner.

Allowance Account(s) (Dedicated): Account(s) in which stated maximum dollar amount(s) are included in the Contract for the purpose of funding specific pre-identified items of work at the sole discretion of the Owner. The scope and limitations regarding use of the Dedicated Allowance Account(s) are contained in the Contract Documents.

Architect/Engineer: Owner or its authorized representatives identified in the Notice-to-Proceed letter, which may include but is not limited to the Owner's Resident Architect/Engineer, the Construction Manager, the Owner's representatives, and the Architect/Engineer of Record. In the event an Architect/Engineer is not employed on the project, or an Architect/Engineer is not otherwise specified in the Notice-to-Proceed, the term shall be read as coterminous with the term "Owner."

Art in Public Places: Miami-Dade County program established in Miami-Dade County Code Section 2-11.15 providing a one and a half percent (1.5%) of each County project's construction and engineering design cost to fund a public art component within the Project. Coordination and installation of the Artist's work is included as part of the scope of the Contractor's services to the extent that it is defined in the Bid Documents. The cost of this program is budgetary, funded by the Department, and shall not be included in the Contractor's bid.

Artist: Person(s) chosen through the Art in Public Places program to design and fabricate or specify an integrated work of art for the Project. The term Artist as may be referred to in the Contract Documents means the Artist and/or their authorized representative.

As-Built Documents: Documents signed and sealed by an appropriately licensed professional and submitted by the Contractor during and/or upon completion of the Contract reflecting actual installed/built conditions and all changes made in the Contract Documents during the construction process and showing the exact dimensions, geometry, location, identification and such other information as required by the Contract Documents and/or Architect/Engineer for all elements of the work completed under the contract (also referred to as "As-Built Drawings" or "As-Builts"). Final payment is conditional upon the receipt of As-Built Documents.

Award: Action taken by the Owner to accept the Bid submitted by the Contractor to perform the Work described in the Contract Documents.

DRAFT

Baseline Construction Schedule: A schedule submitted by the Contractor in accordance with the Contract Documents, reviewed and approved by the Owner that is used by the Contractor to plan the performance of the Work. The Contract Documents may require interim Baseline Construction Schedules be submitted for only a portion of the initial Work to be followed by a Baseline Construction Schedule covering all the Work. The Baseline Construction Schedule shall also be used to quantify delays in accordance with the Contract Documents. While the Baseline Construction Schedule remains unchanged, updates to the Baseline Construction Schedule are prepared and submitted by the Contractor per the Contract Documents. The Baseline Construction Schedule shall only be revised and submitted again for review and approval by the Owner as required by the Contract Documents.

BCC: Board of County Commissioners, the governing board of Miami-Dade County.

Beneficial Occupancy: The point at which the Owner or Architect/Engineer determines that the Work or any portion thereof can be occupied from a regulatory and work function standpoint prior to Substantial Completion of the Work. Beneficial Occupancy will not relieve the Contractor of any of its obligations relative to Substantial Completion, or of its responsibility to fully complete the Work in accordance with the Contract Documents.

Bid: The written offer of a Bidder to perform the Work.

Bid Documents: The Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Security, Construction Contract, all contractual forms, General Conditions, Special Provisions, Technical Specifications and Contract Drawings, together with all Addenda and any other applicable standards, regulations, laws and permits as described within these other documents which may be incorporated by reference.

Bid Item: A specific item of work represented by a line item in the Bid Form.

Bid Form: The form on which Bids are submitted.

Bid Security: (Also known as Bid Bond) The cashier's check, certified check or bid bond, accompanying the Bid and submitted by the prospective bidder, as a guarantee that the prospective bidder will enter into a contract with the Owner for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to him.

Bidder: An individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Work.

Certificate of Substantial Completion: Certificate issued to the Contractor by the Owner certifying that Substantial Completion has been achieved.

Certificate of Completion: Certificate issued by the local building official providing proof that a structure or system is complete and, for certain types of permits, is released for use and may be connected to a utility system. This certificate does not grant authority to occupy a building, such as a shell building, prior to the issuance of a Certificate of Occupancy by the local building official.

Certificate of Final Acceptance: Certificate issued to the Contractor by the Owner certifying that Final Acceptance has been achieved in accordance with the definition reflected herein (see Final Acceptance definition).

Certificate of Occupancy: Certificate issued by the local building official after the building official inspects the building or structure and finds no violations of the provisions of applicable codes or other laws that are enforced by the local building department.

Change Notice: A document issued by the Architect/Engineer or Owner to the Contractor specifying a proposed change to the Contract Documents and requesting a price proposal from the Contractor, if applicable, within a specified time period.

Change Order: A written agreement executed by the Owner, the Contractor and the Contractor's Surety, covering modifications to the Contract Documents.

Claim: A Claim should include any request for additional compensation, time, or other relief arising out of or relating to the Contract Documents, including without limitation, requests for equitable adjustments and breach of contract.

Commissioning: A quality-focused process for enhancing the delivery of a project. The process focuses upon verifying and documenting that all of the commissioned systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the Owner's Project Requirements.

Construction Staging Area: Property which may be available for use by the Contractor during the construction period for the purpose of storing products and construction equipment and for the purpose of staging the Work. The construction staging area(s), if applicable, are defined in the Contract Documents.

Construction Contract: The agreement executed by the Contractor and the Owner covering the performance of the Work including the furnishing of labor, superintendence, materials, tools, and equipment as indicated in the Contract Documents. The term "Contract" shall have the same meaning.

Construction Inspection Services: Services performed by the Owner or a consultant to the Owner to verify that the Work is being performed in accordance with the Contract Documents. The use of these services shall not relieve the Design/Builder of their responsibilities under the Contract Documents.

Consultant: See Architect/Engineer.

Contract Documents: Bid Documents, Contract Summary, General Conditions, Special Conditions, Technical Specifications, Change Orders, Payment and Performance Bonds, Work Orders, Approved Schedules, Approved Shop Drawings and Approved Working Drawings.

Contract Drawings: The plans, profiles, cross-sections, elevations, schedules, and details which show locations, character, dimensions, and details of the Work. Contract Drawings are confidential under the Florida Public Records Act and the Contractor is responsible for maintaining confidentiality during and after the progress of the Work.

Contractor: The individual, firm, partnership, or corporation, or combination thereof, private, municipal, or public, including joint ventures, duly licensed under Florida Statutes, which, as an independent Contractor, has entered a Contract with Miami-Dade County, who is referred to throughout the Contract Documents by singular in number and masculine in gender.

Contract Summary: The written agreement between the County and the Contractor for performance of the Work in accordance with the requirements of the Contract Documents and for the payment of the agreed consideration.

Contract Time: The number of days allowed for completion of the Work commencing with the effective date of Notice to Proceed and ending with the date of Substantial Completion or Final Completion, including completion of punch list items, as determined by the Owner or the Owner's designee. The Contract Time will be stipulated in the Contract Documents unless extended by a Change Order or by a Work Order.

County: See Owner.

DRAFT

County Mayor: The Mayor of Miami-Dade County, Florida, or the County Mayor's designee.

Critical Path: Longest sequence of activities in a project's schedule which defines the project completion date and which must be completed on time in order for the project to be completed on schedule.

Delays: May be Excusable or Non-Excusable. Excusable Delays may be Compensable or Non-Compensable, as further defined within the text of these General Conditions.

Days: Unless otherwise designated, days mean calendar days.

Department Director: The Director of the Miami-Dade County Department implementing the work or the Director's designee.

Department Director's Representative: The person or persons designated by the Department Director to act on his behalf in the administration of the contract within the limits of their respective authorization.

Direct Costs: Direct Costs recoverable by the Contractor as a result of changes in the Work shall be limited to the actual additional costs of labor and materials installed as part of the Work and for the reasonable additional cost of rental of any Special Equipment or Machinery. Labor shall be limited to site labor costs, including Employer's Payroll Burden. Specifically excluded from labor are the costs of general foremen and site office personnel. Materials are limited to permanent materials required by the Contract Documents and materials approved by the Architect/Engineer as necessary to install the permanent materials in an efficient and workmanlike manner. For special equipment or machinery not listed in said document, the Contractor shall be paid a rental rate corresponding to the average prevailing rental rate for such equipment or machinery in Miami-Dade County, Florida, subject to approval by the Architect/Engineer. No additional payment shall be made to the Contractor for fuel, lubricants, for wear and tear, transportation, insurance, or depreciation. Any equipment or machinery not designated by the Architect/Engineer as special equipment and machinery shall be considered Overhead.

Extra Work: Work not provided for in the Contract Documents as awarded or as previously modified by Change Order or Work Order but found to be essential to the satisfactory completion of the Contract within its intended scope.

Facility: The structure or items being constructed under the Contract, inclusive of all subsurface work, landscaping work, and other ancillary work. Field Representative/Construction Manager: An authorized representative of the Owner that may provide administrative and construction inspection services during the pre-construction, construction, and closeout phases of the Contract and through which the orders of the Owner shall be given. The Field Representative has no authority to modify or waive any provision of the Contract Documents.

Fast Track: A design/build method where separate and often, intermediate phases of the Project are designed, permitted and constructed earlier in the schedule while the remainder and often, more complex portions of the Project are designed, permitted and constructed later in the schedule. For example, foundation design, permitting and construction earlier while the remainder of the structure takes longer to design, permit and construct. Fast-track construction is subject to the approval of the Owner and the permitting agencies.

Final Acceptance: The formal written acceptance by the Owner of the completed work.

Final Completion: Point in time when the Owner determines that all physical Work has been completed in accordance with the Contract Documents and all deficiencies listed within the Certificate of Substantial Completion and/or Punch List elements have been corrected to the satisfaction of the Owner and Architect/Engineer. Where the contract requires that Contractor provide the Owner with spares or surplus

material, provision of same in accordance with the Contract Documents shall be an additional requirement for Final Completion (See Article 8 Contract Time Paragraph D. Substantial Completion, Final Completion and Final Acceptance).

Force Account: A method of payment measured by actual cost of the labor, materials, and equipment plus the contractual approved mark-up for Indirect Costs, as distinct from other payment methods such as lump sum or unit price, for Extra Work ordered by Change Order and/or Work Order (See Article 10 Changes Paragraph G. Force Account).

Force Majeure: Force Majeure as used herein shall mean Acts of God, strikes, lockouts, any late delivery of the Owner's supplied material and equipment due to transportation delays beyond Department's control, or other industrial disturbances; acts of public enemy, blockades, wars, insurrections, or riots; epidemics, landslides, earthquakes, fire, storms, floods, or washouts; arrests, title disputes, or other litigation; governmental restraints, either Federal or County, civil or military; civil disturbances; explosions; nationwide inability to obtain necessary materials or equipment, supplies, labor, or permits whether due to existing or future rules, regulations, orders, laws, or proclamations, either Federal, State or County, civil or military, or otherwise; and other causes beyond the control of the Department or County, whether or not specifically enumerated herein. Changes in the market price of goods, materials, equipment, labor, or supplies shall not be considered an instance of Force Majeure, and Contractor's bid shall include all risks of market changes the price of such things. COVID-19 or any other catastrophic event shall not be considered a Force Majeure event. Changes in the County's Responsible Wage Ordinance wage rates shall not be considered as Force Majeure events.

Furnishing: Manufacturing, fabricating, or purchasing and delivering to the site of the Work materials, plant, power, tools, patterns, supplies, appliances, vehicles, and conveyances necessary or required for the completion of Work.

General Conditions: This section of the Contract Documents which specifies, in general, the contractual conditions.

Green Building Practices: Environmentally and socially-conscious practices that emphasize processes and methods of design and construction that reduce exposure to noxious materials, conserve non-renewable energy and scarce materials, minimize life-cycle ecological impact of energy and materials, employ renewable energy or materials that are sustainably harvested, protect and restore local air, water, soils, flora and fauna, and support pedestrians, bicycles, mass transit and other alternatives to fossil-fueled vehicles.

Indirect Costs: Overhead.

Installation, Install or Installing: Completely assembling, erecting, and connecting material, parts, components, supplies and related equipment specified or required for the completion of the Work including the successful passing of all tests so that they are fully functional.

LEED (Leadership in Energy and Environmental Design): An ecology-oriented building certification program run under the auspices of the U.S. Green Building Council (USGBC) which concentrates its efforts on improving performance across five key areas of environmental and human health: energy efficiency, indoor environmental quality, materials selection, sustainable site development, and water savings.

Limit of Work: Boundary within which the Work is to be performed.

Liquidated Damages: The amount that the Contractor accepts, as stipulated in the Contract Documents, which will be deducted from the Contract Sum for each day of delay due to a Non-Excusable Delay. The Liquidated Damages set forth herein are compensation for the County's inability to timely put the project

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into service, the continued disruption of County functions, for impacts to the County's reputation, and other indirect damages which the parties agree are difficult to measure**.** (See Article 8 Contract Time Paragraph F. Liquidated Damages and Liquidated Indirect Costs).

Liquidated Indirect Costs Rate: The amount, stipulated in the Contract Documents, which will be added to the Contract Sum for each day of delay due to a Compensable Delay. The Contractor accepts this sum as full compensation for the Contractor's and all its subcontractors', of any tier, for indirect costs, for each day of Compensable Delays. This amount is agreed to include any costs other than Direct Costs incurred by the Contractor and all its subcontractors of any tier in the performance of this Contract. (See Article 8 Contract Time, Paragraph F. Liquidated Damages and Liquidated Indirect Costs)

Lump Sum Bid Item: A bid item in which quantity is not separately measured for payment in units but rather is based on the amount bid by the Contractor as indicated in the Bid Form and made a part of the Contract. Partial payments of Lump Sum Bid Items will be conditionally made, based upon an approved schedule of values, and will be subject to reconciliation in the event that the work of a Lump Sum Bid Item is not fully completed in accordance with the requirements of the Contract Documents.

Miami-Dade County (MDC): A political subdivision of the State of Florida, the Owner.

Miami-Dade County Code of Ordinances: Central repository for Governing Legislation where Ordinances are codified and kept current with subsequent amendments. The Miami-Dade County Code of Ordinances can be viewed at the following hyperlink:

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances

Milestone: A completion date as defined in the Contract Documents.

Notice to Proceed: Written notice from the Owner to the Contractor specifying the date on which the Contractor is to proceed with the Work and on which the Contract Time commences to run.

Notice of Termination: Written notice from the Architect/Engineer or the Owner to the Contractor to permanently stop work under the Contract on the date and to the extent specified in the notice. The Notice of Termination includes Notices of Termination for Convenience, Default and National Emergencies as set forth in the Contract Documents. Upon receipt of such notice, the Contractor shall comply with the termination provisions of this Contract.

Overhead (Indirect Costs): Overhead, also defined as "Indirect Costs," includes any and all costs other than Direct Costs. The term "Overhead" as indicated in this definition shall apply to both Contractors and subcontractors of any tier. Overhead includes, but is not limited to, all profit and costs associated with: project bond premiums, project insurance premiums, costs of supervision, coordination, superintendents, general foremen, consultants, schedulers, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery, utilities, rent, telephones, facsimile machines, computers, word processors, printers, plotters, computer software, all expendable items, job site and general office expenses, extended jobsite general conditions, interest on monies retained by the Owner, escalated costs of materials and labor, impact cost on unchanged work, inefficiency, decreased productivity, home office expenses or any cost incurred that may be allocated from the headquarters of the Contractor or any of its subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other Project, loss of interest income on funds not paid, costs to prepare a bid, cost to prepare a quote for a Change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work,

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costs spent to achieve compliance with applicable laws and ordinances, loss of Projects not bid upon, loss of productivity or inefficiencies in the Work from any cause.

Owner: Miami-Dade County, whose governing body is the BCC acting in its proprietary capacity through its duly authorized agents. When these Contract Documents require the action of individual persons, the documents contain specific references to these persons. In particular, the documents shall refer to the BCC when approval of the BCC is specifically required and to the Architect/Engineer when the Architect/Engineer's approval is specifically required.

Payment and Performance Bond: Bond executed by the Contractor and its Surety assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the Contract Documents and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work. This bond shall be a single instrument bond for twice the penal sum (to cover 100 percent of the total maximum contract amount for payment-related issues and 100 percent of the total maximum contract amount for performance-related issues).

Project: See definition for Work.

Punch List: A list issued by the Owner to the Contractor of work elements requiring remedial action or completion by the Contractor before Final Completion is issued to the Contractor.

Resolution: An action taken by a vote of the Miami Dade County Board of County Commissioners setting policy and providing guidance to County Departments. Resolutions issued after 1995 can be viewed at the following hyperlink: http://www.miamidade.gov/govaction/searchleg.asp. Earlier Resolution can be obtained through request to the Clerk of the Board Division, Stephen P. Clark Center, 111 NW 1st Street, Suite 17-202 Miami, Florida 33128.

Right-of-Way: A term denoting land and property, and interests therein, owned or acquired by the Owner.

Schedules: All schedules delivered under the Contract including time schedules and schedule of values.

Schedule of Values: A detailed cost breakdown of each lump sum bid item in the bid form, submitted by the Contractor at the beginning of the Work and to be used as a basis to determine monthly progress payments and quantity adjustments within the constraints specified in the Contract Documents.

Shop Drawings: Documents furnished by the Contractor for approval by the Architect/Engineer to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, calculations, schedules, tables, charts, brochures and other data describing design, fabrication and installation of specific portions of the Work Shop Drawings are understood to be submitted for information purposes only, and the County's receipt of or acceptance of shop drawings shall not be deemed as the County agreeing that the selected materials will meet contract requirements or that the selected means and methods are appropriate; the Contractor shall at all times remain responsible for completion of the work in accordance with the contract documents, notwithstanding any approved shop drawings. .

Site, Project Site, Work Site, Construction Site, Job Site: The location(s) at which the work under this Contract is to be accomplished, as shown in the Contract Documents.

Special Provisions: Section of the Contract which includes specific contractual requirements not covered in the General Conditions that are specific to the Project.

Small Business Enterprise – Architect/Engineer (SBE -A&E) Program: Architect/Engineering firms that are certified with Miami-Dade County Small Business Enterprise program

Small Business Enterprise – Construction (SBE -CON) Program: Construction firms that are certified with Miami-Dade County Small Business Enterprise program

Small Business Enterprise – GOODS (SBE -GOODS) Program: Goods, Manufactures, and Wholesalers firms that are certified with Miami-Dade County Small Business Enterprise program

Small Business Enterprise – SERVICES (SBE -SERVIES) Program: Services firms that are certified with Miami-Dade County Small Business Enterprise program

Special Provisions: Section of the Contract Documents which includes specific contractual requirements not covered in the General Conditions that are specific to the Project.

Subcontractor: Any person or entity, other than the employees of the Contractor, supplying the Contractor with labor, materials, supplies and/or equipment used directly or indirectly by the Contractor in the prosecution of the Work.

Substantial Completion: Substantial Completion of a Project is the date on which the Owner certifies that the construction is sufficiently completed, in accordance with the Contract Documents, as modified by any Change Orders, so that the Owner can occupy the Project for the use for which it was intended. A certificate shall be issued to the Contractor by the Owner upon achievement of Substantial Completion. (See Article 8 Contract Time Paragraph D. Substantial Completion, Final Completion and Final Acceptance)

Surety: The bonding company or companies furnishing the bonds required of a Bidder and of the Contractor.

Technical Specifications: The general term comprising all the written directions, provisions and requirements contained herein, entitled "Technical Specifications," those portions of standard specifications to which reference is specifically made in the Technical Specifications, and any Addenda, Work Orders and Change Orders that may be issued for the Contract, all describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies and equipment and standards to which such work is to be performed as well as any reports specifically issued with the Bid Documents and specifically identified in the Instructions to Bidders which may include geotechnical or other technical reports.

Temporary Construction Easement Line: A boundary which describes additional areas which may be made temporarily available for construction operations.

Time Contingency: The maximum time specifically identified in the Contract Documents by which the Owner may extend the contract time to accomplish the work without a change order. Limitations on the use of the time contingency are set forth in the Contract Documents.

Unit Prices: Unit prices shall include all labor, materials, tools, and equipment; all other direct and indirect costs necessary to complete the item of Work and to coordinate the unit price Work with adjacent work; and shall include all overhead and profit. Contractor shall accept compensation computed in accordance with the unit prices as full compensation for furnishing such Work.

Work: The construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's duties and obligations imposed by the Contract Documents or, if not specifically imposed by the Contract Documents, which can be reasonably assumed as necessary to fulfill the intent of the Contract Documents to provide a complete, fully functional, and satisfactory project.

Work Order: A written order, authorized by the Architect/Engineer or Owner, directing the Contractor to perform work under a specific Allowance Account or directing the Contractor to perform a change in the Work that does not have a monetary impact, including but not limited to, extending the Contract Time or subject to the payment of Liquidated Indirect Costs if entitlement is established as required by these Contract Documents. No Work Order may increase the Contract Sum.

END OF ARTICLE

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2. INTERPRETATION

A. The intent of the Contract is to include all necessary items for the proper completion of the Work by the Contractor so the Owner may have a fully functioning facility and fully receive the benefits intended under the Contract. The Contractor shall perform, without additional compensation, such incidental, implied, or appurtenant work as necessary to complete the Work and fulfill the design intent, in accordance with the requirements set forth in the Contract Documents, so that it will meet the requirements for which the Project was intended, in a satisfactory and workmanlike manner.

B. The Contract Documents and all referenced standards cited are essential parts of the Contract requirements. A requirement occurring in one is as binding as though occurring in all. The documents comprising the Contract Documents are complementary and indicate the construction and completion of the Work. Anything mentioned in the Contract Documents and not shown on the Contract Drawings or shown on the Contract Drawings and not mentioned in the Contract Documents, shall be of like effect as if shown or mentioned in both. The more stringent shall apply in the case of a conflict. The Owner's determination of the more stringent standard shall control and be binding on the contractor, without limitation, and the Contractor's compliance with this determination shall not be considered as Extra Work.

C. Site Inspections and Verification of Governing Dimensions: In executing the contract, the Contractor represents that he has, prior to bid, visited the site, become familiar with the conditions under which the work is to be performed and correlated his personal observations with the requirements of the Contract Documents or that he has chosen not to do so, in the event that a mandatory site visit is not specified in the Contract Documents. The Contractor accepts the responsibility for all errors in construction which could have been avoided by such examination and the opportunity to seek timely clarifications during the bidding process. The Contractor, before commencing work, shall verify all governing dimensions at the site, all conditions under which the work is to occur, including but not limited to site access, lay down and staging areas, the presence of known utilities and utility connections, and shall examine all adjoining work on which his work is in any way dependent for its conformance with the intent of the Contract Documents and no disclaimer of responsibility for defective or non-conforming adjoining work will be considered unless notice of same has been filed by the Contractor, and agreed to in writing by the Owner through the Architect/Engineer before the Contractor begins any part of the Work. No disclaimer for defective or non-conforming adjoining work that was clearly foreseeable to the Contractor during a site visit (mandatory or non-mandatory) will be considered by the Owner. The County does not warrant or guarantee the presence or absence of any particular site conditions, or the accuracy of any as-built information related to existing work in-place on the site. To the extent provided by or in the possession of the County, subsurface reports, soil borings, and as-builts are solely for the Contractors consideration and use, and the County does not represent that such materials accurately reflect the conditions of the Site.

D. Errors, Inconsistencies and Omissions: The Contractor shall carefully study and compare all drawings, Contract Documents, and other instructions; shall verify all figures on the Contract Drawings before laying out the Work; shall notify the Owner or Architect/Engineer of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing during the bidding process and prior to submitting his Bid. The Contractor shall not take advantage of any apparent error or omission which may be found in the Contract Drawings or Contract Documents, and the Architect/Engineer shall be entitled to make such corrections therein and interpretations thereof as he may deem necessary for the fulfillment of their intent. The Contractor shall be responsible for all

errors in construction which could have been avoided by such examination and notification, and shall correct, at his own expense, all work improperly priced, scheduled or constructed through failure to notify the Owner or Architect/Engineer and to request specific instructions.

E. Where "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the Contract Documents unless stated otherwise.

F. References to Articles or Sections include sub-articles or subsections under the Article referenced.

G. Referenced Standards: Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of the Invitation to Bid except where otherwise expressly indicated. In case of a conflict between the Contract Documents and the referenced standard, the Contract Documents shall govern.

H. Order of Precedence of Contract Documents: Unless otherwise provided for in the Special Provisions or required by law, the order of precedence of the Contract Documents will be as follows:

1) Change Orders to the Contract
2) Notice to Proceed
3) Contract
4) Addenda
5) Special Provisions
6) General Conditions
7) Referenced Codes and Standards
8) Technical Specifications
9) Contract Drawings
10) Guarantees
11) Instructions to Bidders
12) Invitation to Bid
13) Other documents

I. In case of differences between small- and large-scale drawings, the drawings showing greater detail shall govern. The Owner's determination of the more detailed shall control and be binding on the contractor, without limitation, and the Contractor's compliance with this determination shall not be considered as Extra Work. Schedules on drawings shall take precedence over conflicting notations on drawings. In the event of discrepancy between any scaled dimensions on drawings and the figures written thereon, the figures shall govern over the scaled dimensions unless otherwise indicated.

J. Explanations: Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Owner or Architect/Engineer in a timely manner to allow sufficient time for such further written explanations as may be necessary and shall conform to the explanation provided as part of the Contract. The Owner or Architect/Engineer's decision shall be final.

DRAFT

K. Effect of Headings: The headings and titles to provisions in the Contract Documents are descriptive only and shall be deemed not to modify or affect the rights and duties of parties to this Contract.

L. No acceptance, order, measurement, payment, or certificate of or by the Architect/Engineer and/or the Owner or its employees or agents shall either stop the Owner from asserting any rights or operate as a waiver of any provision hereof or of any power or right herein reserved to the Owner or of any rights to damages herein provided.

M. Wherever the terms, "as directed," "ordered," "permitted," "designated," "as approved," "approved equal," "or equal," "acceptable," and other words of similar meaning which authorize an exercise of judgment are used in the Contract Documents, such judgment shall be vested only in the Owner and shall be final.

N. The Contractor shall make available at the job site one copy of each referenced standard and/or Contract Documents for the Contractor's and the Field Representative's use during the time that work covered by the standards and/or Contract Documents is underway.

O. The Contract Documents provide for a complete work and may have been prepared in divisions of various crafts, trades, and other categories of work. The Contractor is responsible for the performance of all work under the Contract regardless of any such divisions and shall ensure that all work is performed and completed. The organization of the Contract Documents into divisions, sections and articles and the arrangement of the drawings do not restrict or limit the Contractor into dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade.

P. No deviation from the approved Contract Documents shall be permitted without the prior written approval of the Owner, which approved deviation shall be documented either by Change order, except that deviations with respect to line items may be paid for via Work Order, to the extent funds are available in the Allowance Account or applicable dedicated Allowance Account.

Q. All Requests for Information by the Contractor shall be submitted to the Architect or Engineer, with a copy to the Owner, shall be in writing, shall specify, to the maximum extent possible, the particular sheet, page, or section for which the Contractor is requesting information, and shall identify with the maximum specificity possible the ambiguity or uncertainty which the Contractor claims exists.

END OF ARTICLE

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3. ARCHITECT/ENGINEER/FIELD REPRESENTATIVE

A. The Architect/Engineer shall respond to questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work in accordance with the time frames prescribed in the Contract Documents. The Architect/Engineer shall decide all questions which may arise as to the interpretation of the Contract Documents relating to the Work, and the fulfillment of the Contract on the part of the Contractor, and those decisions shall be binding on the Contractor.

B. The Architect/Engineer is not authorized to revoke, alter, or waive any requirement of the Contract.

C. The Architect/Engineer, Owner and Field Representative shall have free access to the Work and materials at all times to facilitate the performance of his duties.

D. Subject to concurrence by the Owner, the Architect/Engineer shall have the right to observe and reject any material or work performed which does not meet the requirements of the Contract Documents. When the Architect/Engineer discovers any work in progress or completed that does not meet the requirements of the Contract Documents, the Architect/Engineer shall reject that portion of the Work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Architect/Engineer will not be paid for, nor shall any work associated to remove, remediate, or correct such non-conforming work be considered Extra Work. Any such observation and/or rejection shall not be construed as undertaking supervisory control of the Work or of means and methods employed by the Contractor or his subcontractors and shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. The Contractor shall not request or attempt to require the Architect/Engineer to undertake such supervisory control or to administer, supervise, inspect, assist, or act in any manner so as to relieve the Contractor from such responsibilities or obligations.

E. The fact that the Architect/Engineer has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Architect/Engineer from subsequently rejecting said materials or work.

F. If either the Architect/Engineer or the Field Representative requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at no additional cost to the Owner.

G. Any work done or materials used which are not in compliance with the Contract Documents may be ordered removed and replaced at the Contractor's expense.

H. The Owner and other agencies having jurisdiction over the work hereunder shall be afforded free access to the site to perform such inspections and tests as may be required to determine conformance of the Work with the Contract Documents.

I. Neither the Architect/Engineer nor the Field Representative shall be responsible for any safety obligations imposed on the Contractor by applicable industry standards, licensing requirements, laws, or regulatory requirements.

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J. Inspectors may additionally be employed by the Owner or the Architect/Engineer. Inspectors will be authorized to inspect all work and materials which are to become a part of the completed Project. Inspectors will have no authority to revoke, alter or waive any requirements of the Specifications or to make any changes in the Plans. Each Inspector will be authorized to call the attention of the Contractor to any failure of the work to conform to the Plans or the Specifications and will have authority to suspend the work affected until any question at issue can be referred to and decided by the Engineer. The Inspector will have no authority to delay the Contractor by failure to inspect the work and materials with reasonable promptness.

K. If authorized in writing by the Owner, the Field Representative and/or Architect/Engineer will administer the Contract and the orders of the Owner are to be given through the Field Representative and/or Architect/Engineer. The Field Representative and/or Architect/Engineer shall make initial determinations as to the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the Contract, subject to review and approval by the Owner.

L. The Field Representative may observe the Contractor's work for compliance with the Contract Documents. Such observation shall extend to all, or any part of the work done and to the preparation, fabrication, or manufacture of the material to be used. Owner reserves the right to observe the work via its own employees, Field Representatives, Inspector's, or the Architect/Engineer.

M. Upon discovery, the Field Representative shall call the Contractor's attention to faulty workmanship or defective materials and shall reject work and materials not conforming to the requirements of the Contract Documents.

N. When any work in progress or completed does not meet the requirements of the Contract Documents, the Field Representative shall have the authority to order the Contractor to shut down that portion of the work affected until the affected work is corrected to the satisfaction of the Field Representative. The Field Representative shall confirm this order in writing as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the Field Representative's order to shutdown will not be accepted or paid for.

O. The Field Representative is not authorized to revoke, alter, or waive any requirements of the Contract. If authorized in writing by the Owner, the Field Representative will negotiate and act on behalf of the Owner to the authorized limits of his authority as specified in the Contract Documents.

P. Whenever the Contractor intends to build, assemble, or perform any portions of the Work away from the site, the Contractor shall promptly notify the Field Representative of such intentions, including where and when such work is to be performed before such work starts. The Contractor shall also make arrangements for access thereto by the Owner, Field Representative and/or the Architect/Engineer so that the aforementioned portions of the Work may be inspected as needed.

Q. The fact that the Field Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Field Representative from subsequently rejecting said materials or work and does not relieve the Contractor of his responsibility to meet the requirements of the Contract Documents.

R. The Field Representative shall not act as a foreman or perform other duties for the Contractor, nor interfere with the management of the work by the Contractor.

S. The administration, observation of the work, and actions by the Field Representative, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of

DRAFT

means and methods employed by the Contractor or his subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Field Representative to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.

T. If authorized in writing by the Owner, the Field Representative shall decide all questions relating to the rights of different prime contractors on the Project or site.

U. All materials and each part or detail of the work shall be subject to observation by the Field Representative and/or the Architect/Engineer. The Architect/Engineer and the Field Representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required.

END OF ARTICLE

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4. OWNER

A. Unless otherwise specified or excluded elsewhere in the Contract Documents, the records of borings, test excavations and other subsurface investigations, if any, are offered as information only and solely for the convenience of the Contractor. The Owner does not warrant or guarantee either that said records are complete or that the said records will disclose the actual subsurface conditions. The interpretation of the records and the conclusions drawn therefrom as to the actual existing subsurface conditions are the sole responsibility of the Contractor.

B. Any estimates of quantities of work or materials, based on said borings, test excavations and other subsurface investigations are not warranted by the Owner to indicate the true quantities or distribution of quantities unless the Contractor is expressly directed to rely on such information to prepare and submit his Bid.

C. If the Contractor is notified by the Owner to correct defective or nonconforming work, and the Contractor fails to promptly proceed with corrective action in a reasonable time, the Owner may, upon written notice, accomplish the redesign, repair, rework, or replacement of nonconforming work by the most expeditious means available and back charge the Contractor for the cost incurred. The cost of back charge work shall include all reasonable costs associated with the corrective action.

D. The Owner shall separately invoice or deduct from payments, otherwise due to the Contractor, back charges as provided herein. The Owner's right to back charge is in addition to any or all other rights and remedies provided in this Contract, or by law. The performance of back-charge work, on behalf of the Owner, shall not relieve the Contractor of any of its responsibilities under this Contract including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and the Contract Time.

E. Miami-Dade County enters into this Contract solely in its proprietary capacity. Nothing in this Contract is intended to bind or otherwise restrict the discretion of Miami-Dade County acting in its regulatory capacity, including but not limited to the regulatory acts of the departments of Regulatory and Economic Resources (RER), Transportation and Public Works (DT&PW), Miami-Dade Fire-Rescue (MDFR) and Mia-Dade Water and Sewer Department (WASD), or their successors.

END OF ARTICLE

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5. CONTRACTOR

A. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

B. The Contractor shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in Chapter 489 of the Florida Statutes and Chapter 10 of the Code of Miami- Dade County.

C. The Contractor shall maintain within Miami-Dade County, Florida, a duly authorized agent to accept service of legal process on its behalf and shall keep the Owner advised of such agent's name and address, during the duration of the Contract, and for three years after final payment or as long as Contractor has warranty obligations under these Contract Documents, whichever period terminates later. The Contractor shall complete the form titled "Contractor Agent to Accept Service" included in the Contract Documents and submit it to the Architect/Engineer prior to NTP.

D. The Contractor shall be responsible for the complete performance for all of the work under the Contract, and for the methods, means, and equipment used in performing the Contract and for all materials, tools, apparatus, and property of every description used in connection therewith.

E. If requested by the Owner, the Contractor will obtain written confirmation from impacted subcontractors agreeing to work within the timeframes specified in the Contractor's schedule as a condition of acceptance.

F. Contractor's Superintendent: The Contractor shall provide a superintendent at the site at all times who is competent in the type of work being performed to act as the Contractor's agent, and shall give that superintendent the full authority to receive instruction from the Field Representative or Architect/Engineer and to execute the order or directions of the Field Representative or Architect/Engineer, including the prompt supply of all materials, tools, equipment, labor, and incidentals that may be required. The Contractor shall furnish such superintendence regardless of the amount of work that is subcontracted, and the superintendent shall read, speak, write, and understand English. The Contractor shall also maintain at least one other employee on the work site during Project working hours who speaks and understands English. The superintendent shall be responsible for keeping written daily logs of the work on the project.

G. The competency of the superintendent shall be demonstrated through licensure or certification in contracting, engineering, trade, or experience as applicable to the work being performed. Proof of licensure, certification or qualification of the superintendent must be provided to the Owner at the pre-construction conference and is subject to the approval of the Architect/Engineer or Field Representative after Contractor receipt of said requirements. The Contractor shall replace the Superintendent only with written notice to the County five (5) days in advance of the proposed substitution, and only with a superintendent qualified to perform the work as reasonably determined by the Field Representative.

H. In the event that the Field Representative or Architect/Engineer determines, through the course of the actual work progress, that the superintendent lacks the knowledge or expertise necessary to execute the work in an efficient and competent manner, in keeping with all current codes and best practices, the Field Representative or Architect/Engineer shall notify the Contractor in writing and the

DRAFT

superintendent shall be replaced by the Contractor with a person acceptable to the Field Representative or Architect/Engineer within five (5) working days.

I. The Contractor's failure to replace the superintendent in the time allotted shall be cause for the Owner to suspend work with such delays chargeable to the Contractor as Liquidated Damages as specified elsewhere in this contract.

J. The Contractor shall maintain a daily accounting of his daily manpower, by trade and position, and provide this information to the Field Representative on a weekly basis.

K. The Contractor shall notify the Owner of any changes of key personnel and all replacement personnel prior to assigning them to the jobsite.

END OF ARTICLE

DRAFT

6. SUBCONTRACTORS

A. The Contractor will be permitted to subcontract portions of the Work to competent subcontractors. Such subcontractors shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in the Florida Statutes and the Code of Miami-Dade County. Use of Subcontractors who were not listed on the Subcontracting Form, or equivalent, at the time of award may occur only with the express consent of the Owner.

B. Nothing contained herein shall create any contractual relationship between the Owner and any level of subcontractor, materialman, or supplier.

C. All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor which shall contain provisions that:

1) Preserve and protect the rights of the Owner and any of its authorized representatives under the Contract, including but not limited to, the Architect/Engineer and Field Representative, with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;

2) Require that such Work be performed in accordance with the requirements of the Contract Documents including the Contractor's accepted schedule;

3) Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment in accordance with any and all payment provisions of the Contract Documents;

4) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any subcontractor or Sub-subcontractor or Supplier where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;

5) Require specific consent to all relevant provisions of the Contract Documents; and

6) Incorporate all flow-down clauses specifically called for in the Contract, as directed.

D. Contractor Participation: The Contractor shall perform not less than 10 percent of the Work, not inclusive of materials purchased, with his own organization. If the Contractor is a joint venture, the requirement shall be satisfied by any one, or a combination of any of the joint venture partners. Where a percentage of a Bid Item is subcontracted, the dollar value of that percentage subcontracted will be based on the estimated cost of such Bid Item, determined from information submitted by the Contractor, subject to approval by the Owner. If, during the progress of the Work, the Contractor requests a reduction in such participation percentage, and the Owner determines that, due to the special nature of the conditions of the Work at the time, it would be to the Owner's advantage, the percentage of the Work required to be performed by the Contractor may be reduced, provided written approval of such reduction is obtained by the Contractor from the Owner. The Contractor shall not proceed with any such reductions until his request is approved in writing by the Owner or his authorized designee. Under no circumstances shall less than 10 percent of the Work be performed with the Contractor's own forces.

E. Work Performed by Equipment-Rental Agreement:

1) The amount of work performed under equipment rental agreements shall not be considered subcontractor work. However, for work to be performed by equipment-rental agreement, the Contractor shall notify the Architect/Engineer in writing of such intention before using the rented equipment and shall indicate whether the equipment is being rented on an operated or non-operated basis. The Contractor's written notice shall contain a listing and description of the equipment and a description of the particular work to be performed with such equipment. As an exception to the above requirements for a written notice to the Architect/Engineer, such notice will not be required for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

2) The operators of rented equipment, whether rented on an operated or a non-operated basis, will be subject to wage rate requirements applicable to the Project. If equipment is being rented without operators, the Contractor shall be required to carry the operators on his own payroll. When equipment is rented on an operated basis, the Contractor, when required by the Contract or requested by the Architect/Engineer, shall submit payrolls from the lessor with the names of the operators shown thereon.

F. No work is to be performed at the Work site until the Contractor is in compliance with the Insurance Specifications, has furnished satisfactory evidence of required insurance to the Owner and obtained all required permits.

G. Approval of Subcontractor:

1) Prior to entering into any subcontract for Work to be performed on the Project, the Contractor shall secure the approval of the Owner regarding the prospective subcontractor's qualifications, employment data and compliance with Small Business Enterprise – Construction (SBE-CON) program requirements, if applicable. The forms or web-based system used to provide the required information shall be the same as those included in the Forms or web-based system for Bidding. The Owner will review the submittal from each subcontractor and will furnish written notification to the Contractor concerning approval of the award of the subcontract. If the Owner objects to the proposed award or fails to respond to the Contractor within five (5) business days of the complete submittal of the required information, the Contractor may furnish written notice of another subcontractor for consideration. The Owner may, at its discretion, waive or reduce subcontractor information submittal requirements as it deems appropriate.

2) In accordance with Miami-Dade County Code Sections 2-8.1 and 10-33.01, the Contractor shall not, without written consent of the Owner, either replace any subcontractor or permit any such subcontract to be assigned or transferred, or allow that portion of the Work to be performed by anyone other than the approved subcontractor, except he may perform the work himself with qualified personnel upon written notice to the Owner in accordance with applicable law.

END OF ARTICLE

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7. PROSECUTION OF THE WORK

A. Workmanship and Unauthorized Work

1) Work under this Contract shall be performed in a skillful and workmanlike manner. Unless otherwise indicated in the Contract Documents, the Contractor shall be solely responsible for means and methods and for the coordination of all trades through completion of the Work and without damage to the existing or newly installed components and surfaces. The Architect/Engineer or Field Representative may, in writing, require the Contractor to remove from the work any employee the Architect/Engineer or Field Representative determines incompetent, careless, or otherwise objectionable. Such request shall be at no cost to the Owner.

2) Unauthorized Work: Work performed beyond the lines and grades shown on the Contract Drawings and approved Shop Drawings or established by the Owner, and Extra Work done without a Work Order or Change Order, will be unauthorized work and the Contractor will receive no compensation therefor. If required by the Owner, unauthorized work shall be remedied, removed, or replaced by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy, remove or replace unauthorized work, the Owner may at its discretion, remedy, remove or replace the unauthorized work and the Contractor shall bear the responsibility for any and all costs and for delays resulting from such work.

3) The entire work and each part thereof, unless otherwise specified in the Contract Documents, shall be placed at the location, elevation, grade and gradient specified, and in proper alignment and adjustment. The Contractor shall provide all frames, forms, falsework, shoring, guides, anchors, and temporary structures required to ensure these results.

4) No deviation from the approved Plans/Specifications shall be permitted unless (1) the Contractor has submitted an RFI requesting the deviation, and (2) the Contractor has prior written approval of the Architect/Engineer and/or Owner. Written approval shall be by Work Order or Change Order, s) shall be documented to the extent required by, and shall otherwise comply with the requirements of, the Contract Documents.

5) The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract Documents. All workers shall have sufficient skill and experience to properly perform the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

6) All proposed equipment shall be of sufficient size and in such mechanical condition as to meet requirements of the work, producing a satisfactory quality of work. Equipment used on any portion of the work shall be such that no damage to previously completed work, adjacent property, or existing facilities will result from its use.

7) When the Contract Documents expressly specify the use of certain methods and equipment, such methods and equipment shall be used unless other methods are authorized in writing by the Architect/Engineer by Work Order or Change Order. If the Contractor desires to use a method or type of equipment other than specified in the Contract, he may request permission from the Architect/Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval

DRAFT

is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Architect/Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality or take such other corrective action as the Architect/Engineer may direct at no additional cost to the Owner. No change will be made to the Contract price or the Contract Time as a result of authorizing a change in methods or equipment under this article.

8) The Contractor shall give constant attention to the work to facilitate the progress thereof such that the work will be completed during the contract time and shall cooperate with the Architect/Engineer and its Field Representatives and with other Contractors in every way possible.

9) The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise expressly allowed in the Plans and Specifications, or otherwise expressly approved in writing by the Owner and that the work will be of good quality, free from faults and defects in materials and workmanship for a period of one year from the date of Substantial Completion, unless otherwise required under this Contract. Work not conforming to these standards may be considered defective. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

10) Contractors working in the Public Rights-of-Way shall be cognizant of and comply with Miami-Dade County Code Section 2-103.1 relating to restoration after construction of utilities or works in the public right of way; and Miami-Dade County Code Sections 21-221 through 228 relating to excavation and protection of underground utilities and requiring various Contractor activities; The Contractor shall make every effort to minimize construction impact to business in the area of the Project and as appropriate, the Department will recover any costs caused the County by Contract delays or other business impacting activities attributable to the Contractor. To this end the Contractor shall conduct its construction activities in a manner that will minimize these detrimental effects.

11) The Contractor shall at all times ensure that the work site is maintained in a clean and orderly fashion. As soon as the work in any one locality is completed, the accumulated rubbish or surplus materials thereat shall be promptly removed. The Contractor shall also restore all public and private property in a manner acceptable to the Engineer, to a condition equal to or better than pre-construction conditions. This shall apply to public and private property which has been displaced or damaged during the prosecution of the work, and the Contractor shall leave the site and vicinity unobstructed and in a neat and presentable condition. In the event of delay exceeding two days after written notice is given to the Contractor by the Engineer to remove such rubbish or materials, or to restore displaced or damaged property, the Engineer may employ such labor and equipment as he may deem necessary for the purpose, and the cost of such work, together with the cost of supervision, shall be charged to the Contractor and shall be deducted from any money due the Contractor on the monthly or final estimate. No Contract shall be considered as having been completed until all rubbish and surplus materials have been removed and disposed of properly.

12) The Architect/Engineer shall furnish the Contractor with horizontal and vertical controls which shall be utilized as specified elsewhere herein to layout the work. The Florida Registered Land Surveyor hired by the Contractor shall verify all controls provided by the Engineer of Record and it shall be the responsibility of the Contractor to preserve same.

DRAFT

a. The Contractor shall retain the services of a Florida Registered Land Surveyor who, shall furnish and set stakes, establishing line and grade and shall solely be responsible for the layout of the work as well as the recording of all as-built dimensions and elevations. The Contractor shall furnish all additional stakes, templates, and other materials for marking and maintaining survey points and lines given and shall be responsible for their preservation. Should any of the horizontal and vertical control points furnished by the Engineer of Record be destroyed or disturbed, they shall be reset by the Contractor's Florida Registered Land Surveyor, at the Contractor's expense. All control points previously furnished by the Engineer of Record shall be verified by the Contractor's surveyor.

b. For pipeline Projects the Engineer of Record shall furnish the Contractor with horizontal and vertical control every 1,320 feet which shall be utilized as specified elsewhere herein to layout the work. If a pipeline Project is less than 1,320 feet, the Engineer of Record will provide the Contractor with two horizontal and vertical control points. At on-plant-site Projects, the Engineer of Record shall furnish the Contractor with three horizontal and vertical controls.

c. No direct payment shall be made for the cost to the Contractor of any of the work occasioned by delay in giving lines and grades, or making other necessary measurements, or by inspection.

13) Chapter 446 of the Florida Statutes, as amended, which is by reference incorporated herein, provides labor standards for ratios of apprentices or trainees to journeymen on State, County, or municipal contracts. It shall be the responsibility of the Contractor, prior to the opening of bids, to inform themselves of the provisions of Chapter 446, Florida Statutes, as amended, which are, or may become, applicable to the Contract, and he shall abide by these provisions at no cost to the County. The Contractor is advised to direct all inquiries concerning Chapter 446, Florida Statutes, as amended to the Florida State Apprenticeship Advisory Council.

B. Material

1) Unless otherwise indicated in the Contract Documents, equipment, material, and products incorporated in the Work covered by this Contract shall be new and of the grade specified for the purpose intended. Unless otherwise specifically indicated, reference to equipment, material, product, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at his option and, subject to the approval of the Architect/Engineer, use any equipment, material, article, or process which is equivalent to that named, subject to the requirements of these Contract Documents or propose a substitute equipment, material, article, or process as indicated below. The Contractor shall at all times comply with Green Building or LEED standards, as established in the Contract Documents; unless otherwise specified, LEED Silver standards shall be the minimum standards acceptable to the County. Proposed alternative equipment, material, products, or patented processes shall be considered equivalent if the Architect/Engineer determines that the proposed alternative is functionally equal to and/or sufficiently similar to that specified in the Contract Documents. The Architect/Engineer and/or the Owner may consider the Department’s current maintenance history, requirements for spare parts, training of personnel and conformity to existing systems when reviewing alternatives.

2) The Architect/Engineer shall be the sole judge of the quality, suitability and cost of the proposed alternative equipment, material, article, or process. A proposed alternative shall be considered

equivalent and/or functionally equal to that specified in the Contract Documents if, in the exercise of reasonable judgment, the Architect/Engineer determines that the proposed alternative is at least equal in materials of construction, quality, durability, appearance, strength and design characteristics, will reliably perform at least equally well the function and achieve the results imposed by the Design Professional's Basis of Design and has a proven record of performance and availability, and the procurement and installation of same will not impact project costs or schedule.

3) If the Architect/Engineer determines that a proposed alternative does not qualify as equivalent or functionally equal, the alternative may be proposed for consideration as a substitute subject to the Contractor submitting sufficient information as provided below to allow the Architect/Engineer to determine that the proposed alternative is essentially equivalent to or better than the specified item and is an acceptable substitute for that said specified item.

4) The burden and cost of proving the quality, suitability and cost of an alternative shall be borne by the Contractor. All information required by the Architect/Engineer in judging an alternative shall be supplied by the Contractor at the Contractor's expense. The Architect/Engineer's costs in evaluating a proposed alternative, irrespective of its acceptance, will be reimbursed by the Contractor to the Owner. In the case of approved alternatives, the Contractor shall also reimburse the Owner for the Architect/Engineer's costs to revise the Contract Documents.

5) The Contractor certifies that, if approved and incorporated into the Work, there will be no increase in cost to the Owner or in Contract Time and the proposed alternative shall conform substantially to the detailed requirements of the item specified in the Contract Documents.

    a. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or change will be considered in evaluating the suitability of the alternative material. All costs pertaining to redesign and changes in other parts of the Work, including remedial work to completed work, shall be at the Contractor's expense,

    b. No action relating to the approval of alternative materials will be taken until the request for approval of the alternative materials is made in writing by the Contractor accompanied by complete data as to the quality, suitability and cost of the materials proposed. Such request shall be made at least 60 days before the early start date of the activity. Any delays in receiving approval shall be the responsibility of the Contractor.

    c. The Architect/Engineer will examine and review the proposed alternative with the Owner and return it, within twenty-one (21) calendar days from the date of its receipt at the Architect/Engineer's office, to the Contractor noted with the final decision. If the final decision approves either an equal or a substitution, the approval must also contain the Owner's written approval. When requested by the Architect/Engineer, the Contractor shall resubmit such Shop Drawings, descriptive data and samples as may be required. Contractor is solely responsible for submitting alternatives in a timely fashion so as not to impact project schedule; in the event that Owner's or Architect/Engineer's review of an alternative delays the project, or redesign of the project required to accommodate the alternative delays the project, such delay shall be considered non-compensable delay.

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d. Where classification, rating, or other certification by a body such as, but not limited to, Underwriters' Laboratories Inc. (UL), National Electrical Manufacturer's Association (NEMA), or American Railway Engineering Association (AREA) is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with Contract Documents requirements. Testing required proving equality of the material proposed shall be at the Contractors expense.

e. Approval of an alternative material will be only for the characteristics and use named in such approval, and shall not change or modify any Contract requirement, or establish approval for the material to be used on any other Project for the Owner.

6) Source of Supply and Quality of Materials: The Contractor shall furnish all materials and products required to complete the Work except those designated to be furnished by the Owner.

   a. Notwithstanding prior inspection and approval by the Architect/Engineer, only materials conforming to the requirements of the Contract Documents shall be incorporated in the Work.

   b. The materials shall be manufactured, handled, and incorporated so as to ensure completed work in accordance with the Contract Documents.

7) Defective Materials: Contractor-furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the Work site. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work. The Owner may cause the removal and replacement of rejected material and the cost thereof will be deducted from any monies due or to become due to the Contractor.

8) Handling of Materials: Materials shall be transported, handled, and stored by the Contractor in a manner which will ensure the preservation of their quality, appearance, and fitness for the Work. Materials shall be stored in a manner to facilitate inspection.

9) The Owner will have no responsibility to the Contractor concerning local material sources.

   a. The Contractor shall make all necessary arrangements with the owners of material sources. The Contractor shall pay all costs in connection with making such arrangements, exploring, developing and using material sources, whether or not indicated, except such costs as the Owner expressly agrees in writing to assume.

10) Disposal of Material Outside the Work Site: Unless otherwise specified in the Contract Documents, the Contractor shall make his own arrangements for properly disposing of waste and excess materials outside the Work Site and he shall pay all costs, therefore. Contractor shall comply with all local, state, and federal requirements when disposing of waste and excess materials.

a. Prior to disposing of material outside the Work Site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file with the Architect/Engineer said permit, or a certified copy thereof, together with a written release from the property owner absolving the Owner from any and all responsibility in connection with the disposal of material on said property.

DRAFT

11) Property Rights in Materials: The Contractor shall have no property right in materials after they have been attached or affixed to the Work or the soil, or after payment has been made by the Owner to the Contractor for materials delivered to the site of the Work, or stored subject to or under the control of the Owner, as provided in these Contract Documents. However, the Contractor shall be responsible for the security of the material on-site until Final Acceptance by the Owner.

C. Methods of Sampling and Testing

1) Sampling and testing of all materials shall be as set forth in the Contract Documents. Except for quality control testing and any other testing that may be the direct responsibility of the Contractor as set forth in the Contract Documents, the testing of samples and materials will be made at the expense of the Owner by the project testing laboratory. The Contractor shall furnish the required samples without charge. Any and all fees for non-conforming materials or work shall be solely borne by the Contractor. The Contractor shall give sufficient notification to the Field Representative of the placing of orders for or receipt of materials to permit testing.

2) The Field Representative may inspect, at its source, any specified material or assembly to be used in the Work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the Work and to obtain samples required for its acceptance of the material or assembly. Should the Field Representative conduct plant inspections, the following shall exist:

    a. The Field Representative shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.

    b. The Field Representative shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of materials being furnished.

    c. If required by the Field Representative, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located with respect to the plant.

3) It is understood and agreed that the Owner shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the site. The Field Representative shall have the right to reject only material which, when retested, does not meet the requirements of the Contract Documents. In such an event, the cost of re-testing shall be borne by the Contractor if it results in a rejected material.

4) All inspections and testing of materials, assemblies and equipment will be performed in Miami-Dade County. If the Contractor's material or manufacturing sources are such that inspections or tests cannot be made in Miami-Dade County, all traveling and lodging expenses in connections with such inspections and testing shall be borne by the Contractor.

D. Meetings

1) A pre-construction conference will be held prior to the issuance of the Notice to Proceed to discuss the work to be performed under this contract. The Contractor and its major subcontractors shall be required to attend this meeting. The Contractor will be advised of the time, date, and location of the meeting.

DRAFT

2) The Contractor shall attend weekly construction coordination meetings at a time and place to be designated by the Architect/Engineer. These meetings are intended to determine job progress, identify job problems, assist in solving and preventing job problems, and promote coordination with all entities involved in the Contract and with other Contractors. The Contractor shall cause subcontractors and suppliers to attend as he deems advisable, or as requested by the Architect/Engineer. Unless otherwise provided for in these Contract Documents, the Contractor shall be responsible for generating and distributing meeting minutes for all such meetings. Notwithstanding, the Owner may generate and disseminate supplemental meeting minutes, as may be necessary in the owner's discretion.

E. Permits and Compliance with Laws

1) Unless otherwise provided for in these Contract Documents, the Contractor shall be responsible for obtaining necessary licenses and permits and for complying with applicable Federal, State, County and Municipal laws and latest codes and regulations in connection with the prosecution of the Work. (For payment of permit(s), see Special Provisions). No time extensions will be allowed for delays in obtaining the required permits unless revisions directly caused by the Owner, or its agents are required to the Contract Drawings due to changes in codes, regulations, and applicable contract standards during the contract term. See Special Provisions for additional permit requirements.

2) The Owner will not pay or reimburse the Contractor for any penalties relating to his permits or fees as a result of the Contractor's failure to timely obtain all his permits, inspections, and approvals.

3) The Contractor shall observe and comply with all applicable Federal, State, County and other laws, codes, ordinances, rules, and regulations of the Federal, State and County governments, all authorities having jurisdiction, and any and all programs developed in compliance therewith, in any manner affecting the conduct of the Work.

4) Dewatering of excavations shall be performed in accordance with the applicable provisions of the County's Department of Regulatory and Economic Resources (RER), Florida Department of Environmental Protection (DEP), U.S. Environmental Protection Agency (EPA) and the South Florida Water Management District (SFWMD) Dewatering Permits and/or any and all authorities having jurisdiction and any other requirements specified in the Contract Documents. The means and methods of dewatering shall be determined by the Contractor who shall bear the full cost of same as part of the contract price.

5) All construction activities shall be subject to the pollution prevention requirements established under the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act regulating storm water discharge from construction sites.

6) Upon completion of all of the work contemplated under the Contract Documents, the Contractor shall obtain and deliver to the Field Representative such Certificate(s) of Occupancy or Certificate(s) of Completion as required by the Florida Building Code and/or authority having jurisdiction.

7) The Contractor shall be subject to and comply with all the provisions of Miami-Dade County Code Section 2-8.4.1, which provides that, whenever any individual or corporation or other entity attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, the County shall, whenever practicable, terminate the Contract. The

DRAFT

Contractor is further directed to Section 10-38 of the Miami-Dade County Code, which provides for the debarment of County contractors.

8) The use of explosives will not be permitted under this Contract, except that powder and/or explosive fasteners may be allowed with the prior written consent of the Owner.

F. Coordination and Access

1) Other Contracts: The Owner may undertake or award other contracts for additional work, and the Contractor shall fully cooperate and coordinate with other Contractors and the Owner and carefully fit his own work to such additional work. The Contractor shall not perform any act which will interfere with the performance of work by any other contractor or by the Owner. The Contractor shall be responsible for obtaining all necessary scheduling details from other Contractors and these requests must be provided, in writing, to the Owner. The Owner, or, if authorized in writing by the Owner, the Architect/Engineer shall have the authority to resolve conflicts related to coordination between Contractors.

2) In the event of interference between the work of the Contractor and other contractors working concurrently at the Site, the Field Representative will instruct the Contractor as to which work has priority in performance and such instructions shall be binding upon the Contractor.

3) Utility companies, railroads, municipal agencies, and County tenants/lessees having facilities within the limits of the Work shall always have access to their facilities for operations, inspection, and repair.

4) Lands to be furnished by the County for construction operations, roads, or for other purposes, will be specifically shown on the drawings or provided for in the Specifications. Should the Contractor find it necessary to use any additional land for the construction operations or for other purposes during the construction of the work, they shall provide for the use and restoration of such lands at their own expense.

5) Rights-of-way for work to be done under the Contract will be provided by the County. Nothing herein contained, however, and nothing marked on the drawings, shall be interpreted as giving the Contractor exclusive occupancy of the territory provided. When two or more contracts are being executed at one time on the same or adjacent land in such a manner that work on one contract may interfere with that on another, the Owner, or, if directed in writing by the Owner, the Architect/Engineer will decide which Contractor shall cease work, and which shall continue, or whether the work of both contracts shall progress at the same time, and in what manner. When the territory of one contract is a necessary or convenient means of access for the execution of another contract, the Engineer may grant to the Contractor so desiring such privilege of access to the territory as the Engineer shall deem to be appropriate, and no such decision shall be made the basis of any claim for delay or damage, except as provided in Article 8 herein.

G. Rights in Land and Improvements

The Contractor shall make no arrangements with any person to permit occupancy or use of any land, structure or building within the Work Site for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the Owner and any property owner, former property owner or tenant of such land, structure or building. The Contractor shall not occupy County-owned property outside the Work Site without obtaining prior written approval from the County.

DRAFT

H. Interference With Existing Utilities

1) Attention of the Contractor is specifically directed to the need for careful control of all aspects of his work to prevent damage to cables, ducts, water mains, sewers, fire mains, telephone cables, fuel lines, radar cables, and any other existing overhead or underground utilities and structures.

2) Before commencing work in any given area, the Contractor shall contact utility companies to identify any potential conflicts. Further, the Contractor shall also carefully review the plans, survey, and search the site for utility locations, and determine possible utility conflicts. All known above and underground utilities, including, but not limited to, electrical, telephone, communications, lighting cables, fuel lines, sewer, drainage and water pipes, and other existing structures are shown on the Plans for reference purposes only, but no guarantee is expressed or implied that the information is accurate. It shall be the sole responsibility of the Contractor to ascertain and/or verify the location of any and all such utilities or structures using magnetic and electronic detectors and by hand excavation or other appropriate measures before performing any work that could result in damage to such existing utilities or structures. The Contractor shall make a thorough search of the particular location for underground utilities or structures whether or not shown on the drawings before excavation work is commenced in any particular location. To this end the Contractor shall provide and maintain throughout the term of the Contract, electronic and magnetic detecting devices capable of locating underground or other non-observable utilities or structures. The Contractor shall, after locating primary and critical existing utilities, mark their location with indelible material or other means satisfactory to the Field Representative and maintain above ground physical identification during the work.

3) In the event of damage to, or accidental disruption of utilities or other facilities as a result of the Contractor's operations, the Contractor shall take immediate steps to repair or replace all damage and to restore all services. Further, the Contractor shall engage any additional outside services which may be necessary to prosecute repairs on a continuous "around the clock" basis until services are restored. The Contractor shall also provide and operate any supplemental temporary services to maintain uninterrupted use of the facilities. All costs involved in making repairs and restoring disrupted service resulting from the Contractor's work shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.

I. Protection of Existing Facilities, Vegetation, Structures, Utilities, and Improvements

1) The Contractor shall preserve and protect existing vegetation such as trees, shrubs, and grass on or adjacent to the work site which are not indicated to be removed and which do not unreasonably interfere with the construction work and he shall replace in kind the vegetation, shrubs, and grass damaged by him at his own expense.

2) The Contractor shall protect from damage all utilities, foundations, walls, or other parts of adjacent, abutting or overhead buildings, railroads, bridges, structures, surface and subsurface structures at or near the site of the Work and shall repair or restore any damage to such facilities, except utilities, resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If, after receipt of notification from the Architect/Engineer, the Contractor fails to or refuses to repair any such damage promptly, the Owner may have the necessary Work performed and charge the cost thereof to the Contractor.

DRAFT

3) At points where the Contractor's operations are adjacent to utility facilities, damage to which might result in expense, loss, disruption of service or other undue inconvenience to the public or to the owners, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay, caused by the Contractor's operations.

    a. Where public utilities or their appurtenances interfere with permanent construction, unless otherwise specified, work involved in permanently relocating or otherwise altering such public utilities and their appurtenances will not be a part of this Contract but will be done by utility owners at no cost to the Contractor. If the Contractor wishes to have utilities temporarily relocated, he shall make necessary arrangements with utility owners and reimburse them at his own expense for cost of the Work. The Contractor shall keep the Architect/Engineer advised of temporary relocation arrangements.

    b. The Contractor shall not repair or attempt to repair utility damage but shall immediately contact the utility owner. The Contractor shall obtain the name, address, and telephone number of each utility company that the work will affect and the person in such utility company to contact. He shall submit to the Architect/Engineer said names, addresses and telephone numbers.

4) The Contractor shall comply with the latest version of the Florida Building Code, Florida Fire Prevention Code or the Code under which the Contract Documents were approved, whichever is applicable at the time the Work is performed.

5) In order to safeguard the owners and tenants of abutting property and at the same time prevent unjust or fraudulent claims against the Contractor the Government, State, the Owner, and the Architect/Engineer in respect thereto, the Contractor shall cause a detailed examination of abutting property to be made before construction is begun. The owner or tenant of each parcel or structure or his or their duly authorized representative will be invited to be present during the examination by a notice in writing delivered by the Contractor to a person in charge of the premises or structure, or by the mailing of the notice to the owner at the premises. The Architect/Engineer will attend while the Contractor makes the detailed examination. A complete record including photographs of the existing conditions of each parcel or structure shall be made in triplicate, signed by the Contractor, Owner, and the Architect/Engineer and one copy will be delivered to the Owner, one to the Architect/Engineer and one will be retained by the Contractor. At such time as the Architect/Engineer may direct, or upon the filling of the verified statement by the owner, tenant, lessee, operator, or occupant of the building structure, and in any event, upon the completion of any work that in the opinion on the Architect/Engineer might affect the abutting property, the Contractor will make another detailed examination of such abutting property. A complete record of the then existing conditions of said property will be made in triplicate, signed by the Contractor and one copy will be delivered to the Owner, one to the Architect/Engineer and one will be retained by the Contractor. In any action, which may be brought by any owner, tenant, lessee, operator, or occupant of abutting property to recover under the provisions of this article or any paragraph hereof, the record of the existing conditions of each parcel will be prima facie evidence of the conditions thereof at the time of the making of the examination.

DRAFT

6) The Contractor shall maintain access to fire hydrants and fire alarm boxes throughout the prosecution of the Work. Hydrants, alarm boxes and standpipe connections shall be kept clear and visible at all times unless approved otherwise. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of the fire hydrant, fire alarm box or standpipe connection. The Contractor shall promptly notify the authority having jurisdiction of any impairment to any fire systems.

J. Damage to the Work and Responsibility for Materials

1) The Contractor shall be responsible for materials delivered and work performed until completion and Final Acceptance of the entire construction thereof, except those materials and work which may have been accepted under the applicable sections of this article and shall take all necessary steps to protect the Work, from all causes, at his expense.

2) The Contractor shall bear the risk of injury, loss or damage to any and all parts of the Work for whatever cause, whether arising from the execution or from the non-execution of the Work, except as provided for in this article. The Contractor shall rebuild, repair or restore work and materials which have been damaged or destroyed from any cause before Completion and Acceptance of the Work and shall bear the expense thereof. The Contractor shall provide security including, but not limited to, security guards, temporary drainage systems and erection of temporary structures and temporary fencing as necessary to protect the Work and materials from damage.

3) The Contractor shall be responsible for materials not delivered to the site for which any progress payment has been made to the same extent as if the materials were so delivered.

4) The Contractor's responsibility for material shall be the same for Owner-furnished material, upon receipt of said material from the Owner, under this Contract as for Contractor-furnished material.

5) Relief from Maintenance and Responsibility: The Contractor may request, in writing, from the Owner, that the Owner relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, as described in this paragraph, which have been completed in all respects in accordance with the requirements of the Contract. Such action by the Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by the Owner or the public for any cause, but not from injury or damage resulting from the Contractor's own operations or negligence. Portions of the Work for which the Contractor may be relieved of the duty of maintenance and protection, as provided in this paragraph, include the following:

A. Early possession by the Owner of any portion of the Work, in accordance with the Contract Documents.

B. This Paragraph 5 does not relieve the Contractor of responsibility for repairing or replacing defective work or materials in accordance with the Contract requirements

6) If it is specifically stated in the Specifications that the Department will furnish materials or equipment to the Contractor for incorporation into the work for which this Contract pertains, the County shall not be liable for any: expenses, losses, damages, claims or demands including but not limited to, all direct costs of Contractor such as labor, material, job overhead, and profit markup but also includes any costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruptions, extended direct overhead

DRAFT

or general overhead, acceleration, material or other escalation which includes wages, and other impact cost, or inflationary factors, arising out of any late delivery of such materials or equipment caused by any force Majeure. Compliance with delivery schedules by the Department shall be excused when delays are caused by force Majeure, and, if the delay causes the Contractor to exceed the Contract time stipulated for the final completion of the Project, a non-compensable time extension in the Contract time. An extension in this Contract time will be allowed equal to the length of the delay.

K. Emergencies

1) In an emergency affecting the safety of life, the Work, or adjacent property, the Contractor shall notify the Owner, the Field Representative, or the Architect/Engineer as early as possible that an emergency exists. In the meantime, without special instruction as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent such threatened loss or injury. As emergency work proceeds, the Owner, the Field Representative, or he Architect/Engineer may issue instructions, which the Contractor shall follow. Contractor shall present any claims for compensation for emergency work under this section as claims for Extra Work; however, the Contract shall not be entitled to claim Extra Work for if the Contractor did not cause or contribute to the occurrence of the emergency via its actions or omissions.

2) For purposes of this article, an emergency is defined as an act or event that has occurred or may imminently occur and which is not caused by actions or inactions of the Contractor, which, if no immediate action is taken may affect the safety of life, the work, or adjacent property. This article does not apply to steps taken by the Contractor to protect the Work, adjacent structures, utilities, existing vegetation, etc. under other sections of the Contract Documents. Furthermore, this article does not apply to preparations the Contractor may make prior to storms or hurricanes or other acts of God.

L. Accident Prevention

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

    a. All persons on the Site or who may be affected by the Work;

    b. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and other property at the Site or adjacent thereto, including trees, shrubs lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

2) Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection.

3) Upon notification from the Owner or its representative(s), the Contractor shall promptly correct any deficiencies affecting the safety and wellbeing of the construction workers and the public that have been identified by the notice.

4) Should a situation of imminent danger be identified, work in the affected area must be suspended immediately until the condition has been corrected. Imminent danger is defined as the exposure or vulnerability to harm or risk that is impending or about to occur as defined by the Field Representative or the Architect/Engineer. The Contractor will not be entitled to future claims alleging impacts caused by the Owner stoppage of the Work due to safety reasons.

5) When the Contract involves work on a plant, pump station or other site or restricted area, the Contractor shall comply with the Owner's Process Safety Management Plan, or other safety management plan or Operation Directives as may be promulgated by Owner prior to the commencement of the work and shall instruct their personnel as required by that plan.

M. Warranty of Work

1) Except where longer periods of warranty are indicated for certain items, the Contractor warrants the Work under the Contract to be free from faulty materials and workmanship for a period of not less than one (1) year from the date of Substantial Completion. This one-year period shall be covered by the Surety Performance Bond as specified in this Contract, except that in the case of defects or failure in a part of the work which the Owner takes possession of prior to Substantial Completion, such a period shall commence on the date the Owner takes possession. Upon receiving notification from the Owner or any public body, to whom the ownership of the Work has been transferred or who has agreed to maintain the Work, the Contractor shall immediately remedy, repair, or replace, without cost to the Owner or other notifying party and to the entire satisfaction of the notifying party, defects, damages, or imperfections due to faulty materials or workmanship appearing in said Work within said period of not less than one year. Remedial work shall carry the same warranty as the original work starting with the date of acceptance of the replacement or repair. Payment to the Contractor will not relieve him of any obligation under the Contract. Notwithstanding, the correction of latent defects shall not be considered as warranty work.

2) The Contractor, at no additional expense to the Owner, shall also remedy damage to equipment, the site, or the buildings or the contents thereof, which is the result of any failure or defect in the Work, and restore any Work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within ten (10) days after receipt of notice thereof, the Owner will have the right to replace, repair, or otherwise remedy such failure or defect and deduct all costs from the Contractor’s pay request or Payment and Performance Bond if final payment has been made.

3) The Contractor will correct all latent defects discovered within ten (10) years after Substantial Completion provided that the Owner shall notify the Contractor of each latent defect within the time specified by law and shall provide the Contractor with an opportunity to conduct test as contemplated in Chapter 558, Fla. Stat. The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for all damages sustained by the Owner resulting from latent defects, fraud, or such gross mistakes as may amount to fraud, discovered after the stated guarantee and warranty periods have expired. If the Contractor fails to act within ten (10) days, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the actual cost associated with procurement, implementation, and management thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.

DRAFT

4) Subcontractors', manufacturers' and suppliers' warranties and guaranties, expressed or implied, with respect to any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Contractor for the benefit of the Owner provided that, if directed by the Owner, the Contractor requires such subcontractors, manufacturers, and suppliers to execute such warranties and guaranties, in writing, directly to the Owner.

5) The rights and remedies of the Owner provided in this article are in addition to and do not limit any rights and remedies afforded by the Contract or by law.

6) Nothing in the above intends or implies that this warranty shall apply to work that has been abused or neglected by the Owner, its agents or other public body, utility or railroad to which ownership has been transferred.

END OF ARTICLE

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8. CONTRACT TIME

A. Notice to Proceed

1) The Contract shall be effective 10 days after notice is provided to the Contractor of contract award ("the effective date") The Contractor shall, immediately after the effective date of the contract: deliver the specified bonds and certificates of insurance to the Owner, if same were not delivered prior to the effective date; apply for all necessary permits; provide a schedule and a schedule of values in accordance with the requirements herein. Contract time shall not begin on the effective date, but instead shall begin upon issuance of a Notice to Proceed. Contractor shall use continuous diligent good faith efforts to provide bonds, insurance, schedules, schedule of values, and to cause the issuance of permits. The failure of Contractor to utilize such continuous diligent good faith efforts shall render the Contractor in default of this Agreement. Alternatively, if the Contractor is unable to obtain all necessary permits within 30 days, through no fault of the Contractor, the Owner has the option, but not the obligation, to terminate the Contract, without fault to the Contractor or the Owner, effective immediately upon written notice by the Owner or give the Contractor additional time to obtain the permits.

2) Upon receipt of all required bonds and insurance, issuance of all required permits, and approval by the Owner of the Schedule and the Schedule of values, the Owner may issue a Notice to Proceed. Except as specifically authorized in writing by the Owner, the Contractor is not authorized to perform work (other than obtaining permits) under the Contract until the effective date of the Notice to Proceed, upon which the Contractor shall commence work and shall diligently prosecute the Work to completion within the time limits specified. The Contract time commences on the start date shown on the Notice to Proceed. The Notice to Proceed shall be effective as of the day it is issued by Owner.

3) Any Work Performed by the Contractor (other than obtaining permits) prior to Notice-To-Proceed shall be at the Contractor's own risk and shall not be considered as the basis for any claim.

B. Schedules

1) The Contractor shall provide, maintain, and submit monthly updated schedules in strict accordance with the Contract Documents. The Contractor shall at all times maintain an electronic schedule in the critical path methodology ("CPM") format or in a format as designated in the technical specifications (e.g., Microsoft Project, Primavera, etc).The Special Provisions and Division 01 of the Technical Specifications may contain further specific requirements for the form, content and date of submission of the baseline schedule and all schedule updates. The County shall approve this schedule prior to issuance of Notice to Proceed. The approved schedule shall be the Baseline Construction Schedule.

2) The Contractor shall prosecute the Work in accordance with the approved Baseline Construction Schedule or most recently approved revision to the baseline schedule. In the event that progress along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours as necessary to meet the time or times of completion specified in this Contract at no additional cost to the Owner, unless the Contractor has demonstrated it is entitled a compensable time extension pursuant to the terms of this Contract. In addition, the Contractor shall revise his schedule to reflect these recovery actions

DRAFT

and submit it to the Owner for review and acceptance it being understood that such acceptance will be as to the format and composition of the schedule and not the Contractor's means and methods. Additional costs resulting therefrom will be borne by the Contractor. Delayed progress is defined as:

a. A delay in the start or finish of any activity on the critical path of the approved baseline schedule or most recently approved revision to the baseline such that the last activity in the critical path occurs after the contract time; or

b. A delay in the start or finish of any non-critical activity which consumes more than the available float shown on the approved baseline schedule or most recently approved revision to the baseline, thereby making the activity critical and late; or

c. A projected completion date shown on a schedule update which is later than the contractual completion date; or

d. Any combination of the above.

3) Failure of the Contractor to comply with the requirements under this provision will be grounds for determination that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the Contract Time. Upon such determination, the Owner may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with the Contract Documents. If in the Contractor's estimation, the cause(s) of delay are beyond the Contractor's control, the Contractor shall adhere to the sections of the Contract Documents related to extensions of time, claims and others as appropriate.

4) The Contractor shall be responsible for scheduling and coordinating the work of all crafts and trades, subcontractors, and suppliers, required to perform the Work and to complete the Work within the prescribed time. Any inefficiency or loss of productivity in the labor, materials, or special equipment of the Contractor or its subcontractors of any tier, from any cause, shall be the responsibility of the Contractor. No reimbursement of these or any other costs can be requested by or granted to the Contractor or any of its subcontractors of any tier for inefficiency or loss of productivity in labor, materials, or special equipment, except as specified in the paragraph in this article dealing with Liquidated Indirect Costs, for delays in the performance and completion of the Work directly caused by the Owner or its authorized representatives. Other than the exception described above, additional costs may only be paid to the Contractor as a result of additional Work added to the Contract scope of work.

C. Extensions of Time and Classification of Types of Delays

1) Once a delay has been identified and it has been established through a Time Impact Analysis that a delay affects the Project's end date or contractually mandated milestone date, the delay must be classified to determine responsibility and to compute damages, if any. Before the Contractor can submit a request for time extension, claim or any request for additional compensation involving or related to time, the Contractor must classify the delay(s) in accordance with the following classifications. These delay classifications shall be used by the Owner and the Contractor in resolving any time-related disputes. Delays fall into three basic categories: non-excusable, excusable, and compensable.

a. Non-excusable delays are those delays to the critical path which were foreseeable at the time of contract award or delays caused by the Contractor due to the Contractor's

fault or negligence or his/her own inefficiencies or problems, due to his/her inability to coordinate subcontractors and/or other flaws in his/her planning. In these types of delays, the Contractor is not entitled to extra time or compensation and the Owner may be allowed to assess Liquidated Damages or actual damages, depending on the contract provisions.

b. Excusable delays are those delays to the critical path beyond the Contractor's control and without the active interference of the Owner, such as extreme weather, force majeure, strikes, and delays caused by third parties (i.e. not the Contractor or the Owner). Contractors are granted a time extension but no additional compensation for the extended time of performance for excusable delays.

c. Compensable delays are delays to the critical path caused by active interference or participation of the Owner or Owner's consultant. Examples of compensable delays are failure of the Owner to provide right-of-way, introducing late design changes, late review of shop drawings by the Owner or his Architect/Engineer and failure of the Owner to coordinate the work of various prime Contractors. In the case of a compensable delay, the compensation for the extended period of performance shall be the Liquidated Indirect Costs as specified in the Contract Documents. Where a delay is caused by Extra Work, the direct costs of the Extra Work shall be paid for in accordance with Section 9 herein.

d. Concurrent delays involve two or more delays to the critical path occurring at the same time (irrespective of whether each delay would if analyzed alone, be compensable or non-compensable), either of which had it occurred alone, would have affected the end date of the Project.

e. The compensability of concurrent delays depends on the types of delays involved. The following shall determine the effects of concurrent delays on time extensions and compensable costs:

i. EXCUSABLE DELAY CONCURRENT WITH A NON-EXCUSABLE DELAY. For excusable delays concurrent with non-excusable delays, the Contractor is entitled to a time extension only. For example, it rains the day footings are to be excavated (excusable delay) but the excavation equipment was down for repairs (non-excusable delays).

ii. NON-EXCUSABLE DELAY CONCURRENT WITH A COMPENSABLE DELAY. For non-excusable delays concurrent with compensable delays, the Contractor is entitled to a time extension only. For example, if the Owner introduces a design change for a beam but the Contractor has failed to submit the shop drawings for said beam in a timely manner. This would be an example of a non-excusable delay (late shop drawings) concurrent with a compensable delay (Owner introducing design change).

iii. EXCUSABLE DELAY CONCURRENT WITH A COMPENSABLE DELAY. For excusable delays concurrent with compensable delays, the Contractor is entitled to a time extension only. For example, the Owner does not provide the necessary right-of-way to begin construction (compensable delay) but the Contractor's forces are on strike (excusable delay).

2) Time Extensions: The Contractor may be granted an extension of time and will not be assessed Liquidated Damages for any portion of the delay in completion of the Work, arising from acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, labor disputes, or weather more severe than the norm, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has given to the Architect/Engineer immediate verbal notification, with written confirmation within 48 hours, of the start of the delay of: (1) the cause or causes of delay, (2) the schedule activities impacted by the delay, (3) a rough order of magnitude estimate of the duration of the delay, and (4) potential measures to recover the schedule. Within thirty (30) days after the end of the delay, the Contractor shall furnish the Architect/Engineer with detailed information concerning the circumstances of the delay, the actual number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay; notwithstanding, where monthly schedule updates are required prior to the end of the delay, that monthly updated schedule shall reflect all delay experienced through the date of the submittal. All requests for extension of time shall be submitted in accordance with the Contract Documents. Failure to submit such information will be sufficient cause for denying the delay claims, irrespective of the Contractors entitlement to a time extension or liquidated damages. The Owner will ascertain the facts and the extent of the delay, and its findings thereon will be final and conclusive subject to the dispute provisions in the Contract Documents. The extensions of time granted for these reasons shall be considered excusable and shall not be the basis for any additional compensation.

   a. Weather more severe than the norm shall apply only as it affects particular portions of the Work and operations of the Contractor, as determined by the Architect/Engineer. Weather more severe than the norm is defined as any situation exceeding the mean data as recorded by The National Climatic Data Center, Asheville, North Carolina, and published by the National Oceanic and Atmospheric Administration (this data is taken from the table of normal, means, and extremes in the latest version of the "Local Climatological Data, Annual Summary with Comparative Data, Miami, Florida"). For the calculation of delays due to rain, precipitation of 0.01 inches or more a day occurring during normal work hours shall be considered to be a rainy day, if the rain actually prevented the Contractor from performing work. The effects of weather less severe than the norm may be taken into account in granting time extensions at the Owner's sole discretion.

   b. An extension of time will not be granted for a delay to the critical path caused by a shortage of materials, except Owner-furnished materials, unless the Contractor furnishes to the Architect/Engineer documentary proof that he has diligently made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of a CPM network analysis data, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the Work which could not be compensated for by revising the sequence of his operations. Only the physical shortage of material will be considered under these provisions as a

DRAFT

cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the Architect/Engineer that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

3) Delays Caused by the Owner: If the Contractor's performance of the Work along the critical path is delayed by any condition or action directly caused by the Owner, and which was not foreseeable by the Contractor at the time the Contract was entered into, the Contractor shall, provide notification in accordance with the Contract Documents, of any such delay and of the anticipated results thereof. The Contractor shall cooperate with the Owner and use its best efforts to minimize the impact on the schedule of any such delay. In instances where the Owner causes a delay which is responsible for extending the Contract beyond the completion date, the Contractor may claim Liquidated Indirect Costs as specified in the paragraph in this article dealing with Liquidated Indirect Costs. These delays shall be considered compensable, except for the period in which these delays may be concurrent with Contractor-caused delays. If a delay on the part of the Owner is concurrent, that is, if it occurs at the same time as a Contractor-caused delay, the Owner-caused delay shall be considered an excusable delay for the portion of the Owner-caused delay which is concurrent with the Contractor-caused delay.

4) Delays Beyond Contractor's Control Not Caused by the Owner: If Contractor's performance of the Work along the critical path is delayed by any conditions beyond the control and without the fault or negligence of Contractor and not caused by the Owner, and if the Owner determines that the delay was beyond the control and without the fault or negligence of the Contractor and not foreseeable by the Contractor at the time this Contract was entered into, the Owner will determine the duration of the delay based on the documentation provided by Contractor, and may extend the time of performance of this Contract provided; however, that Contractor shall cooperate with the Owner and use its best efforts to minimize the impact on the schedule of any such delay. These delays shall be considered excusable, and the Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of the delays contemplated by this paragraph and extension of time shall constitute Contractor's sole remedy for such delays.

5) In addition to the delays in the Work specified in this section, delays in the Work directly caused by an act or omission by an owner of an adjoining property, or by tenants or permittees on County property, will not be considered an Owner-controlled delay. An owner of an adjoining property is a person, firm, corporation, partnership, or other organization who either owns or occupies, or both, structures, or parcels or both, immediately adjacent to the Work Site. Extension of time for those delays will be considered excusable and shall be treated as specified in this article, provided that:

    a. The Contractor has, in accordance with this article, given to the Architect/Engineer immediate verbal justification, with written confirmation within 48 hours of the delay; and

    b. The Contractor establishes, to the satisfaction of the Architect/Engineer, that:

        i. The delay was caused directly by an act or omission by the owner of the adjoining property; and

DRAFT

ii. The Contractor has taken reasonable precautions and has made substantial effort to minimize the delay.

6) A Change Order will be furnished to the Contractor within a reasonable period of time, after approval of a request for extension of time, specifying the number of days allowed, if any, and the new dates for completion of the Work or specified portions of the Work. All requests for time extension shall be in accordance with the Contract Documents. With the exception of time extensions covered under the time contingency allowance in the contract, pursuant to Section 9-3 of the Code of Miami-Dade County. All change orders shall be in full accord with the Contract Documents. The Board of County Commissioners shall not be bound by the recommendation of County Staff with respect to time extensions, and may accept, reject, or modify change orders in its sole discretion.

7) Additional requirements for the submittal of time extension requests may be included in the Technical Specifications,

D. Substantial Completion, Final Completion and Final Acceptance

1) The following items must be satisfied before Substantial Completion, as defined in the Contract Documents, will be approved:

a. All Work must be completed to the satisfaction of the appropriate permitting agencies having jurisdiction over the Work. The Contractor must furnish the Owner with a "Temporary Certificate of Occupancy" or a "Certificate of Completion," as applicable, from the permitting agency unless circumstances arise outside the contract scope that prohibits such certificates from being issued (i.e. utility connections).

b. All operational systems which may include but not be limited to electrical systems, security systems, irrigation systems and fire systems, must be completed in accordance with the Contract Documents, tested and approved.

c. All plumbing, heating, ventilation, and air conditioning systems must be completed, tested, and approved. Whenever the scope of work includes a facility or building, an HVAC test and balance report must be submitted and approved as a condition precedent to Substantial Completion.

d. The punch list may not be so extensive or of a nature that the Contractor's completion will significantly interfere with the Owner's beneficial use of the facility.

2) When the Contractor believes that all the Work or designated portion thereof required by the contract is substantially completed, the Contractor shall submit to the Field Representative and the Architect/Engineer a request for Substantial Completion inspection. The Contractor, the Field Representative, the Architect/Engineer, sub-consultants, and the Owner shall meet at the Project site for the purpose of making a combined inspection of the Work. During this inspection, any item of work remaining to be done or Work to be corrected shall be noted on a Punch List. If the Field Representative and/or the Architect/Engineer and the Owner indicate on this inspection report that the Work is substantially complete, a Certificate of Substantial Completion will be issued to the Contractor. The Certificate of Substantial Completion shall establish the date of Substantial Completion and shall have attached the Punch List reflecting any items to be completed or corrected, but which do not prevent beneficial use and occupancy, and shall state the date by which the Punch List is to be completed. The completion time for

the Punch List shall not be greater than 60 days from the date of issuance of the Certificate of Substantial Completion.

3) If any of the conditions listed in this article are not met and the Work has not been completed, or the Owner determines that the final Punch List cannot be completed within sixty (60) days, a Certificate of Substantial Completion shall not be issued. The Contractor shall continue work, reducing the number of items on the Punch List that were not met. Additional inspections shall be scheduled as necessary until Substantial Completion is declared. However, costs incurred by the Owner for any inspections beyond a second inspection will be charged back to the Contractor.

4) In the event the Contractor fails to achieve Substantial Completion within the period specified in the Contract for completion, the Contractor shall be liable for Liquidated Damages and the Owner has, as its option, the right to, after 10 calendar day-notice to the Contractor, to remove such work from the Contract, in which case the value of the work, as measured by the Owners' cost to have such work performed by others, shall be deducted from Contractor's final payment, whether or not the Owner causes such work to be performed. In the event that the Owner chooses to remove such work, there shall not be any further non-excusable delays charged to the Contractor beyond the 10 days following notice to the Contractor. However, the Contractor shall not be relieved of any non-excusable delays incurred through the date of termination. The Punch List and the Contract shall remain open until all the Work is complete and accepted. The current retainage will be used to offset any Liquidated Damages and any back charges, after which, any surplus retainage will be released to the Contractor. If the retainage is insufficient to cover the Liquidated Damages and any back charge, the Owner will bill the Contractor for the balance and the Contractor shall promptly remit to the Owner an amount equal to the billing.

5) Final Completion: When the Owner or Architect/Engineer considers all Work indicated on the Punch List to be complete, the Contractor shall submit written certification that:

   a. Work has been inspected for the compliance with the Contract Documents.

   b. Work has been completed in accordance with the Contract Documents, and that deficiencies listed within the Certificate of Substantial Completion and its attachments have been corrected.

   c. Work is completed and ready for Final Inspection.

6) Should the Owner and/or Architect/Engineer inspection find that Work is incomplete, he will promptly notify the Contractor in writing listing all observed deficiencies. The Contractor shall be responsible for all Direct and Indirect Costs to the County resulting from the Contractor's failure to complete the Punch List items within the time allowed for completion.

7) The Contractor shall remedy deficiencies and send a second certification. Another inspection will be made that shall constitute the final inspection. Provided that work has been satisfactorily completed, the Architect/Engineer will notify the Contractor in writing of Final Acceptance as of the date of this final inspection.

8) Prior to Final Acceptance, the Contractor shall deliver to the Field Representative complete As-Built drawings, all approved Shop Drawings, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required

DRAFT

for all installed materials, equipment, or machinery, all applicable warranties and guarantees, and the appropriate Certificate of Occupancy.

9) Upon notification of Final Acceptance to the Contractor, the Architect/Engineer will request and consider closeout submittals from the Contractor including but not limited to the final Contractor's Affidavit and Release of All Claims.

10) The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

11) Re-Inspection Fees: Should the status of completion of the Work require re-inspection of the Work by the Owner and the Architect/Engineer due to failure of the Work to comply with the Contractor's representations regarding the completion of the Work, the Owner will deduct from the final payment to the Contractor, fees and costs associated with re-inspection services in addition to scheduled Liquidated Damages.

E. Use and Possession

The Owner shall have the right to occupy, take possession of or use any completed or partially completed portions of the Work. Such possession or use will not be deemed an acceptance of work not completed in accordance with the Contract. While the Owner is in such possession, the Contractor, notwithstanding the provisions of the Contract Documents, will be relieved of the responsibility for loss or damage to those portions of the Work occupied by Owner, excepting those resulting from the Contractor's fault or negligence or breach of warranty. The Contractor shall be responsible for maintenance of all equipment in these areas until these responsibilities are turned over to the County in writing. If such prior possession or use by the Owner delays the progress of the Work or causes additional expense to the Contractor, a Contract change in the Contract price, or the time of completion will be made, and the Contract will be modified in writing accordingly.

F. Liquidated Damages and Liquidated Indirect Costs

1) The parties to the Contract agree that time, in the completion of the Work, is of the essence. The Owner and the Contractor recognize and agree that the precise amount of actual damages for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract and that proof of the precise amount will be difficult. Therefore, the Contractor shall be assessed Liquidated Damages on a daily basis for each Day that individual milestones, both interim and cumulative as specified in the Contract Documents, are not timely achieved or that Contract Time is exceeded due to a non-excusable delay. These Liquidated Damages shall be assessed, not as a penalty, but as compensation to the Owner for expenses which are difficult to quantify with any certainty and which were incurred by the Owner due to the delay. The amount of Liquidated Damages assessed shall be an amount, as stipulated in the Contract Documents, per day for each calendar day that individual milestones as specified in the Contract are not timely achieved or that the Project is delayed due to a non-excusable delay.

2) The Owner and the Contractor recognize and agree that the precise amount of the Contractor's Indirect Costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract, and that proof of the precise amount will be difficult. Therefore, Liquidated Indirect Costs recoverable by the Contractor, shall be assessed on a daily basis for each Day the Contract Time is delayed due to compensable delay.

These Liquidated Indirect Costs shall be paid to the Contractor in full satisfaction of all costs and damages caused by compensable excusable delays, except for Direct Costs. There shall be no Liquidated Indirect Costs payable for time directly related to Extra Work for which a Change Order has been issued.

3) The amount of Liquidated Indirect Costs recoverable shall be an amount, as stipulated in the Contract Documents per day for each day the Contract is delayed due to compensable excusable delay. Unless otherwise specified in the Contract, for lump sum contracts, the daily amount of Liquidated Indirect Costs will be calculated by dividing the total amount in the Contractor's approved Schedule of Values for General Requirements by the Contract duration (in days) after deducting any general conditions costs directly paid by the Owner during the execution of the Project. The amount of the Liquidated Indirect Costs calculated in accordance with this formula shall be stated in the Notice-to-Proceed. For unit price contracts, the daily amount of Liquidated Indirect Costs will be calculated as defined in the formula below:

$$\frac{\text{(Amount of Bid x 8\%) less any General Requirements items paid independently/individually}}{\text{Original Contract Duration (In Days)}}$$

4) In the event the Contractor fails to perform any other covenant or condition (other than time-related) of this Contract relating to the Work, the Contractor shall become liable to the Owner for any actual damages which the Owner may sustain as a result of such failure on the part of the Contractor. The Owner reserves the right to retain these amounts from monies due the Contractor.

5) Nothing in this article shall be construed as limiting the right of the Owner to terminate the Contract and/or to require the Surety to complete said Project and/or to claim damages for the failure of the Contractor to abide by each and every one of the terms of this Contract as set forth and provided for in the Contract Documents.

6) Consequential Damages: This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Notwithstanding anything whatsoever contained in this Agreement to the contrary, the Parties expressly agree that no Party to this Agreement shall be liable to any other Party or Parties to this Agreement for any special, consequential, or exemplary damages of any kind whatsoever, whether arising in contract, warranty, tort (including but not limited to negligence), strict liability, or otherwise, including without limitation losses of use, profits, business reputation and financing.

END OF ARTICLE

DRAFT

9. PROGRESS PAYMENTS

A. Payments

1) The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials, for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof.

2) The Owner will make progress payments monthly as the work proceeds. Prior to issuance of the Notice to Proceed, unless the Special Provisions provide for the payment to be determined by using a cost-loaded CPM, the Contractor shall, furnish a Schedule of Values for review and approval by the Owner consisting of a detailed cost breakdown of each lump sum bid item in the Bid Form in such detail as the Architect/Engineer shall request, showing the amount included therein for each principal category of the work, to provide the basis for determining the amount of progress payments. Unit price bid items shall be paid for in accordance with the Bid Form. The Schedule of Values shall clearly indicate the amount to be paid by the Contractor to each individual subcontractor. Notice to Proceed shall not be issued, and the Contractor cannot submit monthly invoices, without an approved Schedule of Values.

3) In making such progress payments, a maximum of 5 percent of the estimated amount shall be retained from each progress payment made to the Contractor until 50 percent Completion of the work has been established. 50 percent completion is defined as the point in time when at least 50 percent of the Work under contract has been physically and satisfactorily completed in accordance with the intent of the Contract Documents as determined by the Architect/Engineer. At this point, the retainage amount withheld from each subsequent progress payment may be reduced, at the discretion of the Owner, provided the Owner finds that satisfactory progress is being made. Also, whenever the Work is Substantially Complete, the Owner, if it considers the amount retained to be in excess of the amount adequate for its protection, may release to the Contractor all or a portion of such excess amount.

4) Material and work covered by progress payments shall become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for material and work upon which payments have been made, the restoration of damaged work or as waiving the right of the Owner to require the fulfillment of the terms of the Contract.

5) Progress payments will be made in accordance with the Miami-Dade County Code, Florida Statute, s. 218.70 Florida Prompt Payment Act, and Florida Statute, s. 218.735.

   a. The Contractor's attention is directed to Florida Statute, s. 218.735, revising provisions regarding timely payment, revising deadlines for the payment of contractors, subcontractors, sub-subcontractors, materialmen and suppliers. The contractor shall remit payment due to subcontractors within 10 days after the contractors' receipt of payment. The subcontractor shall remit payment due to sub-subcontractors and suppliers within seven (7) days after the subcontractors' receipt of payment. Dispute resolution is provided within the Statute.

   b. The Contractor's attention is further directed to Miami Dade County Code Section 10-33.02, Section 2-8.1.4 , Section 2-8.1.1.1.1 and Section 2-8.1.1.1.2 , providing for prompt payments of fourteen (14) days upon receipt of an approved invoice are made

DRAFT

to prime contractor certified as Miami Dade County certified small businesses or prime contracts with Miami Dade County certified small businesses are participating as subcontractors by County agencies and the Public Health Trust; creating dispute resolution procedures for payment of County and Public Health Trust obligations; and requiring the prime Contractor to issue prompt payments within two (2) days upon receipt of payment from the owner, and have the same dispute resolution procedures as the County, for all small business subcontractors. Failure of the Contractor to issue prompt payment to small businesses, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the County contract or Public Health Trust contract and debarment procedures of the County.

6) No progress payments will knowingly be made for work not in accordance with this Contract, but payment of a requisition shall not constitute acceptance of non-conforming work or otherwise constitute a waiver of any of the Owner's rights under the Contract

7) Applications for progress payments shall be in the format as prescribed by the Owner. These applications shall be supported by evidence, which is required by this article. Each application for payment shall clearly indicate the amount to be paid to the Contractor as well as the amount to be paid to each of the Contractor's subcontractors and suppliers, based on work installed and approved at the time of the application The Contractor shall certify, pursuant to the Miami-Dade County False Claims Ordinance, that the work for which payment is requested has been done and that the materials listed are stored where indicated. Those items on the progress payment application that, in accordance with the applicable sections of the Contract Documents, compensate for Force Account Work, for materials not yet incorporated in the work, or for work under change orders negotiated on a cost-reimbursable basis will, under procedures of the Owner, be subject to the Owner's audit review of the Contractor's records supporting the payment application. Audits will be performed so as not to interfere with timely processing of applications for payment. If audit indicates the Contractor has been overpaid under a previous payment application, that overpayment will be credited against current progress payment applications. For a period of five years from Final Acceptance of the Contract, the Contractor shall maintain and make available for audit inspection and copying by the Owner, State and the Government and their authorized representatives, all records subject to audit review.

8) The Owner, at its discretion, may authorize payment for materials not yet incorporated into the Work, whether or not delivered to the Work Site. The value of materials on hand but not incorporated into the Work will be determined by the Field Representative, based on actual invoice costs to the Contractor, and such value will be included in a monthly application for payment only if the materials have been properly stored on the Site, provided that such materials meet the requirements of the Contract Documents, and are delivered to acceptable locations on Site or in bonded warehouses that are acceptable to the Owner; materials paid for in this manner shall be kept segregated from other materials purchased by Contractor and shall not be used for other projects undertaken by Contractor. Such delivered costs of stored or stockpiled materials may be included in the next application for payment after the following conditions are met:

   a. The material has been stored and stockpiled in a manner acceptable to the Field Representative at or on the Work site or in a secure storage facility within Miami-Dade County or other location as approved by the Architect/Engineer. If such

DRAFT

materials are stored outside Miami-Dade County, the Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the Owner by any state or subdivision thereof on account of such storage of such material. The Owner will permit the Contractor, at his own expense, to contest the validity of any such tax levied against the Owner and in the event of any judgment or decree of a court against the Owner, the Contractor agrees to pay same.

b. The Contractor has furnished the Field Representative with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

c. The Contractor has furnished the Field Representative with satisfactory evidence that the materials and transportation costs have been paid including but not limited to certified bills of sale for such materials and insurance certificates or other instruments, in writing, and in a form as required by the Owner. The Architect/Engineer may allow only such portion of the amount represented by these bills as, in his opinion, is consistent with the reasonable cost of such materials.

d. The Contractor has furnished the Owner legal title (free of debts, claims, liens, mortgages, taxes, or encumbrances of any kind) to the material so stored and stockpiled and subject only to the Owner's payment for the materials as reflected in the application for payment. All such materials so accepted shall become the property of the Owner. The Contractor at his own expense shall mark such material as the property of the Owner and shall take such other steps, if any, the Owner may require or regard as necessary to vest title in the Owner to such material.

e. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work. The cost of the material included in an application for payment which may subsequently become lost, damaged, or unsatisfactory shall be deducted from succeeding applications for payment irrespective of the cause and whether or not due to the negligence, carelessness or fault of the Owner.

f. It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents and does not waive Owner's right to reject defective material when it is delivered to the Site until such material is delivered to the Site and satisfactorily incorporated into the work.

g. In no case will the amount in an application for payment for material on hand exceed the Contract price for such material, the Contract price for the Contract item in which the material is intended to be used or the value for such material established in the approved Schedule of Values. Payment for material furnished and delivered as indicated above will be based on 100 percent of the cost to the Contractor and retention will be withheld as specified in the Contract Documents. In any event, partial payments for materials on hand will not exceed 70 percent of the item's Bid Price, including taxes and shipping, or the agreed amount within the Schedule of Values.

DRAFT

h. No partial payment will be made for stored or stockpiled living or perishable plant materials.

i. The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this Article.

j. Materials may be subject to being purchased by the Owner directly under the County's "Direct Material Purchase Program" and installed by the Contractor, as applicable, in accordance with the Special Provisions.

9) Payment of the Contract lump sum price for General Requirements, if applicable, will be made in the following manner:

a. The General Requirements Lump Sum amount, including cost for bonds and insurance, shall be paid in proportion to the total percent of completion. The Owner will consider requests for payment for bonds and insurance under the General Requirements after receipt of certified invoices from the Contractor showing that the Contractor has paid them.

b. The Owner reserves its right to withhold payment for General Requirements, in whole or in part, at the Owner's sole discretion, in accordance with Paragraph 11 below.

10) If any claim is filed against the project for labor, materials, supplies or equipment which the Owner has determined to have been incorporated on the site and the Contractor has not paid for, the Owner will have the right to retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this article or under other provisions of the Contract, an amount equal to such amounts claimed.

11) In addition to the provisions of this article and other relevant sections of the Contract Documents, payment may also be withheld proportionately for the following reasons:

a. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum,

b. Reasonable indication that the Work will not be completed within the Contract Time,

c. Damage to another Contractor,

d. Unsatisfactory prosecution of the Work by the Contractor,

e. Failure of the Contractor, or his subcontractors, to pay wage rates, when applicable as required by the Contract.

f. In the event the Surety on the Performance and Payment Bond provided by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the State of Florida suspended or revoked as provided by law. In this case, payment will continue when the Contractor provides a good and sufficient Bond(s) as required by the Contract Documents, in lieu of the Bond(s) so executed by such Surety.

g. If any work or material is discovered which, in the opinion of either the Architect/Engineer or the Field Representative, is defective, or should a reasonable

doubt arise on the part of either the Architect/Engineer or the Field Representative as to the integrity of any part of the work completed previous to the final acceptance and payment. In this case, there will be deducted from the first application for payment subsequent to the discovery of such work, an amount equal in value to the defective or questioned work, and this work will not be included in any subsequent applications for payment until the defects have been remedied or the causes for doubt removed.

12) The Contactor shall submit with each monthly invoice, or as otherwise directed by the County, certified payroll forms for all the Contractor's employees on the job, as well as for all subcontractors regardless of tier in accordance with applicable Responsible Wages and Benefits in accordance with Miami-Dade County Code Section 2-11.16). Failure to provide this information will cause the Contracting Officer, Field Representative, and/or Architect/Engineer to return the invoice to the Contractor until such time as the Contractor properly submits the required information.

13) Failure to comply with the insurance requirements listed in the Contract Documents may result in the Owner's withholding or delaying payment to the Contractor.

14) In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

B. Taxes

1) Except as may be otherwise provided for in the Contract Documents, the price or prices bid for the Work shall include full compensation for all federal, state, local and foreign taxes, fees and duties that the Contractor is or may be required to pay and the Contractor shall be responsible for the payment thereof during the prosecution of the work.

2) The Contractor's attention is directed to the fact that materials and supplies necessary for the completion of this Contract are subject to the Florida Sales and Use Tax, in accordance with Section 212.08, Florida Statutes, as amended. The Contractor shall not collect taxes upon making delivery to the Owner.

3) The Owner, at its sole discretion, upon request of the Contractor and where appropriate, may furnish to the Contractor appropriate evidence to establish exemption from any taxes, fees or duties which may be applicable to the agreement and from which the Owner is exempt.

C. Tax Exempt Owner Purchase Materials

The owner may incorporate specifications for tax exempt owner purchase in all covered contracts. A tax-exempt owner purchase is one made directly by the County which is intended to be tax exempt in accordance with Section 212.08(6) of the Florida Statutes and Rule 12A-1.094 of the Florida Administrative Code, as the same may be amended. A covered contract is a contract for the construction, improvement or rehabilitation of property which is estimated to exceed ten million dollars ($10,000,000.00) in cost.

The contractor must include Florida State Sales Tax and other applicable taxes in his bid for materials, supplies, and equipment. The owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Contractor's bid and/or contract, substantially in accordance with the contract.

OWNER DIRECT PURCHASE PROCEDURES

A) Contractor shall provide Owner's Representative a list of all intended suppliers, vendors, and materialmen for consideration as Owner Direct Purchased materials. This list shall be submitted at the same time as the preliminary schedule of values and the Project schedule. The Contractor shall submit a description of the materials to be supplied, estimated quantities and prices.

B) Upon request from Owner, and in a timely manner, Contractor shall submit the attached Purchase Order Requisition Form to the Owner's Representative, to specifically identify the materials which Owner has, at its sole option, elected to purchase directly. On the Purchase Order Requisition Form, the Contractor will provide the Owner the required quantities of material at the price established in the vendor's quote to the Contractor, less any sales tax associated with such price.

C) Such Purchase Order Requisition Forms are to be submitted to Owner's designated representative no less than two (2) weeks prior to the need for ordering such Owner Direct Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.

D) After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Promptly, within two (2) business days of receipt of each Purchase Order, the Contractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. After such verification by the Contractor, The Owner shall issue the Purchase Order to the supplier or vendor. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Owner Direct Purchased Materials on the delivery dated provided by the Contractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The Owner's Purchase Order shall also provide that the supplier shall invoice the Owner directly for the items purchased and not the Contractor. Owner shall immediately provide Contractor with copies of such invoices it receives. The Owner's Purchase Orders shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown. The Owner shall issue each supplier or vendor a Certificate of Entitlement on the Certificate of Entitlement Form attached hereto with each Purchase Order.

DRAFT

E) All shop drawings and submittals shall be made by the Contractor in accordance with the Project Specifications.

F) Contractor shall be fully responsible for all matters relating to the receipt of materials in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees in favor of and for the benefit of the Owner required by the Contract Documents, inspection and acceptance of the goods at the time of delivery. At the time of, and subsequent to, the delivery of such materials, the Owner shall be liable for all and loss or damage to equipment and materials purchased pursuant to the Purchase Order. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Contractor. Notwithstanding the foregoing, the Owner shall be responsible for payment off the invoices issued by the supplier or vendor pursuant to the procedures in Paragraph G below.

G) As Owner Direct Purchased Materials are delivered to the jobsite, the Contractor and the Owner's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice issued to the Owner for material delivered. The Contractor shall assure that each delivery of Owner Direct Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier delivered to the Owner (and provided to Contractor) conforming to the Purchase Order, together with such additional information as the Owner or Contractor may require. The Contractor shall verify in writing to the Owner's Representative that the Materials were received in order for the Owner to agree to approve the invoice for payment of the invoice issued. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

H) The Contractor shall insure that Owner Direct Purchase materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Contractor discovers defective or nonconformity's in the Owner Direct Purchased Material upon such visual inspection, the Contractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally the Contractor shall notify the Owner of such occurrence. If the Contractor fails to perform such inspection and otherwise incorporates Owner Direct Purchased materials, the condition of which it either knew or should have known by performance of an inspection, Contractor shall be responsible for all damages to

DRAFT

Owner resulting from Contractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or nonconforming, the Contractor shall promptly take action to remedy the defect or nonconformance so as not to delay the work.

I) The Contractor shall be responsible for obtaining and managing all warranties and guarantees in favor of and for the benefit of the Owner for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier or vendor.

J) The transfer of possession of Owner Direct Purchased Materials from the Owner to the Contractor shall constitute a bailment for mutual benefit of the Owner and the Contractor. The Owner shall be considered the bailor and the Contractor the bailee of the Owner Direct Purchased materials. Owner Direct Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. Bailee shall have the duty to safeguard, store and protect all Owner Direct Purchased Materials.

K) The Contractor shall maintain insurance in favor of and for the benefit of the Owner pursuant to the requirements set forth in the Owner and Contractor Agreement which shall be sufficient to protect against any loss of or damage to Owner Direct Purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Direct Purchased Materials not yet incorporated into the Project from the time the Owner first takes title which shall be at the time of delivery and acceptance of the materials by the Contractor as provided in Paragraph F above.

L) On a monthly basis, Contractor shall be required to review invoices submitted by all suppliers of Owner Direct Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the supplier, based upon Contractor's records of materials delivered to the site and any defects in such materials.

M) In order to arrange for the prompt payment to the supplier, the Contractor shall provide to the Owner, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a payment to the supplier based upon the receipt of data provided. This payment will be released, delivered and remitted directly to the supplier by the Owner. The Contractor agrees to assists the Owner to immediately obtain partial or final release of lien waivers as appropriate.

DRAFT

N) Salvage materials shall be the property of the Owner and stored or removed from the site by the Contractor at the Owner's discretion.

O) From the time of delivery and acceptance, the Owner shall have and retain title to any and all Owner Direct Purchased materials.

P) Upon completion of the project, the Contractor shall execute and deliver to the Owner, one or more deductive Change Orders, referencing the full value of all Owner Direct Purchased materials purchased directly, plus all sales tax savings associated with such materials in Contractor's bid to Owner's Representative.

D. Payments to Subcontractors and Suppliers

1) The Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and in accordance with Miami-Dade County Code Section 10-33.02 and Florida Statute s. 218.735.

2) Before the Contractor can receive any payment, except the first payment, for monies due him as a result of a percentage of the work completed, he must provide the Architect/Engineer with duly executed release of claim from all subcontractors and suppliers who have performed any work or supplied any material on the project as of the date, stating that said subcontractors or suppliers have been paid their proportionate share of all previous payments. In the event such affidavits cannot be furnished, the Contractor may, at the Owner's sole discretion after the Contractor demonstrates justifiable reasons, submit an executed Consent of Surety to Requisition using the form provided in the Contract Documents identifying the subcontractors and the amounts for which the Statement of Satisfaction cannot be furnished.

3) The Contractor's failure to provide a Consent of Surety to Requisition Payment will result in the amount in dispute being withheld until (1) the Statement of Satisfaction is furnished, or (2) Consent of Surety to Requisition Payment is furnished. The subcontractor(s) shall submit with each monthly invoice the Certified Payroll forms for all employees on the job in accordance with applicable Provisions. Failure to provide this information will cause the Architect/Engineer to return the invoice to the Contractor until such time as the Contractor properly submits the information.

E. Contract Prices - Bid Form

Payment for the various Bid Items listed in the Bid Form shall constitute full compensation for furnishing plant, labor, equipment, appliances, and materials and for performing operations required to complete the Work in conformity with the Contract Documents. All costs for work shown or indicated by the Contract Documents, although not specifically provided for by a Bid Item in the Bid Form, shall be included in the most appropriate Bid Item price for the items listed. Except for the relief provided by the applicable section of the Contract Documents governing Differing Site Conditions, the Contractor will not be entitled to additional compensation for providing an activity

or material necessary for the completion of the Work in accordance with the Contract even though the activity or material is not included in a specific Bid Item or indicated in the Contract Documents.

F. Final Payment

1) After the Work has been accepted by the Owner, subject to the provisions of the Contract Documents, a final payment will be made as follows:

a. Prior to Final Acceptance of the Work, the Contractor shall prepare and submit a proposed final application for payment to the Architect/Engineer showing the proposed total amount due the Contractor, segregated as to Bid Item quantities, force account work, and other bases for payments; deductions made or to be made for prior payment; amounts to be retained; any claims the Contractor intends to file at that time or a statement that no claims will be filed; and any unsettled claims, stating amounts. Prior applications and payments shall be subject to correction in the proposed final application for payment. Claims filed with the final application for payment must be otherwise timely under these General Conditions.

b. The Owner will review the Contractor's proposed final application for payment and necessary changes, or corrections will be forwarded to the Contractor. Within 10 days thereafter, the Contractor shall submit a final application for payment incorporating changes or corrections made by the Architect/Engineer together with additional claims resulting therefrom. Upon approval by the Owner, the corrected proposed final application for payment will become the approved final application for payment.

c. If the Contractor files no claims with the final application for payment and no claims remain unsettled within 30 days after final inspection of the Work by the Architect/Engineer and the Owner, and agreements are reached on all questions regarding the final application for payment, the Owner, in exchange for an executed release of all claims and properly executed close-out documents specified in Paragraph 3 below, will pay the entire sum found due on the approved final application for payment.

d. Upon final determination of any and all claims, the Owner, in exchange for properly executed close-out documents specified in Paragraph 3 below, will pay the entire sum found due on the approved final application for payment, including the amount, if any, allowed on claims.

e. The release from the Contractor will be from any claims arising from the Work under the Contract. If the Contractor's claim to amounts payable under the Contract has been authorized by the Owner for assignment pursuant to the relevant sections of the Contract Documents, a release may be required from the assignee.

f. Final payment will be made within 30 days after approval of the final notice and resolution of Contractor's claims, or 30 days after Final Acceptance of the Work by the Owner, whichever is later. If a final application for payment has not been approved within 30 days after final inspection of the Work, the Owner shall make payment of sums not in dispute without prejudice to the rights of either the Owner or the Contractor in connection with any disputed items.

DRAFT

g. Prior to payment of a claim settlement, the claim may be audited by the Owner and may be subject to approval by the funding agencies.

h. Final payment made in accordance with this article will be conclusive and binding against both parties to the Contract on all questions relating to the amount of work done and the compensation paid.

2) With the final application for payment, the Contractor shall return and submit final releases of claim from himself, from each subcontractor of record and from other subcontractors or material suppliers who may have notified the Owner that they were furnishing labor or materials for this project. These releases from subcontractors and suppliers shall be final, originals, notarized and executed on the form provided by the Owner and included in the Contract Documents, all in accordance with all applicable Florida Statutes. In addition, the Contractor shall execute and return to the Owner all the enclosed close-out documents. In the event that all of the above releases cannot be furnished, the Contractor may, at the Owner's sole discretion after the Contractor demonstrates justifiable reasons, submit a Consent of Surety to Final Payment in a form acceptable to the Owner, recognizing lack of such releases of claim. Furthermore, the Contractor and the Surety shall agree in writing, in a form acceptable to the Owner, to indemnify, defend and hold harmless the Owner from any claims of subcontractors and suppliers who refuse to execute final releases.

3) <u>The making of final payment shall constitute a waiver of all claims by the Owner except those arising from</u>:

a. Faulty or defective Work appearing after Final Completion;

b. Failure of the Work to comply with the requirements of the Contract Documents, discovered after Final Completion;

c. The performance of audits to seek reimbursement of any overpayments discovered as a result of an audit as provided in the Contract Documents;

d. The enforcement of those provisions of the Contract Documents which specifically provide that they survive the completion of the Work;

e. The enforcement of the terms of the Payment and Performance Bonds against the Surety;

f. Terms of all warranties/guarantees required by the Contract Documents.

4) The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

5) <u>Escalation of Bid Items</u>

Q) A dedicated allowance account has been established in this contract for escalation of contractor Unit Prices. The funds in the dedicated allowance account may not be used for any purpose other than escalation of Unit Prices as provided for below. Funds in the dedicated allowance account are the property of the Owner, and any unused funds at the end of the Contract shall remain property of the Owner. The Contractor expressly agrees that it is solely responsible for all cost escalations which exceed the value of the dedicated allowance account. Payment shall be made in a lump sum, based on escalation occurring in the preceding 365 days, as outlined below.

R) The Contractor shall be entitled to escalation of its Unit Prices 365 days after award of the contract, and every 365 days thereafter.

S) The Contractor shall utilize the most recent statistical data available as published by the Bureau of Labor Statistics.

T) The formula for the alteration of the Unit Prices shall be the percentage change for the previous 12 months with a not-to-exceed percentage change of five percent (5%) for each bid item. Should the Bureau of Labor Statistics make a major CPI revision, such as a change to the applicable CPI base period, it remains that the Unit Prices shall be altered utilizing the percentage change of the most recent 12 months as published within the changed CPI. The percentage change in Unit Prices shall be computed similar to the following example:

CPI for the most recent month 135.8

Less CPI for the month 12 months previous 129.9

Equals the index point change 5.9

Divided by previous period CPl.. ..... 129.9

Equals 0.0454

The result is multiplied by 100 ..... 0.0454 x 100

Which equals the percentage change multiplier 4.54

The percentage multiplier shall be rounded to two decimal places using the 5/4 rounding method, e.g., if the 3rd digit to the right of the decimal is a 5 through 9, then the 2nd digit to the right of the decimal is rounded up one value; or if the 3rd digit to the right of the decimal is 0 through 4, then the 2nd digit to the right of the decimal remains as is.

E) Following each escalation period, the Contractor shall submit a request for escalation during the prior 365 days. The Owner shall, upon receipt of a proper request submitted in accordance with the provisions of these General Conditions, issue a work order for a lump sum amount representing the cost of escalation for all Unit Price items accepted and paid by the Owner during the preceding 365 days (Unit Price work accepted and paid multiplied times the percentage change multiplier). The Contractor shall at all times throughout the contract submit monthly invoices based on the Unit Prices contained in the bid, and shall not submit monthly invoices based on escalated pricing. Escalation Unit Prices shall only be paid retroactively and in a lump sum. Where the Dedicated Allowance Account is insufficient to pay for Escalated Unit Prices, the Owner shall pay the Contractor to the remaining value in the Dedicated Allowance Account and Owner shall have no further liability for escalated costs.

In the event that base contract work is not broken out into Unit Prices (i.e., for projects which were bid on a lump sum basis) escalation shall apply to the costs of such project as broken out in the approved Schedule of Values as if such costs were Unit Prices.

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DRAFT

END OF ARTICLE

DRAFT

10. CHANGES

A. Changes

NOTE: "OVERHEAD" AS USED IN THIS SECTION IS DEFINED IN SECTION 1 DEFINITIONS - PAGE 8

1) The Owner reserves the right to, at any time, without notice to the sureties and without invalidating the Contract, by written notice or order designated as a Change Notice or Change Order, make any change in the Work within the general scope of the Contract including but not limited to changes:

    a. In the Contract Documents;

    b. In the method or manner of performance of the Work;

    c. In Owner-furnished facilities, equipment, materials, services, or site or;

    d. Directing acceleration in performance of the Work.

    The Owner may authorize, via Allowance Account Work Order, Extra Work which does not change any provision of the General Covenants and Conditions or the Contract Documents, if the value of such work is less than the value remaining in the applicable Allowance Account and/or Time Contingency Account.

2) In the event the Owner exercises its right to change, delete or add work under the Contract, such work will be ordered and paid for as provided for in the Contract Documents.

3) Changes in the work may be initiated by the issuance of a Change Notice by the Architect/Engineer. The Contractor shall submit a proposal to the Architect/Engineer and the Owner for their review, in accordance with the Contract Documents, within five days after receipt of a Change Notice. The Contractor shall maintain this proposal, for acceptance by the Owner, for a minimum of 90 calendar days after submittal. The cost or credit to the Owner for any change in the work shall be determined in accordance with the provisions of the Contract Documents. The Contractor shall not be compensated for effort expended in preparing and submitting price quotes.

4) In the event the Contractor fails to provide the full cost and time estimate for the change work or refuses to execute a full accord Change Order, the Owner will, at its sole discretion, 1) determine the total cost and time impacts of the change and compensate the Contractor and/or extend the Contract Time, if applicable, through a unilateral Change Order signed only by the Owner; or 2) direct the Contractor to proceed with the Work under the Force Account provisions of this article. Failure of the Contractor to submit his total and final estimated cost and time impact within the time period specified on the Change Notice form shall constitute a waiver by the Contractor to claim additional costs or time beyond that which has been determined by the Owner. Any disputes arising out of an Owner determination shall be resolved in accordance with the dispute provisions in the Contract Documents. Pending the Owner's final decision, the Contractor shall proceed diligently with the performance of the Work under the Contract.

5) Changes in the work covered by Unit Prices, as stated in the Contract Documents shall be all inclusive. These prices will include all Direct and Indirect Costs and means and methods of

DRAFT

execution. To be compensable, units must be measured daily by the Contractor and approved in writing by the Owner or his authorized representative.

6) The following mark-ups on Extra Work shall apply to all changes in the Work performed under this article:

   a. For Extra Work performed by the Contractor's own forces, the Contractor agrees that proposed cost to perform said Extra Work will in no event include a rate for total overhead in excess of 20 percent of the actual costs of the Extra Work.

   b. For Extra Work performed by a subcontractor's forces, the Contractor agrees that the overhead, for each sub-contractors, sub-subcontractors, and suppliers, shall not exceed 15% of the total of all sub-contractor's actual direct costs of the Extra Work. The Contractor may then add five percent (5%) times the subcontractor's or sub-tier subcontractor's actual Direct Cost as direct compensation for the Contractor's Overhead and all other costs associated with the subcontractors Extra Work at all tiers.

7) Increases to the Contract Amount shall be authorized by a Change Order executed by the Contractor, the Contractor's Surety and the Owner and approved by the Board of County Commissioners; where the Board of County Commissioners has delegated via Ordinance authority to County Staff to execute change orders, such change orders are subject to ratification by the Board of County Commissioners as described in such ordinance. BCC. Decreases to the Contract amount shall be by Change Order or Work Order as determined by the Owner and shall also be subject to BCC approval when the decrease results from a reduction in the scope of the work.

8) A cost of bonds for Change Orders that impact the Contract price shall be established by the Contractor's actual reimbursement costs, as approved by the Owner, based on the original Contract Amount and the original amount reimbursed to the Contractor for bonds at the commencement of the Work. This cost of bonds shall be added to all credit amounts allowed by the Owner. For Change Orders paid under the Allowance Account, no additional bond cost will be allowed unless the Allowance Account is not included in the original Contract Amount. In this case, additional bond costs for these Change Orders will be considered.

9) Any claim for payment of Extra Work that is not covered by a Change Order or Work Order will be rejected by the Owner.

B. Allowance Accounts

1) Certain portions of work which may be required to be performed by the Contractor under this Contract are either unforeseeable or have not yet been designed, and the value of such work, if any, is included in the Contract as a specific line item(s) entitled "Allowance Account(s)."

   a. The Allowance Account (Contingency) can be used to reimburse the Contractor for 1) furnishing all labor, materials, equipment and services necessary for modifications or Extra Work required to complete the Project because of unforeseeable conditions and; 2) for performing construction changes required to resolve: Owner directed changes in the work, unforeseen conditions (if compensation for same is otherwise allowed under the contract), revised regulatory requirements, work required by any Authority Having Jurisdiction (if not required

DRAFT

due to errors or omissions of the Contractor), and for making final adjustment to estimated quantities shown on the Schedule of Values or amounts bid in the Bid Form to conform to actual quantities installed.

b. Other Allowance Account(s) (Dedicated) may be used as specified in the Contract Documents to fund specific items of work at the sole discretion of the Owner. These dedicated allowance accounts shall be used only for the purposes approved pursuant to a written Work Order issued by the Owner or his authorized representative.

2) At such time as work is to be performed under the Allowance Account(s), if any, the work shall be incorporated into the Schedule and the Schedule of Values and shall in all respects be integrated into the construction as a part of the Contract as awarded.

3) The Work Order for the required work will be issued by the Owner or Architect/Engineer upon receipt from the Contractor of a satisfactory proposal for performance of the work, and the acceptance thereof by the Architect/Engineer and the Owner. If the Contractor and the Owner are unable to agree upon an amount of compensation or; if the nature of the work is such that a Unit Price or Lump Sum price is not economically practical or if the change work is deemed essential to the Project and actual conditions require work to be swiftly conducted to avoid or minimize delays, the Work Order may be issued to perform the work on a Force Account basis. In the event that an equitable adjustment for the said change work cannot be arrived at, either by mutual agreement or under the dispute provisions of the Contract Documents, the compensation hereunder will be the total compensation for this work.

4) No Work Orders shall be issued against an Allowance Account if such Work Orders in the aggregate exceed the authorized amount of that Allowance Account, provided however that such excess may be authorized by appropriate Change Order.

5) The unexpended amounts under the allowance accounts shall remain with the Owner and the Contractor shall have no claim to the same.

C. Deletion or Addition of Work

1) In the event the Owner exercises its right to delete any portion(s) of the work contemplated herein, such deletion will be ordered, and the Contract Total Amount and Time may be adjusted as provided for in these Contract Documents by Change Order or by Work Order, as appropriate. The Contractor shall be reimbursed for any actual reasonable expenses incurred prior to the notice of deletion of work as a result of preparing to perform the work deleted. In the event of a dispute between Owner and Contractor as to the adjustment to the amount of time, the dispute shall be handled in accordance with these General Conditions.

2) Deleted Work - Lump Sum Bid Item(s): The Contractor shall credit the Owner for the reasonable value of the deleted work determined from the approved Schedule of Values, subject to approval by the Architect/Engineer. If the reasonable value of the deleted work cannot be readily ascertained from the Schedule of Values submitted in accordance with these General Conditions, or if requested by the Architect/Engineer, the Contractor shall supply all data required by the Architect/Engineer, including the actual agreements executed by the Contractor with the subcontractors and suppliers affected by the deleted work, to substantiate the amount of the credit to be given the Owner. The Contractor shall also submit for the Owner's approval a revised schedule of values reflecting the work remaining under the Contract following the deletion.

DRAFT

3) No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.

4) In the event the Owner exercises its right to add to any portion of the work contemplated herein, such addition will be ordered, and the Contract Total Amount and Contract Time will be adjusted as provided for in these Contract Documents, by Change Order or by Work Order as appropriate. In the event of a dispute between Owner and Contractor as to the adjustment to the Amount or the Time, the dispute shall be handled in accordance with the Contract Documents.

D. Increased or Decreased Quantities (Unit Prices)

1) This section applies to Owner-initiated additions or deletions from the Work and to the unit prices contained within this contract and controls payments or credits for variations between estimated and actual quantities required to complete the Work, even though the additions or deletions may be distinct or separate structures or activities and regardless of the fact that the addition or deletion is a result of field adjustments, site conditions, a design change, or any other cause. Increases or decreases will be determined by comparing the actual quantity required to the Architect/Engineer's estimated quantity in the Bid Form.

2) If the actual quantity of Bid Item varies from the Architect/Engineer's quantity estimate by 25 percent or less, payment for the Bid Item will be made at the Contract unit price. If the actual quantity varies from the Bid quantity by more than 25 percent, the compensation payable to the Contractor will be the subject of review by the Contractor and the Architect/Engineer and a Contract adjustment will be made by means of a Change Order in accordance with the Contract Documents to credit the Owner with any reduction in unit prices or to compensate the Contractor for any increase in unit price resulting from variations between estimated and actual quantities. The unit price to be re-negotiated shall be only for that quantity above 125 percent or below 75 percent of the original bid quantities.

3) The Contractor shall submit to the Architect/Engineer all data required to substantiate the amount of compensation requested, therefore. In no event shall the Contractor be entitled to compensation greater than the aggregate amount of all the Unit Prices times the original bid quantities of Work reflected in the Bid Form.

4) No compensation will be made in any case for loss of anticipatory profits, loss of bonding capacity or consequential damages.

E. Extra Work

1) Except as otherwise expressly provided above, all additional work ordered, work changed or work deleted shall be authorized by Work Order(s) or Change Order(s). All changed or added work so authorized shall be performed by the Contractor at the time and in the manner specified. The Change Order shall include, as a minimum:

a. Scope of work to be added, deleted, or modified;

b. Cost of work to be added, deleted, or modified;

c. The Contract time extension or reduction in contract time in the case of deleted work required to perform the work to be added, deleted, or modified;

d. Full release of claims associated with the Contract through the date of the change order, or, if the Owner and Contractor cannot agree on entitlement to a claim, a

DRAFT

reservation of the specific claims at issue; such reservation must, to be effective: identify each specific claim reserved, the scope of the work, the maximum cost of the work associated with the claim, and the maximum number of days of Contract time requested.

The Work Order shall include, at a minimum:

a. Scope of work to be added, deleted, or modified;

b. Cost of work to be added, deleted, or modified;

c. The Contract time extension required to perform the work to be added, deleted, or modified;

d. Full release of claims associated with the work order work, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract time requested, shall be specified.

2) If Work is ordered, changed, or deleted which is not covered by Unit Prices, then, the Owner and the Contractor shall negotiate an equitable adjustment to the Contract Price for the Direct Costs for the performance of such work in accordance with this article. Indirect Costs for Work ordered, changed, or deleted may be reimbursed for Excusable and Compensable Delay as defined in these Contract Documents.

a. In order to reimburse the Contractor for additional Direct Costs, either by Work Order, Change Order or any other means, the Contractor must have additional work added to the Contract Scope of Work. The additional cost of idle or inefficient labor, from any cause, or the additional cost of labor made idle or inefficient from any cause will not be considered a reimbursable additional Direct Cost. Special equipment or machinery, which is made idle or inefficient by the Work ordered, changed, or deleted, may be reimbursable if approved by the Architect/Engineer as an unavoidable cost to the Contractor, caused by the Owner.

b. Costs of special equipment or machinery, not already mobilized on the site, approved by the Architect/Engineer, shall be calculated using the current issue of the Associated Equipment Distributors (AED) Manual plus any required mobilization. The selection of which of the AED rates (daily, weekly, monthly) to be used to calculate these costs shall be as follows:

i. Between one (1) day and seven (7) days, use the daily rate.

ii. Between seven (7) days and 30 days, use the weekly rate.

iii. Greater than 30 days, use the monthly rate.

c. For less than one (1) day hourly rates, use the daily rate divided by eight (8).

d. For overtime hourly rates use the daily rate divided by eight (8), the weekly rate divided by 40, or the monthly rate divided by 176 as appropriate.

e. Costs for Special Equipment and Machinery already mobilized on the site, shall not exceed the monthly rate stated in the AED Manual, divided by 176, per hour that the

Special Equipment and Machinery is in use on the work plus any required re-mobilization.

f. The cost calculation shall not combine rates within the range of a time extension. It shall use decimals of the time extension rate that the extension falls under. For example, the cost calculation for a piece of Special Equipment with an approved delay of 45 days shall be one and one-half (1.5) months times the monthly rate, not one (1) month at the monthly rate, plus two (2) weeks at the weekly rate, plus one (1) day at the daily rate.

g. Rental for special equipment and machinery, not already mobilized to the site, shall be an amount equal to the appropriate daily, weekly, or monthly rental rate for such equipment, in accordance with the current issue of Associated Equipment Distributors' (AED) "Compilation of Nationally Averaged Rental Rates and Model Specifications for Construction Equipment" (notwithstanding the caveats contained therein that such rental rates are not for use by government agencies) for each and every rental period (in weeks, days, or months as applicable) that the special equipment or machinery is in use on the work plus any required mobilization. Payment for special equipment and machinery already mobilized to the site shall not exceed the monthly rate stated in the AED standards divided by 176 to establish a per hour rate that the special equipment and machinery is in use on the Work, plus any required re-mobilization.

h. For indirect costs, the Contractor shall be allowed a percentage mark-up as set forth in paragraph (6) above...

F. Differing Site Conditions

1) The Contractor shall immediately, upon discovery and before such conditions are further disturbed, notify the Architect/Engineer in writing of: 1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, 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 the Contract.

2) The Architect/Engineer will promptly investigate the conditions, and if such conditions materially differ from those warranted by the County, and if same cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, a Contract change may be made, and the Contract modified in writing in accordance with the Contract Documents.

3) No claim of the Contractor under this article will be allowed unless the Contractor has given the notice required in the Contract Documents.

4) No claim by the Contractor for a Contract change hereunder will be allowed if asserted after final payment under this Contract.

5) If the Owner is not given written notice prior to the conditions being disturbed, the Contractor will be deemed to have waived his right to assert a claim for additional time and compensation arising out of such changed conditions.

G. Force Account

1) If the Owner and the Contractor cannot reach agreement on an equitable adjustment to the Contract Price for any work as prescribed above, then the Extra Work will be performed on a Force Account basis as directed by the Architect/Engineer and paid for subject to the maximum markups specified in this Contract for changes in the work.

2) In the event Extra Work is performed on a Force Account basis, then the Contractor and the subcontractor(s), as appropriate, shall maintain itemized daily records of costs, quantities, labor and the use of authorized Special Equipment or Machinery. Copies of such records, maintained as follows, shall be furnished to the Architect/Engineer daily for approval, subject to audit.

a. Comparison of Record: The Contractor, including its subcontractor(s) of any tier performing the work, and the Architect/Engineer shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor, the subcontractor performing the work, and the Architect/Engineer or their duly authorized representatives.

b. Statement: No payment will be made for work performed on a force account basis until the Contractor has furnished the Architect/Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:

i. Name, classification, date, daily hours, total hours, rate and extension for each laborer, tradesman, and foreman.

ii. Designation, dates, daily hours, total hours, rental rate, and extension of each unit of special machinery and equipment.

iii. Quantities of materials, prices, and extensions.

iv. Transportation of materials.

The statements shall be accompanied and supported by a receipted invoice of all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

c. Authorization of Special Equipment and Machinery: No compensation for special equipment or machinery shall be made without written authorization from the Architect/Engineer. The Architect/Engineer shall review and evaluate any special equipment or machinery proposed by the Contractor for use on a force account basis. As part of its evaluation, the Architect/Engineer shall determine whether any of the special equipment or machinery being proposed by the Contractor will be concurrently used on the Project, including approved changes, or on other force account work on the Project. If the Architect/Engineer determines that such a concurrent use of special equipment or machinery is being proposed by the Contractor, prior to the authorization of such special equipment or machinery, the Architect/Engineer and thereto Contractor shall establish a straight-line prorated billing mechanism based on the actual percentage of time that the equipment or

DRAFT

machinery is required to be used on the force account work(s). Special equipment or machinery which is approved for use by the Architect/Engineer shall be reviewed and accounted for on a daily basis as provided in the Comparison of Record and Statement paragraphs of this section of the Contract.

d. Inefficiency in the Prosecution of the Work: If in the Owner's or Architect/Engineer's opinion, the Contractor or any of its subcontractors, in performing Force Account Work, is not making efficient use of labor, materials or equipment or is proceeding in a manner which makes Force Account Work unnecessarily more expensive to the Owner, the Owner or Architect/Engineer may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways, including but not limited to: 1) the timing of the Work, 2) the use of unnecessary labor or equipment, 3) the use of a higher percentage of journeymen than in non-force account Work, 4) the failure to procure materials at lowest price, or 5) using materials of quality higher than necessary.

H. Contractor Proposals - General

The Contractor may at any time submit to the Architect/Engineer for review proposed modifications to the Work, including but not limited to, changes in the Contract Time and/or Contract Amount, supported by a cost/price proposal. Upon acceptance of the proposed modifications by the Owner, a Work Order or Change Order will be issued. Denial of a proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities. A Contract change in the form of a Contract price reduction will be made if the change results in a reduction of the cost of performance and the Contractor will not be entitled to share in said savings unless the proposal is made in accordance with Paragraph I of this article. Except as provided in Paragraph I below, the Contractor will not be compensated for any direct, incidental or collateral benefits or savings the Owner receives as a result of the proposal.

I. Value Engineering Change Proposals

The Contractor may submit to the Architect/Engineer one or more cost reduction proposals for changing the Contract requirements. The proposals shall be based upon a sound study made by the Contractor indicating that the proposal:

1) Will result in a net reduction in the total Contract amount;

2) Will not impair any essential function or characteristic of the Work such as safety, service life, reliability, economy of operation, ease of maintenance and necessary standardized features;

3) Will not require an unacceptable extension of the Contract completion time; and

4) Will require a change in the Contract Documents and such change is not already under consideration by the Owner.

a. The Owner may accept in whole or in part any proposal submitted pursuant to the previous paragraph on Value Engineering Change Proposals by issuing a Change Order which will identify the proposal on which it is based. The Change Order will provide for a Contract change in the Contract price and will revise any other affected provisions of the Contract

Documents. The equitable adjustment in the Contract price will be established by determining the net savings resulting from the accepted change. The net savings resulting from the change will be shared between the Contractor and the Owner on the basis of 50 percent for the Contractor and 50 percent for the Owner and will be limited to one Value Engineering Change Proposal per Change Order. Net savings will be determined by deducting from the proposal's estimated gross savings 1) the Contractor's costs of developing and implementing the proposal (including any amount attributable to a subcontractor) and 2) the estimated amount of increased costs to the Owner resulting from the change, such as evaluation, implementation, inspection, related items, and Owner -furnished material. Estimated gross savings will include Contractor's labor, material, equipment, overhead, profit and bond. The Contract price will be reduced by the sum of the Owner's costs and share of the net savings. For the purposes of this article, the applicable provisions of the Contract Documents shall be used to determine the equitable adjustment to the Contract price.

b. The Owner will not be liable for delay in acting upon, or for failure to act upon, any proposal submitted pursuant to of this article. The decision of the Owner as to the acceptance or rejection of any such proposal under the Contract will be final. The submission of a proposal by the Contractor will not in itself affect the rights or obligations of either party under the Contract.

c. The Contractor shall have the right to withdraw part or all of any proposal he may make under Paragraph 2 of this article at any time prior to acceptance by the Owner. Such withdrawal shall be made in writing to the Architect/Engineer. Each such proposal shall remain valid for a period of 60 days from the date submitted. If the Contractor wishes to withdraw the proposal prior to the expiration of the 60-day period, they will be liable for the cost incurred by the Owner in reviewing the proposal.

d. The Contractor shall specifically identify any proposals under Paragraph 2 of this article with the heading "Value Engineering Change Proposal," or the proposal will be considered as made under Paragraph 1 of this article.

2) The Contractor, in connection with each proposal for a Contract Change Notice under this article, shall furnish the following information:

a. A description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages of each, justification when a function or characteristic of an item is being altered, and the effect of the change on the performance of the end item;

b. An analysis and itemization of the requirements of the Contract which must be changed if the Value Engineering Change Proposal is accepted and a recommendation as to how to make each such change (e.g., a suggested specification revision);

DRAFT

c. A separate detailed cost estimate for both the existing Contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the Value Engineering Change Proposal taking into account the costs of development and implementation by the Contractor;

d. A prediction of any effects the proposed change would have on collateral costs to the Owner such as government-furnished property costs, costs of related items, and costs of maintenance and operation;

e. A statement of the time by which a Contract modification accepting the Value Engineering Change Proposal must be issued so as to obtain the maximum cost reduction, noting any effect on the Contract completion time or delivery schedule; and

f. Identification of any previous submission of the Value Engineering Change Proposal to the Owner, including the dates submitted, the numbers of the contracts involved, and the previous actions by the Owner.

3) The Contractor waives any and all claims relating to any delay that may arise out of a Value Engineering Change Proposal.

END OF ARTICLE

DRAFT

11. CLAIMS AND DISPUTES

A. Notice of Claims

1) The Contractor will not be entitled to additional time or compensation otherwise payable for any act or failure to act by the Owner, the happening of any event or occurrence, or any other cause, unless he shall have given the Architect/Engineer a written notice of claim therefore as specified in this article.

2) The Contractor shall provide immediate verbal notification with written confirmation within 48 hours of any potential claims and of the anticipated time and/or cost impacts resulting thereof. The written notice of claim shall set forth the reasons for which the Contractor believes additional compensation and/or time will or may be due, the nature of the costs involved and the approximate amount of the potential claim.

3) It is the intention of this article, that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of the Architect/Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken.

4) The notice requirements of this article are in addition to those required in other articles of these Contract Documents.

5) The Contractor shall segregate all costs associated with each individual claim including but not limited to labor, equipment, material, subcontractor and supplier costs, and all other costs related to the claim. In the event that the Contractor has multiple claims, the Contractor will segregate each claim individually including the respective costs associated with each claim. Failure to segregate claims and their respective costs will be grounds for the Owner's rejection of the claim. No “total cost claims” shall be allowed under this Contract.

6) The Contractor must maintain a cost accounting system as a condition for making a claim against the Owner. The cost accounting system must segregate the costs of the work under the Contract (non-claims-related) from claims-related and other Contractor costs through the use of a job cost ledger and be otherwise in compliance with general accounting principles.

7) If the Owner decides to pay all or part of a claim for which notice was not timely made, the Owner does not waive the right to enforce the notice requirements in connection with any other claim.

8) Inasmuch as the notice of claim requirements of this article are intended to enable the Architect/Engineer to investigate while facts are fresh and to take action to minimize or avoid a claim which might be filed thereafter, the Contractor's failure to make the required notice on time is likely to disadvantage the Owner. Therefore, a claim that does not comply with the notice requirements above shall not be considered unless the Contractor submits with his claim proof showing that the Owner has not been prejudiced by the Contractor's failure to so comply and, in the event the Owner has been prejudiced by the Contractor's failure to submit a timely notice of claim, the Owner will reduce any equitable adjustment claimed by the Contractor to reflect the damage.

DRAFT

B. Claim Submittals

1) Claims or requests for equitable adjustments filed by the Contractor shall be filed in full accordance with this article no later than 30 calendar days after the act giving rise to the claim and in sufficient detail to enable the Owner to ascertain the basis and amount of said claims. In the case of continuing or on-going claim events, the Contractor shall be allowed to periodically amend his claim to more accurately reflect the impact of said claim, until the end of the claim event. No claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment, or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

2) The Owner will review and evaluate the Contractor's claims. It will be the responsibility of the Contractor to furnish, when requested by the Architect/Engineer, such further information and details as may be required to determine the facts or contentions involved in his claims. The cost of claims preparation or Change Order negotiations shall not be reimbursable under this Contract.

3) Any work performed by the Contractor prior to Notice-to-Proceed (NTP) shall not be the basis for a claim from the Contractor of any kind.

4) Each claim must be certified by the Contractor as required by the Miami-Dade Code, False Claims Act (see Code Section 21-255, et seq.), and accompanied by all materials required by Miami-Dade County Code Section 21-257. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:

    a. The claim is made in good faith;

    b. The claim's supporting data is accurate and complete to the best of the person's knowledge and belief;

    c. The amount of the claim accurately reflects the amount that the claimant believes is due from the Owner; and

    d. The certifying person is duly authorized by the claimant to certify the claim.

5) In order to substantiate time-related claims (delays, disruptions, impacts, etc.), the Contractor shall, if applicable and as determined by the Owner, submit, in triplicate, the following information (schedule information shall be provided in electronic format with all logic visible):

    a. Copy of Contractor's notice of claim in accordance with this article. Failure to submit the notice is sufficient grounds to deny the claim.

    b. The approved, as-planned Schedule in accordance with the applicable section of the Contract Documents and computer storage media, if applicable.

    c. The as-built Schedule reflecting changes to the approved schedule up to the time of the impact in question and computer storage media if applicable.

    d. The basis for the duration of the start and finish dates of each impact activity and the reason for choosing the successor and predecessor events affected in the schedule

DRAFT

shall be explained. Also, the basis for the duration of any lead/lags inserted into the schedule and the duration in related activity duration shall be explained.

e. A marked-up as-built Schedule indicating the causes responsible for changes between the as-planned and as-built schedule and establishing the required cause and effect relationships.

f. After indicating specific time related changes on the as-built schedule, the documentation must be segregated into separate packages with each package documenting a specific duration change identified previously. This documentation package shall include Change Orders, Change Notices, Work Orders, written directions, meeting minutes, etc., related to the change in duration.

g. The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation described under Liquidated Indirect Costs: 1) home office expenses or any Direct Costs incurred allocated from the headquarters of the Contractor; 2) loss of anticipated profits on this or any other project, 3) loss of bonding capacity or capability; 4) losses due to other projects not bid upon; 5) loss of business opportunities; 6) loss of productivity on this or any other project; 7) loss of interest income on funds not paid; 8) costs to prepare, negotiate or prosecute claims and 9) costs spent to achieve compliance with applicable laws and ordinances (excepting only sales taxes paid shall be reimbursable expense subject to the provisions of the Contract Documents).

h. All non-time-related claim items for additional compensation for Direct Costs shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.

i. Cost information shall be submitted in sufficient detail to allow for review. The basis for the budgeted or actual costs shall include man-hours by trade, labor rates, material, and equipment costs etc. These costs shall be broken down by pay item and Construction Specification Institute (CSI) Division.

j. The documentation for budgeted cost shall, as a minimum, include:

    i. Copies of all the Contractor's bid documents, bid quotes, faxed quotes, emailed quotes etc.

    ii. Copies of all executed subcontracts.

    iii. Other related budget documents as requested by the Architect/Engineer.

k. The documentation for actual cost shall, as a minimum, include:

    i. Time Sheets.

    ii. Materials invoices

    iii. Equipment invoices

    iv. Subcontractors’ payments

    v. Other related documents as required by the Architect/Engineer.

l. The Contractor shall make all his books, employees, work sites and records available to the Owner or its representatives for inspection and audit.

6) No payment shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work. Contractor shall not be entitled to any compensation for loss of efficiency, loss of productivity, disruption, loss of opportunity, or other similar indirect costs except via entitlement to Liquidated Indirect Damages as provided for herein. As indicated above, the Architect/Engineer and the Field Representative shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within 60 days after a claim has been received, the claim shall either be rejected with an explanation as to why it was rejected or acknowledged. Once the claim is acknowledged, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties fail to reach an agreement on a recognized claim, the Owner shall pay to the Contractor the amount of money it deems reasonable, less any appropriate retention, to compensate the Contractor for the recognized claim.

7) Failure of the Contractor to make a specific reservation of rights in the form provided for above regarding any such disputed amounts in the body of the Change Order which contains the payment shall be construed as a waiver, abandonment, or relinquishment of all claims for additional monies resulting from the claims embodied in said Change Order. However, once the Contractor has properly reserved rights to any claim, no further reservations of rights shall be required, and the Contractor shall not be required to repeat the reservation in any subsequent change order. Prior reservation of rights may however be further limited or waived by express reference, in subsequent change orders. Notwithstanding the aforementioned, at the time of final payment under the Contract, the Contractor shall specify all claims which have been denied and all claims for which rights have been reserved in accordance with this section. Failure to so specify any particular claim shall be constructed as a waiver, abandonment, or relinquishment of such claim.

C. Disputes

1) The following provisions shall govern disputes under this Contract unless the Special Provisions to this Contract contain the requirement for the use of an alternate dispute resolution method. For example, for large projects of great complexity, a Dispute Review Board (DRB) may be employed by the Owner to settle disputes in lieu of the Department Director or Office of the Mayor (OOM) designee as specified below. In this case, the DRB alternative shall be specified by the individual department in the Special Provisions and, if utilized, shall supersede this dispute provision.

a. In the event the Contractor and Owner are unable to resolve their differences concerning any determination made by the Architect/Engineer or Owner on any dispute or claim arising under or relating to the Contract (referred to in this Section as a "Dispute"), either the Contractor or Owner may initiate a dispute in accordance with the procedure set forth in this article. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

b. For contracts with a value of $5 million or less, all Disputes under this Contract shall be decided by the Department Director or his designee. For contracts valued at more than $5 million, Disputes shall be decided by a designee appointed by the OOM.

DRAFT

Decisions rendered by the Department Director or OOM designee shall not be binding but shall be admissible in a court of competent jurisdiction.

c. As soon as practicable, the Department Director or OOM designee shall adopt a schedule for the Contractor and Owner to file written submissions stating their respective positions and the basis, therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within 20 working days of the date on which such written submissions are filed, the Department Director or OOM designee shall afford each party an opportunity to present a maximum of one hour of argument. The Department Director or OOM designee may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact, and the party is entitled to a favorable resolution pursuant to the terms of this Contract. As part of such decision, the Department Director or OOM designee shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Department Director or OOM designee shall have the authority to rule on questions of law, including disputes over contract interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Department Director or OOM designee is authorized by both parties to strike elements of claims seeking relief or damages not available under the contract (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) by summary disposition.

d. In the event that the Department Director or OOM designee determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Department Director or OOM designee at his reasonable discretion.

e. No formal discovery shall be allowed in connection with any proceeding under this article. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this contract shall remain in force and effect throughout the proceeding. The Department Director or OOM designee shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this contract shall constitute a waiver of that party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim all of which shall be a criterion in determining the sufficiency and validity of a claim.

f. The Department Director or OOM designee shall issue a written decision within 15 working days after conclusion of any testimonial proceeding and, if no testimonial

DRAFT

proceeding is conducted, within 45 days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or subcontractor claims. As indicated previously, the decision of the Department Director or OOM designee is not binding on the parties but will be admissible in a court of competent jurisdiction.

g. If either party wishes to protest the decision of the Department Director or OOM designee, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Department Director or OOM designee's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

h. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Architect/Engineer's interpretation. Any presentation or request by the Contractor under this article will be subject to the same requirements for Submittal of Claims in this article.

D. Terminations

1) Termination for Convenience

a. The Owner may at its option and discretion terminate the Contract, in whole or, from time to time in part, at any time without any default on the part of the Contractor by issuing a written Notice of Termination to the Contractor and its Surety, specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective, at least 10 days prior to the effective date of such termination.

b. In the event of Termination for Convenience, the Owner shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its subcontractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Field Representative and approved by the Architect/Engineer. The Contractor will be paid for:

i. The value of all work completed under the Contract, based upon the approved Schedule of Values and/or Unit Prices,

ii. The value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,

iii. The value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the Owner to a site or location designated by the Department prior to release of payment for such materials and equipment.

iv. The values calculated under i., ii., and iii. above shall be as determined by the Field Representative and approved by the Architect/Engineer.

c. In the event of termination under this article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such termination.

d. In the event of termination under this article, the Owner does not waive or void any credits otherwise due the Owner at the time of termination, including Liquidated Damages, and back charges for defective or deficient work.

e. Upon termination as indicated above, the Field Representative shall prepare a certificate for Final Payment to the Contractor.

2) Termination for Default of Contractor

a. The Contract may be terminated in whole or, from time to time in part, by the Owner for failure of the Contractor to comply with any requirements of the Contract Documents including but not limited to:

i. Failure to perform the work or failure to provide sufficient workers, equipment, or materials to assure completion of work in accordance with the terms of the Contract, and the approved Schedule, or

ii. Failure to provide the Schedule for the Project by the date due, or

iii. Failure to provide adequate shop drawings by the dates indicated in the approved Schedule for the Project, or

iv. Failure to replace the superintendent in the time allotted, if required, or

v. Performing the work unsuitably or neglecting or refusing to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Field Representative, or

vi. Violating the terms of the Contract or performing work in bad faith, or

vii. Discontinuing the prosecution of the work, or

viii. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or

ix. Abandonment of the Contract, or

x. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or

xi. Allowing any final judgment to stand against him unsatisfied for a period of ten (10) days, or

xii. Making an assignment for the benefit of creditors, or

xiii. For any other cause whatsoever, fails to carry out the work in an acceptable manner or to comply with any other Contract requirement.

b. Before the Contract is terminated, the Contractor and its Surety will be notified in writing by the Architect/Engineer or the Field Representative of the conditions which make termination of the Contract imminent (Notice to Cure). The Contract may be terminated by the Owner ten (10) days after said notice has been given to the Contractor and its Surety unless a satisfactory effort acceptable to the Owner has been made by the Contractor or its Surety to correct the conditions. If the Contractor

DRAFT

fails to satisfactorily correct the conditions giving rise to the termination, the Owner may declare the Contract breached and send a written Notice of Termination to the Contractor and its Surety.

c. The Owner reserves the right, in lieu of termination as set forth in this article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied. In the event of Termination for Default, the Owner also reserves the right, in cases where the damages calculated by the Owner are expected to exceed the amount the Owner anticipated recovering from the Surety, to withhold amounts for work already performed.

d. In the event the Owner exercises its right to terminate the Contract for default of the Contractor as set forth herein, the Owner shall have the option of finishing the work, through any means available to the Owner, or having the Surety complete the Contract in accordance with its terms and conditions. In case that the Owner decides to have the Surety take over the remaining performance of the Work, the time or delay between Notice of Default and start of work by the Surety is a non-excusable delay. If the Surety fails to act promptly, but no longer than thirty (30) calendar days after the Owner notifies the Surety of the Owner's decision to have the Surety complete the work, or after such takeover fails to prosecute the Work in an expeditious manner, the Owner may exercise any of its other options including completing the Work by whatever means and method it deems advisable. No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

e. Payments for the various Bid Items listed in the Bid Form will constitute full compensation for all expenses incurred in consequence of discontinuance of all or any portion of the Work except as provided in this section of the Contract Documents. In no event will compensation be made for anticipatory profits or consequential damages as a result of a discontinuance of all or any portion of the Work.

f. The Contractor shall immediately upon receipt communicate any Notice of Termination for Default issued by the Owner to the affected subcontractors and suppliers at any tier.

g. If, after Notice of Termination of the Contractor's right to proceed under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, or that the Contractor was entitled to an extension of time under the Contract Documents, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the section of this article dealing with Termination for Convenience.

3) Termination for National Emergencies

a. The Owner shall terminate the Contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction Contract as a direct result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.

DRAFT

b. When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual number of units or items of work completed at the Contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

4) Implementation of Termination

a. If the Owner cancels or terminates the Contract or any portion thereof, the Contractor shall stop all work on the date and to the extent specified in the Notice of Termination and shall:

i. Cancel all orders and Subcontracts, to the extent that they relate to the performance of the work terminated and which may be terminated without costs;

ii. Cancel and settle other orders and Subcontracts, except as may be necessary for completion of such portion of the Work not terminated, where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed, subject to prior approval of the Field Representative;

iii. Settle outstanding liabilities and claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, to the extent it may require, which approval or ratification shall be final for the purposes of this Article;

iv. Transfer title and deliver to the Owner, in the manner, at the time, and to the extent, if any, directed by it, in accordance with directions of the Field Representative, all fabricated or un-fabricated parts, all materials, supplies, work in progress, completed work, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;

v. Assign to the Owner in the manner, at the times and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner will have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

vi. Deliver to the Field Representative As-Built Documents, complete as of the date of cancellation or termination, plans, Shop Drawings, sketches, permits, certificates, warranties, guarantees, specifications, three (3) complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated by the Contractor for use in the performance of the work;

vii. Perform all work as may be necessary to preserve the work then in progress and to protect materials, plant, and equipment on the site or in transit

thereto. The Contractor shall also take such action as may be necessary, or as the Architect/Engineer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest;

viii. Complete performance of each part of the work not terminated by the Notice of Termination;

ix. Use his best efforts to sell, in the manner, at the time, to the extent, and at the price or prices directed or authorized by the Owner, property of the types referred to above; provided, however, that the Contractor a) shall not be required to extend credit to any purchaser, and b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; provided, further, that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Owner may direct;

x. Termination of the Contract or a portion thereof shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve its Surety of its obligation for and concerning any just claim arising out of the work performed;

xi. In arriving at the amount due the Contractor under this article, there will be deducted, (1) any claim which the Owner may have against the Contractor in connection with this Contract and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Owner.

5) Suspension of Work

a. The Owner reserves the right to temporarily suspend execution of the whole or any part of the Work without compensation to the Contractor.

b. In case the Contractor is actually and necessarily delayed by any act or omission on the part of the Owner, as determined by the Owner in writing, the time for completion of the Work shall be extended by the amount of the time of such delay as determined by the Owner, and an allowance may be made for actual direct costs, if any, which may have been borne by the Contractor. Such requests for additional time and/or compensation must be made in accordance with the applicable sections of the Contract Documents.

c. Only the actual delay necessarily resulting from the causes specified in this Article, shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be granted for the delay.

DRAFT

d. In case the Contractor is actually and necessarily delayed in the performance of the Work from one or more of the causes specified in this Article, the extension of time to be granted to the Contractor shall be only for such portion of the Work so delayed. The Contractor shall not be entitled by reason of such delay to an extension of time for the completion of the remainder of the Work. If the Contractor shall be so delayed as to a portion of the Work they shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work. No demand by the Contractor that the Owner determine and certify any matter of extension of time for the completion of the Work or any part thereof will be of any effect whatsoever unless the demand be made in writing at least 30 days before the completion date of the Work or any part thereof for which Liquidated Damages are established when meeting those dates is claimed to have been delayed by a suspension under this Article. Owner's determination as to any matter of extension of time for completion of the Work or any part thereof shall be binding and conclusive upon the Contractor.

e. Permitting the Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such periods shall not operate as a waiver on the part of the Owner of any rights under this contract.

f. The Contractor shall insert in each subcontract a provision that the subcontractor shall comply immediately with a written order of the Owner to the Contractor to suspend the Work, and that they shall further insert the same provision in each subcontract of any tier.

END OF ARTICLE

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12. MISCELLANEOUS PROVISIONS

A. Third-Party Beneficiary

No contractual relationship will be recognized under the Contract other than the contractual relationship between the Owner and the Contractor. There shall be no third-party beneficiary to this Contract.

B. Venue

Any litigation which may arise out of this Contract shall be commenced either in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, or in the United States District Court, Southern District of Florida.

C. Governing Laws

1) The Contractor shall, during the term of this Contract and in the prosecution of the work, be governed by the statutes, regulatory orders, ordinances and procedures of the United States of America, the State of Florida, and Miami-Dade County including, but not limited to, the Florida Building Code and Florida Fire Prevention Code.

2) The Contractor(s) shall comply with all applicable laws including, but not limited to, the Small Business Enterprise (SBE) programs (including, without limitation, SBE-Construction, SBE-Architectural and Engineering, and SBE-Goods, SBE-Services); Responsible Wages and Benefits program; Community Workforce Program; Residents First Training and Employment programs as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.2, 2-8.1.1.1.1, 2-11.16, 2-1701, and 2-11.17 of the Code; the Sustainable Buildings Program; Chapter 119 of the Florida Statutes regarding public records laws; the State of Florida and the County's Prompt Payment laws as set forth in Sections 2-8.1.4 and 10-33.02 of the County's ordinances; the County's Inspector General requirements as set forth herein; the County's Art in Public Places requirements as set forth herein; and provide the requisite bonding in accordance with Section 255.05 of the Florida Statutes, as well as the insurance requirements set forth in this Agreement

Specifically, the Contractor and his subcontractors shall comply with Miami-Dade County Resolution Nos. R-1386-09 and R-138-10 governing the treatment of SBE-CON firms.

3) In addition, the Contractor agrees to abide by all federal, state, and local procedures, as may be amended from time to time, regarding how documents that the Contractor has access to, are handled, copied, and distributed, particularly documents that contain sensitive security information.

D. Successors and Assigns

The Owner and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due the Contractor hereunder, without the previous written notice to the Owner. Consent will not be given to any proposed assignment, which would relieve the Contractor or his Surety of their responsibilities under the Contract.

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E. Written Notice

1) Written notice to the Contractor shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to those who give the notice.

2) Written notice to the Owner shall be deemed to have been duly served if delivered in person, delivered at or sent by registered or certified mail to the individual identified in the Special Provisions.

F. Indemnification

1) In consideration of this Agreement, and to the maximum extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the Government, State, County, their elected officials, officers, employees, consultants, and agents from claims, liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work.

2) The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

3) In the event that any claims are brought, or actions are filed against the Owner with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Contractor further agrees to pay at the Contractor 's expense the attorneys' fees and costs incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. The Owner, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the Owner.

4) To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

5) This Section shall survive expiration or termination of this Agreement.

G. Audit Rights

1) Access to Records

a. The Contractor shall, during the term of this Contract and for a period of five years thereafter, allow the Owner and its duly authorized representatives to inspect all payroll records, invoices for materials, books of account, job cost ledgers, Project correspondence and Project-related files and all relevant records pertinent to the Contract.

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b. The Owner retains the right to audit accounts and access all files, correspondence and documents in reference to all work performed under this Contract. The Owner shall be provided full access upon request to all documents, including those in possession of subcontractors or suppliers during the work and for a period of five years after the completion of the Work. In case of any litigation regarding this Project, such rights shall extend until final settlement of such litigation. Failure to allow the Owner access shall be deemed a waiver of Contractor's claims.

c. The Contractor shall maintain a banking account within Miami-Dade County for all payments to laborers, subcontractors and vendors furnishing labor and materials under this Contract. All records shall be maintained in Miami-Dade County for the term of this Contract.

2) Inspector General

a. According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all, on any County/Trust contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless this Contract is federally or state funded where federal or state law or regulations preclude such a charge or where such a charge is otherwise precluded by Special Condition. The Contractor shall, in stating its agreed prices, be mindful of this assessment which will not be separately identified, calculated, or adjusted in the proposal or Bid Form.

b. The Miami-Dade Office of the Inspector General is authorized to investigate County affairs and empowered to review past, present, and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses, and monitor existing Projects and programs. Monitoring of an existing Project or program may include a report concerning whether the Project is on time, within budget and in conformance with the Contract Documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to Project design, bid specifications, (bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption.

c. Upon 10 days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector inspectors general to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process

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including but not limited to Project design, bid specifications, (bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption.

d. The Inspector General shall have the right to inspect and copy all documents and records in the (Contractor/Vendor/Consultant's) possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all Project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

e. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

   i. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

   ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

f. The provisions in this section shall apply to the (Contractor/Vendor/Consultant), its officers, agents, employees, subcontractors, and suppliers. The (Contractor/Vendor/Consultant) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (Contractor/Vendor/Consultant) in connection with the performance of this contract.

g. Nothing in this section shall impair any independent right to the Owner to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the Owner by the (Contractor/Vendor/Consultant) or third parties.

H. Severability

In the event any article, section, sub-article, paragraph, sentence, clause or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, sentences, clauses or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub-article, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally contained in the Contract Documents.

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I. Payment and Performance Bond

1) A single instrument Payment and Performance Bond, satisfactory to the Owner, for twice the penal sum (no less than 100 percent of the total maximum contract amount for payment-related issues and 100 percent of the total maximum contract amount for performance-related issues), shall be required of the Contractor.

   a. The bond shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$500,001 to $1,500,000	B V
$1,500,001 to $2,500,000	A VI
$2,500,001 to $5,000,000	A VII
$5,000,000 to $10,000,000	A VIII
Over $10,000,000	A IX

2) On Contract amounts of $500,000 or less, the Bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

   a. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Invitation to Bid is issued.

   b. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

   c. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. 9304-9308.

   Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds," published annually. The Bond amount shall not exceed the underwriting limitations as shown in this circular.

3) For Contracts in excess of $500,000 the provisions of the Contract Documents will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

4) Payment and Performance Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

5) The attorney-in-fact or other officer who signs a Payment and Performance Bond for a surety company must file with such Bond a certified copy of his/her power of attorney authorizing him/her to do so.

6) The cost of the Bonds shall be included in the Bid.

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7) The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

8) The Bond shall be delivered to the Contracting Officer in accordance with the instructions within the Notice of Award.

9) In the event the Surety on the Payment and Performance Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law, the Owner shall withhold all payments under the provisions of these Contract Documents until the Contractor has given a good and sufficient Bond in lieu of Bond executed by such Surety.

10) Cancellation of any bond, or non-payment by the Contractor of any premium for any Bond required by this Contract, shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums and deduct the costs thereof from any amounts that are or may be due to the Contractor.

J. Insurance

The Contractor shall maintain the insurance set forth in the Special Provisions throughout the performance of this Contract until the Work has been completed by the Contractor and accepted by the Owner.

K. Conflict of Interest

1) The Contractor or his employees shall not enter into any Contract involving services or property with a person or business prohibited from transacting such business with Miami-Dade County pursuant to Section 2-11.1 of the Code of Miami-Dade County, Florida, known as the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.

2) In the event the Contractor, or any of its officers, partners, principals, or employees are convicted of a crime arising out of, or in connection with, the work to be done or payment to be made under this Contract, this Contract, in whole or any part thereof may, at the discretion of the Owner, be terminated without prejudice to any other rights and remedies of the Owner under the law.

3) In accordance with the Code of Miami-Dade County, no officer or employee of Miami-Dade County during his tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

L. Rights in Shop Drawings

1) Shop Drawings submitted to the Architect/Engineer by the Contractor, pursuant to the Work, may be duplicated by the Owner and the Owner may use and disclose, in any manner and for any purpose Shop Drawings delivered under this Contract.

2) This paragraph shall be included in all subcontracts hereunder at all tiers.

M. Patent and Copyright

1) If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Owner, the Field Representative, and the Architect/Engineer from any and all claims for

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infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.

2) The Contractor shall warrant that the materials, equipment, or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. The Contractor shall defend, or may settle, at his expense, any suit or proceeding against the Owner or the Architect/Engineer so far as based on a claimed patent or copyright infringement which would result in a breach of this warranty, and the Contractor shall pay all damages and costs awarded therein against the Owner or the Architect/Engineer due to such breach. The Contractor shall report to the Architect/Engineer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Owner when requested, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor.

3) The Contractor shall bear all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work. In such case materials, equipment, devices, or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense shall:

   a. Secure for the Owner the right to continue using said materials, equipment, devices, or processes by suspension of the injunction or by procuring a license or licenses; or

   b. Replace such materials, equipment, devices or processes with non-infringing materials, equipment, devices, or processes; or

   c. Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices, or processes and refund the sum paid therefore without prejudice to any other rights of the Owner.

4) The preceding paragraph shall not apply to any materials, equipment or devices, specified by the Owner or the Architect/Engineer or manufactured to the design of the Owner or the Architect/Engineer or in accordance with the details contained in the Contract Documents; and as to any such materials, equipment or devices the Contractor assumes no liability whatsoever for patent or copyright infringement and the Owner will hold the Contractor harmless against any infringement claims arising therefrom.

5) Patent rights to patentable invention, item or ideas of every kind or nature arising out of the Work, as well as information, designs, specifications, know-how, data and findings shall be made available to the Government for public use, unless the Owner shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

6) The sense of this article shall be included in all subcontracts. The foregoing states the entire liability of the Contractor for patent or copy infringement by use of said materials, equipment, or devices.

N. The Contractor shall be responsible for acknowledging the County's Recycling Programs when hauling materials that meets the requirement for a commercial business establishment. Please contact the Department of Solid Waste Management at dswm@miamidade.gov pr visit www.earth911.com to search for recycling or disposal options and locations.

O. Historical, Scientific and Archaeological Discoveries

All articles of historical, scientific, or archaeological interest uncovered by the Contractor during progress of the Work shall be preserved and reported immediately to the Architect/Engineer. Further operations of the Contractor with respect to the find, including disposition of the articles, will be decided by the Owner.

P. Use of Owner's Name in Contractor Advertising or Public Relations

The Owner reserves the right to review and approve Owner-related copy prior to publication. The Contractor shall not allow Owner-related copy to be published in Contractor's advertisement or public relations programs until submitting the Owner-related copy and receiving prior approval from the Owner. The Contractor shall agree that published information on the Owner or the Owner's program shall be factual and in no way imply that the Owner endorses the Contractor's firm, service or product. The Contractor shall insert the substance of this provision, including this sentence, in each subcontract and supply Contract or purchase order.

Q. Accounts Receivable Adjustments

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

R. User Access Program (UAP)

Pursuant to Miami-Dade County Code Section 2-8.10. User Access Program in County Purchases this Contract is subject to a user access fee under the County's User Access Program (UAP) in the amount of two percent (2%). All construction services provided under this contract are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity. From every payment made to the Contractor under this contract (including the payment of retainage), the County will deduct the two percent (2%) UAP fee provided in the ordinance and the Contractor will accept such reduced amount as full compensation for any and all deliverables under the contract. The County shall retain the two percent (2%) UAP for use by the County to help defray the cost of its procurement program. Contractor participation in this pay request reduction portion of the UAP is mandatory.

S. Residents First Training and Employment Program

Except where state or federal laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a County Construction Contract shall satisfy the requirements of this Article. In accordance with Section 2-11.17 of the Code of Miami-Dade County and Implementing Order No. 3-61, which are available online at

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www.miamidade.gov/smallbusiness/business-development-legislation.asp, all contractors and subcontractors of any tier on (i) construction contracts valued in excess of $1,000,000 for the construction, demolition, alteration and/or repair of public buildings, or public works; or (ii) contracts or leases valued in excess of $1,000,000 for privately funded construction, demolition, alteration or repair of buildings, or improvements on County-owned land, shall comply, if applicable, with the following:

1) Bidders must:

   a. Submit a completed Responsible Contractor Affidavit (Form RFTE 1), along with the Bid Submittal Package. RFTE 1 shall verify the following:

      i Prior to working on the project, all persons employed by the contractor on the project to perform construction have completed the OSHA 10-hour safety training course; and

      ii Contractor will make its best reasonable efforts to have 51 percent of all construction labor hours performed by Miami-Dade County residents. County residents employed in furtherance of the goal set forth in the County's Community Workforce Program (CWP) shall be counted towards the 51 percent goal.

   b. In the event that form RFTE 1 is not submitted along with the bid package, the County will provide a notice that the bidder has 48 hours from the time of notification to submit the form or their bid or proposal will be deemed nonresponsive and disqualified.

2) Prior to the issuance of a Notice to Proceed, contractors must also submit the following:

   a. A Construction Workforce Plan (Form RFTE 2) and supporting documentation;

   b. A list of all subcontractors to be used on the project;

   c. A Responsible Subcontractor Affidavit (Form RFTE 1) for each subcontractor; and;

   d. A list of all employees currently employed by the contractor.

3) Submit OSHA Safety Training Affidavit (Form RFTE 3) with all certified payrolls.

4) Submit a Workforce Performance Report (Form RFTE 4) within 30 business days of completion of the Project.

5) Any lessee shall include requirements of Section 2-11.7 of the Code of Miami-Dade County and Implementing Order No. 3-61, including the right of the County to access the contractor's and subcontractors' records to verify compliance, in any contract, subcontract, or sublease. Lessee shall be responsible to the County for payment of compliance monitoring costs and any penalties found due.

T. Employ Miami-Dade Program

In order to promote Employ Miami-Dade Program, pursuant to Administrative Order 3-63, and except where federal or state laws or regulations mandate to the contrary, all County construction contracts shall include notification to the Contractor regarding the use of the Employ Miami-Dade Register, the minimum number of participants on the contract, and details regarding the County's evaluation of the Contractor's efforts to promote this legislation by using participants on the contract,

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which will be used as part of the responsibility review for consideration on new County contract awards. The provision of this legislation shall apply to Country contracts valued in excess of $1,000,000 for the construction, demolition, or alteration/repair of public buildings or public works projects, funded completely or partially by Miami-Dade County.

U. Public Records and Contracts for Services Performed on Behalf of Miami-Dade County

The Contractor shall comply with the Public Records Laws of the State of Florida, including but not limited to: (1) keeping and maintaining all public records that ordinarily and necessarily would be required by Miami-Dade County (County) in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of the agreement and shall be enforced in accordance with the terms of the agreement. **If the contractor has questions regarding the application of Chapter 119, F.S. to the contractor's duty to provide public records relating to this contract, contact the custodian of public records via phone at (305) 375-5773, or via email at isd-vss@miamidade.gov. Offices are located at 111 NW 1st Street, Suite 1300, Miami, FL 33128.**

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13. APPLICABLE LEGISLATION

Contractors and subcontractors are required to abide by all applicable federal, state, and local laws and ordinances, as they may be amended from time to time. Applicable local laws and ordinances include, but are not limited to, the following:

A. Resolutions

http://www.miamidade.gov/govaction/searchleg.asp

- R-1049-93 - Affirmative Action Plan Furtherance and Compliance
- R-385-95 - Policy prohibiting contracts with firms violating the American with Disabilities Act (ADA) and other laws prohibiting discrimination on the basis of disability ADA requirements, are a condition of award, as amended by Resolution R-182-00
- R-531-00 - Prohibition of contracting with individuals and entities while in arrears with the County
- R-894-05 - Independent Private Sector Inspector General (IPSIG) Services
- R-183-00 - Family Leave Requirements
- R-185-00 - Domestic Violence Leave
- R-1386-09 - Community Small Business Development Program; directing County Mayor to include additional subcontractor provisions in all future contracts, where applicable unless waived by the Board of County Commissioners
- R-138-10 - Resolution requiring that construction contracts include language mandating that the scope of work of SBEs be separately stated and accounted for in schedule of values.
- R-63-14 - Contractor Due Diligence

B. Administrative Orders

http://www.miamidade.gov/ao/home.asp?Process=completelist

- 3-20 - Independent Private Sector Inspector General (IPSIG) Services
- 3-37 - Community Workforce Program (CWP)
- 3-39 - Standard Process for Construction of Capital Improvements, Acquisition of Professional Services, Construction Contracting, Change Orders and Reporting
- 10-10 - Duties and Responsibilities of County Departments for Compliance with the Americans with Disabilities Act (ADA)

C. Implementing Orders

http://www.miamidade.gov/ao/home.asp?Process=completelist

- 3-9 - Accounts Receivables Adjustments
- 3-21 - Bid Protest Procedure
- 3-22 - Small Business Enterprise (SBE) Program for the Purchase of Construction Services
- 3-41 - Small Business Enterprise (SBE) Program for the Purchase of Goods and Services
- 3-61 - Residents First Training and Employment Program

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D. Code of Miami-Dade County:

- https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinancesSection 2-1 Rule 5.09 Statement of consideration of impact of sea level rise.
- Section 2-1076 - Office of the Inspector General
- Section 2-2113 First Source Hiring Referral Program
- Section 2-8.1 - Contracts and Purchases
- Sections 2-8.1.1 Bids from related parties and bid collusion for the purchase of goods and services, leases, permits, concessions, and management agreements.
- Section 2-8.1(d) Disclosure required of contractors and entities transacting business with Miami-Dade County.
- Section 2-8.1(f) Listing of subcontractors required
- Section 2-8.2.6.1 Buy American Iron and Steel Products
- Section 2-8.2.6.2 Cybersecurity and Information Technology
- Section 2-8.2.7 Economic Stimulus Ordinance
- Section 2-8.4 - Protest Procedures
- Section 2-8.5 - Local Preference
- Section 2-8.5.1 - Local Certified Veteran Business Enterprise
- Section 2-8.8 - Fair Subcontracting PracticesSection 2-8.8(4) Reporting of subcontracting policies procedures and payments
- Section 2-8.10. - User Access Program in County Purchases.
- Section 2-10.4.01 Small Business Enterprise – Architecture & Engineering Program
- Section 2-10.33.02 Small Business Enterprise – Construction Program
- Section 2-10.7 Sales Tax Exemption Program
- Section 2.11.1 - Conflict of Interest and Code of Ethics
- Section 2-11.1 (i)-(r) Financial Disclosure
- Section 2-11.16.1 Construction Contract Fee for Affordable Housing
- Section 2-11.16. Responsible Wages and Benefit Program
- Section 2-11.17 Residents First Training and Employment Program
- Section 2-1076 Office of the Inspector General
- Section 2-1701 Community Workforce Program
- Section 9-71 through 9-75 Sustainable Building Program
- Section 10-34 - Listing of Subcontractors Required
- Section 11A-38 through 11A-52 Discrimination
- Section 21-255 through 21-266 False Claims Ordinance

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END OF ARTICLE

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SECTION 14

SPECIAL PROVISI ONS TO BE ATTACHED

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