

THE CITY OF DAYTONA BEACH

MAIN STREET PIER PILING REPLACEMENT EMERGENCY CONTRACT

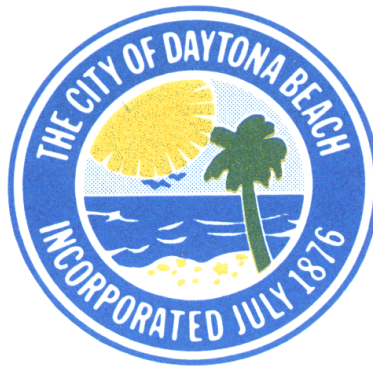
INVITATION TO BID No. 20463

CONTRACT 2017-056

PROJECT SPECIFIC CONSTRUCTION SERVICES

NIGP COMMODITY CODES

- 95900
- 95990
- 95935
- 91200
- 32000
- 54000
- 57000



**THE CITY OF DAYTONA BEACH
PUBLIC WORKS DEPARTMENT – TECHNICAL SERVICES DIVISION
P.O. BOX 2451
DAYTONA BEACH, FLA. 32115**

ISSUE DATE: May 6, 2020

INVITATION TO BID – PROJECT SPECIFIC CONSTRUCTION SERVICES

The City of Daytona Beach will receive sealed bids for “**MAIN STREET PIER PILING REPLACEMENT EMERGENCY CONTRACT**”, Invitation to Bid No. **20463**, at the City of Daytona Beach Purchasing Division, City Hall Room 146, 301 S. Ridgewood Ave., Daytona Beach, Florida 32114, until **2:00 p.m., on May 20, 2020**, at which time bids will be opened publicly and read aloud. Bids received after said time will be returned unopened.

The City is accepting online bids ONLY through its Web Based Bid Platform. No paper Bids by delivery or in person will be accepted.

The work generally consists of construction of replacement pilings and associated bracing and connections on the Main Street Pier in Daytona Beach. Project includes furnishing all labor, materials, equipment, supervision and permitting necessary to complete the work shown in the contract documents

THE REQUIRED SERVICES ARE BEING UNDERTAKEN AS AN EMERGENCY EXPENDITURE IN ACCORDANCE WITH SECTIONS 30-81(a)(3) AND 30-87 OF THE CITY CODE OF ORDINANCES. THE INTENTION OF THIS SOLICITATION IS TO USE COMPETITIVE BIDDING TO THE EXTENT THAT TIME IS AVAILABLE AND TO OBTAIN THE REQUIRED SERVICES IN THE MOST EXPEDIENT MANNER POSSIBLE WHILE AVOIDING UNDUE COSTS. HOWEVER, THE COMPETITIVE BIDDING REQUIREMENTS WITHIN CHAPTER 30 OF THE CODE DO NOT APPLY TO THIS SOLICITATION, NOR TO THE EVALUATION OR AWARD OF BIDS SUBMITTED, UNLESS SPECIFICALLY STATED HEREIN.

Bid Documents may be obtained as pdf files on-line at <http://codb.us/841/purchasing>. There is no charge for downloading Bid Documents. The Bid Documents and all other Contract Documents, including Drawings and Technical Specifications if applicable, are also on file at the Daytona Beach Purchasing Division, 301 S. Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114. A complete set of these Documents may be obtained upon payment of \$75, NON-REFUNDABLE. Checks must be made payable to the City of Daytona Beach, Florida. All inquiries and checks pertaining to this project which are mailed should be directed to Post Office Box 2451, Daytona Beach, Florida 32115-2451.

Each bid must be accompanied by **Bid Security** in an amount not less than **10%** of the total bid.

The successful contractor will be required to furnish separate 100% Performance and Payment Bonds unless the Contract price is less than \$100,000.

The City reserves the right to reject any and all bids, or any portion of any bid, or to waive any informalities in the bidding.

Bids may be held by the City for a period not to exceed 60 days from the date of opening of bids for the purpose of reviewing the bid and investigating the qualifications of bidders prior to awarding the contract.

By: Joanne Flick, CPPO, CPPB, Purchasing Agent
CITY OF DAYTONA BEACH
Issue Date: May 6, 2020

INSTRUCTIONS TO BIDDERS – PROJECT SPECIFIC CONSTRUCTION SERVICES

THE REQUIRED SERVICES ARE BEING UNDERTAKEN AS AN EMERGENCY EXPENDITURE IN ACCORDANCE WITH SECTIONS 30-81(a)(3) AND 30-87 OF THE CITY CODE OF ORDINANCES. THE INTENTION OF THIS SOLICITATION IS TO USE COMPETITIVE BIDDING TO THE EXTENT THAT TIME IS AVAILABLE AND TO OBTAIN THE REQUIRED SERVICES IN THE MOST EXPEDIENT MANNER POSSIBLE WHILE AVOIDING UNDUE COSTS. HOWEVER, THE COMPETITIVE BIDDING REQUIREMENTS WITHIN CHAPTER 30 OF THE CODE DO NOT APPLY TO THIS SOLICITATION, NOR TO THE EVALUATION OR AWARD OF BIDS SUBMITTED, UNLESS SPECIFICALLY STATED HEREIN.

1. BID DOCUMENTS. The Bid Documents consist of the Invitation to Bid; these Instructions; Special Instructions, if any; the Bid Proposal Letter, the Bid Schedule and all other Forms to be completed, signed, and submitted by the Bidder; and all additional documents required to be completed and submitted by the Bidder as part of the Bid.

In making copies of Bid Documents available, the City does so only for the purpose of obtaining Bids and does not confer a license or grant to use the Bid Documents for any other purpose.

2. COMPLETING THE BID. In order for the Bid to be considered complete:

A. The Bid Proposal Letter, the Bid Schedule, and all other required Forms must be completed. All blank spaces must be completed.

B. All information/documentation that is required to be submitted by this solicitation must be provided in the manner indicated.

C. The Bidder is requested to submit only the Bid Proposal Letter and other Forms, documents, and information specifically required. Any extraneous documents or information submitted by the Bidder will be discarded. The Bidder be asked to sign a written contract only if the City awards a contract to Bidder.

D. Where the Bid Schedule only calls for unit prices the Bidder must provide quotes for all unit prices and extended unit prices as set forth in the Bid Schedule unless Special Instructions are included in this solicitation specifically allowing for partial or lot-by-lot bids. If this solicitation allows for partial or lot-by-lot bids, the Bidder must comply with the Special Instructions in completing filling out the unit prices and extended unit prices set forth in the Bid Schedule.

E. The Bid Price (including unit prices and extended prices if applicable), must be stated in numerals.

F. If this solicitation includes unit prices, Contractor will complete an Excel protected Bid Schedule where they will fill in unit prices only. Extended price and totals will be calculated. This Excel Bid Schedule will be included with the bid submittal in order to be considered responsive.

G. The Bidder must not submit alternative bids unless this solicitation specifically authorizes alternate bids. If this solicitation specifically allows the submission of alternate bids, the Bidder must submit the standard and the alternative bid in order to be considered responsive.

H. The Bid may not contain qualifications or exceptions of any kinds.

I. All other submittal requirements stated herein must be met.

3. SIGNING THE BID. The Bid Proposal Letter, the Bid Schedule and all other Forms and documents requiring Bidder's signature must contain the electronic signature of an individual authorized to bind the

Bidder. The signature must be located in the space(s) marked for the Bidder's signature. In addition, the person signing the Bid must also sign all of the other Forms to be submitted. Only electronic signatures will be accepted.

4. REQUESTS FOR INTERPRETATIONS. If the Bidder is in doubt as to the meaning of any of the Bid Documents or other Contract Documents included in this solicitation, the Bidder may submit a written request to the City for an interpretation, care of the Purchasing Agent at the email address purchasing@codb.us or online through the Web Based Bid Platform. Such requests must be received **7 days** prior to bid opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation issued by the City in the form of a written addendum or reply to all users via the web based platform and will be deemed to be a part of the Bid Documents.

Prospective Bidders may submit questions online through the City's Web Based Bid Platform. . Responses will be posted in the form of an Addendum on the Web Based Bid Platform.

No oral clarification or interpretation will be binding.

5. ADDENDA TO BID DOCUMENTS. Prior to bid opening, the City may on the City's own initiative or in response to a request for clarification, furnish addenda for additions or alterations to these Instructions, the Bid Documents, and to any or any Drawings, Specifications, or other Contract Documents previously supplied by the City. In addition, the City may extend the date scheduled for Bid Opening by addenda.

The Purchasing Agent will make reasonable efforts to notify all potential bidders of the issuance of an Addendum. The Purchasing Agent will also post Addenda on the Purchasing Division's web page, <http://codb.us/841/purchasing>.

However, the Bidder is solely responsible for ensuring that the Bid submitted reflects all such Addenda.

6. BID SECURITY. The Bidder must submit Bid Security equal to 10% of the Bid. The Bid Security will be in the form of a bid bond; or any of the following alternate forms: cashier's check, certified check, money order, notes at par value, U.S. Currency, or U.S. Government Bond. Any Bid Security provided must be in original form; copies are unacceptable. The City has the right to retain the bid security as liquidated damages should the Successful Bidder fail to comply with the terms of the bid. The City will return the bid security to unsuccessful Bidders after the contract award.

Any bid bond provided must be in a form approved or provided by the City, and must be accompanied by sufficient evidence of the issuing agent's authority. The surety company executing the bond must be authorized to do business in the State of Florida. If the bid bond is in an amount greater than \$5,000.00 the surety company executing the bond is listed by the United States Treasury Department as being approved for writing bonds for federal projects on its current list in an amount not less than the required bond amount.

Bidders shall submit a copy of the Bid Security with the electronic submittal. Bid security must be provided in original form as a hard copy to the Purchasing Division at 301 South Ridgewood, Room 146, Daytona Beach, FL 32114 within 5 business days after the Bid Opening Date.

7. SUBMISSION OF ON-LINE BIDS. The City will only accept on-line Bids for this solicitation through its Web Based Bid Platform. The City's only authorized Web Based Bid Platform is Vendor Registry, accessible through the City's website www.codb.us/841/Purchasing under the link to "Public Solicitation", then by selecting the proper bid and clicking "Submit Bid". ***No other forms of on-line bids will be accepted.*** Any reference in this document to "sealed bids" is hereby replaced with "sealed on-line Bids".

8. AMENDMENT AND WITHDRAWAL OF BID. The Bidder may amend or withdraw the Bid at any time prior to bid opening.

Mere negligence on the part of the Bidder in preparing the Bid does not constitute a right to withdraw the Bid subsequent to bid opening.

9. DISQUALIFICATION OF BIDDERS.

A. **Only One Bid Permitted:** The Bidder may submit only one Bid. If the Bidder submits more than one bid for the work involved, all bid proposals submitted from the Bidder will be rejected.

B. **Collusion:** If the City determines that collusion exists among bidders, the City will reject the bids of all participants in the collusion.

C. **Scrutinized Companies List:** If the Bidder is found to have submitted a false certification as provided by F.S. Section 238.175(5), or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the City will have the option to immediately terminate this Contract.

10. BID OPENING. Bid opening will be scheduled on the date and time specified by the Invitation for Bid, or by any applicable Bid Addenda that the City may issue. At bid opening, the City will open and record the Bid so long as it is proper and has been timely submitted. In recording the Bid the City will state the name of the Bidder and the Bid Price.

The Bidder is solely responsible to ensure that the Bid is prior to bid opening. Late bids will not be accepted by the Bid Platform.

11. BID AS OFFER; FIRM PRICING; NO GUARANTEES AS TO QUANTITIES ORDERED. In submitting the Bid, the Bidder certifies that the Bidder is making a firm offer that will remain open for 60 days following Bid Opening unless properly and timely withdrawn by the Bidder prior to Bid Opening unless the City, in the City's sole discretion, rejects the Bid after Bid Opening. Extensions of time beyond the 60 day-period will only be by agreement of the City, the Bidder, and the surety for the Bidder.

In addition, if this solicitation requests submission of unit prices: (i) all unit prices will be deemed to be held firm for the duration of the Contract, including any extension thereof, unless specifically authorized by the Contract Documents; and (ii) quantities stated are an estimate only and no guarantee is given or implied as to quantities that will actually be required during the contract period.

12. FEDERAL TAXES. The bid price will be exclusive of all federal taxes. If the Bidder believes that certain other taxes are properly payable by the City, the Bidder may list such taxes separately in each case directly below the respective item bid price. Tax exemption certificates will be furnished upon request.

13. BID PRICE INCLUSIVE OF COSTS. The Bid Price is inclusive of all of the Bidder's direct and indirect costs of performing the Work.

14. BIDS AND PUBLIC RECORDS. Sealed bids received by the City pursuant to this solicitation will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, bids will be open for inspection by any person pursuant to Public Records Law.

If the Bidder believes that the Bid or any portion thereof is permanently exempt from disclosure under the public records laws, the Bidder must state the grounds for this position in CAPITAL LETTERS in a certified letter addressed to the Purchasing Agent and received at least 3 days prior to the Bid Opening. The Bidder will be contacted prior to the opening of the Bid and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Bidder may withdraw their bid.

15. BID OPENING RESULTS. The Bidder may secure information pertaining to bid opening results on the Purchasing Division webpage under the "Expired Solicitations" link, by visiting the Purchasing Division Office Monday through Friday between 8:00 am and 3:00 pm, or by emailing a request to

purchasing@codb.us. Copies of bid tabulation sheets will be furnished upon request and receipt of a valid email address or self-addressed stamped envelope.

16. BIDDER CAPABILITY/REFERENCES. Prior to contract award, the City may require Bidder to show that Bidder has the necessary facilities, equipment, ability, and financial resources to perform the work specified in a satisfactory manner and within the time specified.

In addition, the City may require Bidder to demonstrate that Bidder has experience in work of the same or similar nature as the work required herein, and to provide references satisfactory to the City.

17. REVIEW; BASIS OF AWARD. Bids will be reviewed in accordance with the procedures set forth in these Instructions to Bidders and the applicable provisions of the Purchasing Code, Chapter 30 of the Daytona Beach Code of Ordinances. Any contract awarded pursuant to this solicitation will be made on the basis of the criteria for award of bids provided in the Purchasing Code.

A link to the Code of Ordinances is available on the City's web site, www.codb.us.

18. LOCAL PREFERENCE. The Purchasing Code, Chapter 30, Code of the City of Daytona Beach provides for a preference to local vendors whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.

As used in City Code, the term, "local vendor" means a person or business entity which has maintained a permanent place of business with full-time employees within the city limits of the City of Daytona Beach for a minimum of six months prior to the date bids or proposals were received for the purchase or contract at issue, which generally provides from such permanent place of business the kinds of goods or services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

Pursuant to City Code, if the lowest responsive bid is submitted by a non-local vendor, and a bid submitted by a local vendor is within 10% of the lowest bid, then these two vendors will each have the opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid within five working days after bid opening. The bid will be awarded to the bidder submitting the lowest responsive bid or final bid. In case of a tie between a local vendor and a non-local vendor, the bid will be awarded to the local vendor.

If the Bidder intends to qualify as a local vendor, the Bidder must complete and sign the Local Vendor affidavit and submit it as part of the Bid. A Bidder who fails to properly complete and sign this affidavit or submit it with the Bid, will not further considered for local preference.

If the Bidder submits a properly completed Local Vendor affidavit as part of its Bid, the City reserves the right to verify that the Bidder meets the definition of Local Vendor, including by requiring the Bidder to supply additional documentation. In all instances, the City will be the final arbiter as to whether the Bidder qualifies for local preference.

With certain exceptions, application of local preference is discretionary. For more information on how the Local Preference may apply, see the Purchasing Code.

19. IDENTICAL TIE BIDS. If there are two or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria, the tie will be awarded to the following in order of preference: a) the bidder qualifying for local preference under Code 30-86; b) the bidder in compliance with the drug free workplace certification requirements set forth in Florida Statutes 287.087; or c) the most responsible bidder as defined under the City Code 30-82 (9)(c).

20. RIGHT TO ACCEPT OR REJECT BIDS. The City will reject bids which contain modifications, qualifications, or exceptions, or which are incomplete, unbalanced, conditional, obscure, or which contain additions not requested, or irregularities of any kind, or which do not comply in every respect with these

Instructions to Bidders and the Contract Documents, unless the City in its sole discretion determines that the non-compliance is minor.

The City does not bind itself to accept the minimum bid stated herein, but reserves the right to accept any bid, which in the judgment of the City will best serve the needs and interests of the City.

21. CRA MAY AWARD PURCHASE ORDERS ISSUED PURSUANT TO CONTRACT. In the case of a continuing/term supply or service contract awarded pursuant to this solicitation, if the funds to be used to pay for a portion of the supply or service are from redevelopment trust funds, the Community Redevelopment Agency (CRA) is authorized to issue the purchase order corresponding to the supply or service instead of the City.

22. CITY'S PROJECT-SPECIFIC CONSTRUCTION CONTRACT FORM. The City's contract form for project specific construction projects, which is included in this solicitation, contains additional terms and conditions, including indemnification and insurance requirements, completion deadlines, and liquidated damages, that the Bidder should review prior to submitting the Bid. The City reserves the right to make minor changes to the form contract prior to execution by the Successful Bidder to correct errors, make other minor formatting changes, or for legal sufficiency. The City will provide the Successful Bidder the final contract for execution.

23. LICENSES. At time of Bid submittal, the Bidder must hold the required licensure to be the prime contractor for all work to be performed under this solicitation. Any subcontractors or subconsultants whom the Bidder proposes to use to perform work under this solicitation must also hold the required licensure at the time of Bid submittal. Required licensure must be maintained in full force and effect during the contract term.

24. BIDDER RESPONSIBILITY FOR PREPARATION COSTS. Neither the City nor the City's officers or agents will be liable for the costs incurred by the Bidder in reviewing or responding to this solicitation.

25. POST-AWARD SUBMITTAL REQUIREMENTS. Within 15 business days after the City's issuance of a notice of award, the Successful Bidder must submit each of the following:

- A. A fully-executed contract, using the form provided with or referenced by the notice of intent to award.
- B. Proof of insurance, in accordance with the requirements of the Contract. See the Contract form for more information regarding insurance requirements.
- C. Performance Security, as further described below, in an amount equal to 100% of the Contract Price.

The award is subject to cancellation and the bid security subject to forfeiture if this deadline is not met.

26. PERFORMANCE SECURITY. Performance Security is required unless contract is less than \$100,000.00. Payment and performance bonds may be submitted; or an alternative form of security as specified in Florida Statutes § 255.05(7) may be provided upon the City's prior written approval.

If the Successful Bidder elects to use payment and performance bonds for required Performance Security, the Successful Bidder will use forms provided by the City. Copies of the City's current form bonds will be provided with the Notice of Award. Completed bonds must be originals, not copies, with raised corporate seals included where applicable. The bonds must be accompanied by sufficient evidence of the authority of the issuing agent, including a certified copy of the power of attorney of the person signing the bond on the surety's behalf. The surety company executing the bonds must be must be rated "A" or better by A.M. Best Key Rating Guide, authorized to do business in the State of Florida, and must be listed by the United States Treasury Department Treasury Fiscal Service, Bureau of Government Financial Operations, Federal Register, Part V, latest revision, entitled: "Companies Holding Certificates of Authority as Acceptable

Sureties on Federal Bonds and as Acceptable Reinsuring Companies,” as being approved for writing bonds for federal projects on its current list in an amount not less than the required bond amount.

END OF INSTRUCTIONS TO BIDDERS SECTION

SUBMITTAL CHECKLIST

The following items will be submitted with the Bid Proposal Letter. Each blank on the form will be filled out. Use NA (not applicable) rather than leaving blank.

City Staff Verified	Bidder verified	Item(s) Required with Submittal
		BID PROPOSAL LETTER
		BID SCHEDULE
		NONCOLLUSION AFFIDAVIT OF PRIME BIDDER
		DRUG-FREE WORKPLACE CERTIFICATION
		AFFIDAVIT ON PUBLIC ENTITY CRIMES
		LOCAL VENDOR AFFIDAVIT (<i>only if filing for local preference</i>)
		MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES CERTIFICATION FORM
		MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE OFFICER CERTIFICATION FORM
		Bid Security (10% for all construction bids)
		Label the outer most package with the following: Bid Number Date of the Opening Contractor Name and Address
		Item(s) Required after Bid Submittal
		<u>Certificate of Insurance</u> indicating the coverages outlined in this solicitation, including naming the City as additional insured (<i>requested when Notice of Intent to Award is Issued</i>)
		Contract signed by Authorized Representative of the Vendor (<i>completed contract sent with Notice of Intent to Award</i>)
		Payment & Performance Bonds to be returned as instructed within 15 days after the Notice of Award is issued (<i>P & P Bonds acceptable to the City will be sent with Notice of Award</i>)

BID PROPOSAL LETTER - ITB NO.: 20463

TO THE MAYOR AND COMMISSIONERS
THE CITY OF DAYTONA BEACH, A FLORIDA MUNICIPAL CORPORATION

Dear Mayor and Commissioners:

This Bid is submitted by _____
(insert Bidder's full legal name; include D/B/A if applicable)

Business Address: _____
(include P.O. Box/street address, city, state and zip code)

Business Phone: _____ Business Fax: _____
(include area code) (include area code)

Business Email: _____
(leave blank if n/a)

The undersigned, as BIDDER or BIDDER's authorized representative, hereby declares and affirms each of the following:

1. That BIDDER has had the opportunity to examine the project site(s) and is fully informed in regard to all conditions pertaining to the site(s).
2. That BIDDER is fully informed regarding local conditions where the work will be required.
3. That BIDDER has thoroughly examined all Contract Documents, including Plans and Specifications as applicable, relative to the work to be performed, and that BIDDER is sufficiently knowledgeable of the work to be performed.
4. That BIDDER hereby agrees to furnish all labor, materials, and equipment to do the work in strict accordance with the Contract Documents for the price(s) stated in the attached Bid Schedule.
5. That, subject to the terms and conditions stated in the Contract Documents, BIDDER will perform the work in accordance with the completion date(s) specified in the Contract Documents, and will pay liquidated damages in the amounts specified in the Contract Documents for BIDDER's failure to comply with the completion date(s).
6. That BIDDER agrees to indemnify and hold harmless the CITY any other interests as set forth in the Contract Documents.
7. That insofar as the attached Bid Schedule includes extended unit prices, the use of extended unit quantities will not be construed to be a guarantee that the CITY will purchase such quantities if a contract is awarded; and that, subject to the terms and conditions of the Contract, BIDDER will be entitled to payment only based on the units constructed, installed, or otherwise placed in service.

BID PROPOSAL LETTER -- ITB No.: 20463, cont.

8. That Bidder has received the following Addenda (*leave blank if inapplicable*):

Add #	Dated	Add #	Dated	Add #	Dated

(list any additional Addenda by number and date): _____

9. That, if within the time period specified in the bid solicitation, BIDDER fails to execute the form Contract, provide proof of insurance, and submit (if required) Performance Security, the bid award will be subject to cancellation and the Bid Security provided with this Bid will be subject to forfeiture.

10. That all information provided by BIDDER as part of this Proposal is truthful to the best of BIDDER's knowledge.

11. That BIDDER is (*mark the appropriate box and include the additional information, as applicable*):

- ☐ An individual person/sole proprietor
- ☐ A Florida corporation/ limited liability company
- ☐ A foreign corporation/limited liability company authorized to do business in Florida*
_____ (*specify state of incorporation/formation*)
- ☐ A Florida limited partnership
- ☐ A foreign limited partnership authorized to do business in Florida*
_____ (*specify state of incorporation / formation*)
- ☐ A general partnership**
- ☐ A joint venture***
- ☐ Other _____ (*specify, including type of entity*)

* *Attach proof of formation/registry from State of Florida.*

** *Provide on separate, signed sheets(s) of paper, full legal name and address of the partnership; and names of all general partners.*

*** *Provide on separate signed sheet(s) of paper the full legal names of all persons/firms comprising the joint venture.*

BID PROPOSAL LETTER -- ITB NO.: 20463, CONT.

12. That BIDDER has completed and attached all required and requested attachments with this Bid Proposal, including Bid Schedule, Non-Collusion Affidavit, Drug Free Workplace Certification, MWBE Certifications and Attachments, and Public Entity Crimes Affidavit.

In signing below, I certify that I am the above-named BIDDER or a person duly authorized by BIDDER to bind BIDDER to these terms and conditions.

By: _____
(Signature)

Printed Name: _____

Title: _____

Date signed: _____

Email: _____

BID SCHEDULE - ITB NO. 20463
MAIN STREET PIER PILING REPLACEMENT EMERGENCY CONTRACT

The Unit Price Bid Schedule is a separate Excel document Bidders must download, complete, print and submit with the Bid. The Bid Schedule must be downloaded from at <http://www.codb.us/841/Purchasing> by clicking "Public Solicitation", then "Main Street Pier Piling Replacement Emergency Contract", then clicking "ITB 20463_Bid_Schedule".

Bidders must complete the "unit price" column. Extended totals and total price will automatically be calculated.

All unit prices MUST be completed in order for the Bid to be considered responsive.

ATTACHMENT A
NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

I, _____, depose and state:

(1) I _____ am, _____ Title _____ of
_____ COMPANY _____, the Bidder that has submitted the attached
Bid;

(2) I am fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agent, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from Bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Daytona Beach, FL (Local Public Agency) or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Non-collusion Affidavit of Prime Bidder and that the facts stated in it are true.

Print Name

Signature

Date

DRUG-FREE WORKPLACE CERTIFICATION

IDENTICAL TIE BIDS: - If there are two or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria, the tie will be awarded to the following in order of preference: a) the bidder qualifying for local preference under Code 30-86; b) the bidder in compliance with the drug free workplace certification requirements set forth in Florida Statutes 287.087; or c) the most responsible bidder as defined under the City Code 30-82 (9)(c).

In order to have a drug-free workplace program, a business will:

- (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violation.
- (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in section (1), above.
- (4) In the statement specified in section (1), above, notify the employees that, as a condition of working on the commodities or contractual services that are underbid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or *nolo contendere* to, any violation occurring in the workplace no later than five days after such conviction.
- (5) Impose sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

By: _____
(Signature)

Title: _____
(leave blank if sole proprietor)

Date: _____

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

1. This sworn statement is submitted to _____
(print name of the public entity)
by _____
(print individual's name and title)
for _____
(print name of entity submitting sworn statement)
whose business address is _____

_____ and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, insert the Social Security Number of the individual signing this sworn statement above:
2. I understand that a "public entity crime" as defined in Paragraph 287.133(l)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(l)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(l)(a), Florida Statutes means:
- (a) A predecessor or successor of a person convicted of a public entity crime, or

- (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, will be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months will be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(l)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (*Indicate which statement applies.*)

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (*attach a copy of the final order.*)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Sworn Statement Pursuant To Section 287.133(3)(A), Florida Statutes, On Public Entity Crimes and that the facts stated in it are true.

Print Name

Signature

Date

LOCAL VENDOR AFFIDAVIT

Complete and submit this form ONLY if you qualify for local preference as provided in the City of Daytona Beach Purchasing Code.

A copy of the Bidder's Daytona Beach Business Tax Receipt must be submitted with this Affidavit.

NAME OF BIDDER: _____

LOCAL BUSINESS ADDRESS *(street address being used to claim Local Preference, including zip code):*

The undersigned certifies under penalty of perjury each of the following:

The Local Business Address has continuously been used as a Permanent Place of Business with at least one full-time employee since _____.
(Insert date)

The Local Business Address has consistently offered or provided the goods or services being solicited by the City of Daytona Beach during the time referenced above.

The Local Business Address has not been established with the sole purpose of obtaining the advantages that may be granted pursuant to the Local Preference provisions of the City of Daytona Beach Purchasing Code.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Local Vendor Affidavit and that the facts stated in it are true.

Print Name

Signature

Date

The City of Daytona Beach reserves authority to require a copy of the corporate charter, corporate income tax filing return, and any other documents(s) to evaluate the Bidder's Local Preference claim.

**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE
USAGE FORM**

Contractor shall submit this form with each application for payment, indicating the MBE and WBE subcontractors and suppliers paid under the pay application.

This report provided by _____
Firm

Representative completing form: _____
Name

Contract Number: 20463

Pay Application No. _____
Indicate if "final"

Date form completed: _____

Total funds paid under this pay application to:

MBE Firms		WBE Firms	
Firm Name	Amount	Firm Name	Amount
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	

Total Amount Paid MBE's this
Pay Application: \$ _____

Total Amount Paid to WBE's this
Pay Application: \$ _____

DRAFT
PROJECT-SPECIFIC CONSTRUCTION CONTRACT
ITB 20463

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation, hereinafter the "CITY" or "OWNER," and >, a >, hereinafter the "CONTRACTOR."

WITNESSETH, that the CONTRACTOR and the CITY agree as follows, for the mutual valuable consideration provided herein:

ARTICLE I. SCOPE OF WORK

The CONTRACTOR will, at its sole cost and expense, provide, perform, and complete the construction project commonly known as "MAIN STREET PIER PILING REPLACEMENT EMERGENCY CONTRACT" and more fully described in the Contract Documents, hereinafter the "Work".

ARTICLE II. CONTRACT DOCUMENTS

The Contract Documents are further described in the General Conditions, and if applicable the Supplemental General Conditions. In addition, the Plans, dated 2/18/2019 and referenced herein are the plans or drawings prepared by John P. Simko (the "Engineer/Architect" or "E/A"), provided or made available with the CITY's Invitation to Bid, as amended by any addenda to the bid documents, are a part of the Contract Documents. These Plans are not physically attached hereto but are incorporated herein by reference. CONTRACTOR acknowledges receipt of all such Plans.

The Contract Documents are intended to include all information necessary for CONTRACTOR's proper prosecution and timely completion of the Work. CONTRACTOR will prosecute the Work as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary, and what is required by one will be as binding as if required by all.

ARTICLE III. COMMENCEMENT AND COMPLETION

The CITY and the CONTRACTOR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. To that end, the CONTRACTOR will commence the Work not later than the Commencement Date set forth in the General Conditions, and will diligently and continuously prosecute the Work at such a rate, and with sufficient forces as will allow the CONTRACTOR to achieve Substantial Completion within **30** days after the Commencement Date and Final Completion within **15** days after the Commencement Date, subject only to any adjustments in the Contract Time that may be authorized by Change Orders properly issued in accordance with the Contract Documents. In executing this Contract, CONTRACTOR affirms that the time set for completion is reasonable.

The CITY will suffer financial loss if Final Completion of the Work is not achieved within the Contract Time. Accordingly, and in lieu of actual damages or proof thereof, if CONTRACTOR fails to meet these deadlines, CONTRACTOR will be liable to the CITY for liquidated damages as follows:

In the amount of **\$964** for each and every day of unexcused delay in achieving Substantial Completion; and

In the amount of **\$482** for each and every day of unexcused delay from the date that Substantial Completion is achieved until Final Completion is achieved.

The CITY will have the right to offset such liquidated damages against any remaining portion of the Contract Price due CONTRACTOR, but will not be limited to the offset if it is insufficient. If the unpaid balance of the Contract Price is less than the amount of the Liquidated Damages, the CONTRACTOR or its Surety must pay the deficiency to the CITY upon demand.

ARTICLE IV. CONTRACT PRICE

Subject to any adjustments that may be authorized pursuant to this Contract, the Contract Price due the CONTRACTOR is \$>_____ for work completed and accepted in accordance with the Contract Documents. The Contract Price represents the CONTRACTOR's sole compensation from the CITY for prosecution of the Work. The Contract Price will be paid in a series of Progress Payments and a Final Payment, and is subject to retainage, as further described in the Contract Documents.

ARTICLE V. PERFORMANCE SECURITY

CONTRACTOR must provide a payment bond and a performance bond, or alternate form of Performance Security in an amount equal to 100% of the Contract Price >if the contract price exceeds \$100,000.00.

Additional requirements associated with the provision of Performance Security, including requirements to increase the amount provided, are set forth in the General Conditions and, if applicable, the Supplemental General Conditions.

ARTICLE VI. INDEMNIFICATION

A. The CONTRACTOR shall indemnify and hold harmless the City of Daytona Beach, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

B. CONTRACTOR indemnifies the CITY against any claim of supplier's or subcontractor's lien (in cases where such payment is not already guaranteed by payment bond). If any claim or lien remains unsatisfied after all payments are made, CONTRACTOR must refund to the CITY all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

C. For purposes of the obligations stated in this Article, references to the CITY include the CITY's officers, employees, and agents.

D. CONTRACTOR's obligations under this Article are made without regard to the availability of insurance of the CITY or the Engineer/Architect.

ARTICLE VII. INSURANCE

A. Required Insurance.

CONTRACTOR will provide and maintain at CONTRACTOR's sole expense, insurance of the kinds of coverage and in the amounts set forth in this Article, primary and non-contributory with the City's own insurance, in form and from companies satisfactory to the City. The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the CONTRACTOR or sub-contractor providing such insurance.

1. **Workers' Compensation Insurance** – As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance and any other applicable federal laws (including Longshore & Harbor Workers' Act, Jones Act, & Maritime Coverage Endorsement) for all employees of CONTRACTOR employed at the project site or in any way connected with the Work.

The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and any applicable federal laws and include Employers' Liability Insurance with limits of not less than \$500,000 per accident. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

2. **Liability insurance – Including Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, collapse and underground, and personal injury on an "occurrence" basis, insuring the CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the Work; and **Automobile Liability coverage** insuring claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle used by CONTRACTOR at the project site or in any way connected with the Work.

The limit of liability will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in CONTRACTOR's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

3. **Watercraft Protection & Indemnity** in the amount of \$1,000,000 CSL (Combined Single Limit of liability coverage if contractor is using watercraft during construction process)

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the insurer will waive its rights of subrogation, if any, against the CITY on of the above-listed types of required insurance coverage.

B. Subcontractors' Insurance. Each of CONTRACTOR's subcontractors will be required to provide insurance in substantially similar form to the insurance required of CONTRACTOR above based on the services they will provide to the project.

C. Proof of Insurance. CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence Work until all required insurance has been approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard and the expiration dates.

Upon request of the Risk Manager, CONTRACTOR will also provide the CITY copies of the insurance contracts referenced by the certificates.

D. Cancellation and Replacement. CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of any required insurance occurring prior to expiration or termination of this Contract. If such insurance terminates without CONTRACTOR's prior knowledge, immediately upon becoming aware of such termination CONTRACTOR will provide notice to the City's Risk Manager at P.O. Box 2451, Daytona Beach, Florida 32115-2451.

The CITY reserves the right to suspend any or all of the Work until such insurance has been replaced, or to obtain replacement insurance at CONTRACTOR's sole cost.

E. Termination of Insurance. CONTRACTOR will not cancel any required insurance coverage until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Manager that CONTRACTOR is authorized to cancel the insurance and the effective date of such authorization. The Risk Manager will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

The liabilities of CONTRACTOR under this Contract will survive and not be terminated, reduced, or otherwise limited by any expiration, limitations, exclusions or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the contractor will relieve the CONTRACTOR or its sub-contractors from responsibility to provide insurance as required by the contract.

ARTICLE VIII. NOTICES

A. Where the Contract Documents authorize or require the CITY to provide notice to CONTRACTOR, notice may be provided by delivery by hand to CONTRACTOR's designated Superintendent at the Project Site, or in the absence or unavailability of the Superintendent to any other person on the Project Site who holds himself or herself out as managing the Work on behalf of CONTRACTOR, or in lieu of either of these, by written notice to the address provided below.

B. Where the Contract Documents authorize or require CONTRACTOR to provide notice to the CITY, notice may be provided only by written notice to the address provided below.

C. Written notice is valid only if sent by certified United States mail, return receipt requested, facsimile with confirmation receipt required, or by recognized courier such as Federal Express with confirmation receipt requested. All such notices will be deemed to have been duly given and provided on (i) the date of receipt, (ii) upon receipt or refusal of delivery if transmitted by registered or certified mail, return receipt requested, or (iii) the first business day after the date of deposit, if transmitted by reputable overnight courier service, whichever occurs first. Written notices will be sent to the following persons:

If to the CITY:
Attn: James Nelson, City Engineer
City of Daytona Beach Pubic Works
950 Bellevue Ave.
Daytona Beach, FL 32114
Fax: 386-671-8620

If to the CONTRACTOR:
Attn: _____

Fax: _____

provided, however, that either Party may by written notice change the address designated for receipt of written and faxed notices.

ARTICLE IX. DISPUTE RESOLUTION

If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

A. **Negotiations Required.** A Party will request in writing that a meeting be held between representatives of each Party within 14 days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

B. **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described above proves unsuccessful or the Parties mutually waive the procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

ARTICLE X. GENERAL PROVISIONS

A. This Contract will be governed by the laws of the state of Florida without regard to any choice of law principles that could result in application of the laws of any other jurisdiction. Venue for any legal action or proceeding arising out of this Contract is exclusively in the federal or state courts in and for Volusia County, Florida. The Parties hereby waive any right to stay or dismiss any action or proceeding brought under or in connection with this Contract that is brought before the above-referenced courts on the basis of *forum non-conveniens*.

B. In case of litigation arising out of this Contract where the meaning of one or more provisions is at issue, the CITY will not be penalized by virtue of its having drafted this Contract. CONTRACTOR has carefully reviewed and had the opportunity to seek advice of legal counsel prior to executing this Contract.

C. The CITY and CONTRACTOR agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

D. In performing the services provided for herein, CONTRACTOR is an independent contractor and not an employee of the CITY.

E. The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, does not constitute a waiver or estoppel of the right to do so.

F. All terms and conditions of this Contract which contemplate a period of time beyond completion or termination, will survive such completion or termination and not be merged therein or otherwise terminated.

G. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

H. The undersigned representative of CONTRACTOR affirms that in executing this Contract on behalf of CONTRACTOR, he or she is fully authorized to bind CONTRACTOR to the terms and conditions herein set forth.

I. No CITY officer, employee, or independent consultant who is involved in the development, evaluation, or decision-making process of the performance of any solicitation will have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this

provision, with the knowledge, expressed or implied, of CONTRACTOR will render the Contract voidable by the CITY.

J. This Contract represents the entire and integrated agreement between the CITY and CONTRACTOR with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have executed this Contract on the dates written below.

THE CITY OF DAYTONA BEACH

>CONTRACTOR

By: _____
Derrick L. Henry, Mayor

By: _____
Printed Name: _____
Title: _____

Attest: _____
Letitia LaMagna, City Clerk

Date: _____

Date: _____

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMS

1.1 Defined Terms.

Whenever used in the Contract the following terms have the meanings indicated, which are applicable to both the singular and plural thereof

“50-Percent Completion” means the point at which the OWNER has expended 50% of the Adjusted Contract Price.

“Adjusted Contract Price” means the Contract Price as set forth in the Contract, as previously adjusted by valid Change Order.

“Bid” means the offer of the Bidder.

“Bid Platform” means Vendor Registry, the software currently used by the City. All communications...posted at www.codb.us/841/purchasing through the Public Solicitations link. Bidders MUST submit bids through the Bid Platform. All communications regarding solicitations will be posted at www.codb.us/841/Purchasing and click “Public Solicitation”. All Bids/Proposals MUST be submitted through here.

“Bid Schedule” means the Bid Schedule submitted by CONTRACTOR with the Bid; unless CONTRACTOR was the sole responsive bidder and the Parties have negotiated final pricing as part of the bid solicitation process pursuant to the Purchasing Code, in which instance the term means the Revised Bid Schedule included within the Contract Documents.

“Change Instrument” means a Field Directive or a Change Order.

“Change Order” means a written directive issued by the OWNER authorizing an adjustment in the Contract Price, the Contract Time, the scope of Work, or any other material term or condition of the Contract. When approved by the City Commission, a change order may be in the form of a formal amendment to this Contract.

“City Code” means the City of Daytona Beach Code of Ordinances.

“City Commission” or *“Commission”* means the City of Daytona Beach City Commission.

“City Manager” means the City Manager for the City.

“Commencement Date” means the date established in the Notice to Proceed upon which the Contract Time begins to run; or if no such date is provided in the Notice to Proceed, the date of the Notice to Proceed.

“Construction Contract form” means that part of the titled as “Project-Specific Construction Contract” or something similar, and signed by the Parties.

“Contract” includes all Contract Documents.

“Contract Administrator” means the individual specifically authorized to administer the Contract on the OWNER’s behalf; provided, however that in all instances the City Manager may act as the Contract Administrator.

“Contract Price” means the total compensation due to CONTRACTOR for the Work to be performed under the contract, subject only to those adjustments provided in the Contract Documents.

“Contract Time” means the total period of time stated in the Contract between the Commencement Date and the deadline for Final Completion, subject only to those adjustments provided in the Contract Documents.

"Critical Path" means the longest series of tasks that runs consecutively from the beginning to the end of the Project, as determined by duration and workflow sequence. This longest path sets the managerial standard for how quickly the Project can be completed, given appropriate resources.

"Day" or *"Days"* means calendar days unless otherwise specifically noted in the Contract Documents.

"Defective Work" or *"Nonconforming Work"* means Work that:

- (i) Does not conform to the requirements of the Contract;
- (ii) Does not meet the requirements of any inspection, test, or approval as referred to in the Contract or as required by law;
- (iii) Contains defects;
- (iv) Represents a substitute for that required by the Technical Provisions, unless properly approved and authorized as provided in the Contract; or
- (v) Has been damaged or destroyed prior to Final Completion.

"Effective Date" means the date on which this Contract is approved by City Commission.

"E/A" (also, *"Engineer/Architect"*, *"Architect"*, or *"Engineer"* as applicable) generally means the professional licensed architect or engineer who develops the criteria and concept for the Project, performs the analysis, and is responsible for the preparation of the Technical Provisions and Plans. The E/A may be the OWNER's in-house staff or a consultant retained by the OWNER. No contractual relationship is created by this Contract between CONTRACTOR and the E/A.

"Equipment" means the machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the construction and acceptable completion of the Work.

"Field Directive" means a written order prepared and signed by the OWNER, not involving a change in Contract Price or Contract Time, directing a minor change in the Work where a Change Order is not required.

"Final Completion" means acceptance of the Work by the OWNER as evidenced by its signature upon the Certificate of Final Completion.

"Force Account" means a method for payment of additional Work that is based on CONTRACTOR's labor, equipment and materials costs with consideration for overhead and profit.

"Force Majeure Event" means conditions or other circumstances, such as acts of God, that: (i) were not foreseen, and could not have been reasonably foreseen, by CONTRACTOR or the OWNER, (ii) are beyond the control of CONTRACTOR and the OWNER, and (iii) materially hinder or interfere with the ability of CONTRACTOR to prosecute the Work; provided, however, that no such condition or circumstance will be a Force Majeure event if it is the result of CONTRACTOR's fault, negligence, or material breach of this Contract. Examples of Force Majeure events include wars, floods, strikes and labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, and severe adverse weather conditions not reasonably anticipated.

"Hazardous Materials" has the meaning as provided by law.

"Legal Requirements" means, collectively, all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work. The term includes the City Code and other CITY ordinances and regulations.

“Materials” means goods or substances to be incorporated in the Work under the Contract.

“Milestone” means a significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Final Completion of the Work.

“OWNER” means the City of Daytona Beach; or, if the form Contract so provides, the Community Redevelopment Agency for the CITY. All references within the Technical Provisions to the “CITY” (whether or not capitalized) are intended to refer to the “OWNER” unless logic dictates otherwise.

“Plans” means the plan documents prepared by the E/A and identified in the Table of Contents or otherwise incorporated into the Contract, including reproductions thereof, showing the location, character, dimensions, and details of the Work. The term may also be referred to herein as “drawings,” “contract drawings,” “contract plans,” or similar terms; but not “shop drawings.”

“Project” means the subject of the Work and its intended result.

“Project Site” or *“Site”* means the land or premises on which the Project is located, and in addition any land and areas identified in and permitted for use by CONTRACTOR by the Contract, subject to conditions that may apply such as for rights-of-way, permits, and easements.

“The Prompt Payment Act” means the Local Government Prompt Payment Act, F.S. § 218.70 et seq. (2014), as hereafter amended.

“Purchasing Code” means the provisions of Chapter 30 of the City Code.

“Referenced Standards” includes standards, standard details, specifications, manuals, regulations or codes of any technical society, organization or association, or of any governmental or quasi-governmental authority referred to in the Contract to describe the nature or quality of any of the Work, whether such reference be specific or by implication, and means the latest standard, standard detail, specification, manual, regulation or code in effect at the time of Bid opening, except as may be otherwise specifically stated in the Contract.

“Resident Project Representative” means, where the E/A is a private firm or person under contract with the CITY to act as the E/A, the authorized representative of E/A assigned to the Project Site; and in all other instances, the Contract Administrator.

“Risk Manager” means the Risk Manager for the CITY or designee; provided however, that the City Manager may act on behalf of the Risk Manager.

“Schedule of Values” means the written breakdown of the Contract Price by Construction Specification Institute divisions or by other format acceptable to the OWNER, prepared by CONTRACTOR for OWNER’s review and approval.

“Shop Drawings” means all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR as required by this Contract.

“Site-Related Reports” means any environmental, geotechnical, subsoil, and related reports relating to conditions at the Project Site which were used or made available for the OWNER’s or E/A’s use in creating the Plans.

“Specifications” means the Technical Provisions and Plans.

“Stored Materials” means delivered materials or equipment that are located at the Project Site, or with the OWNER’s approval at another location, and that have not yet been incorporated into the Work.

"*Subcontractor*" means a person or firm that under a direct contract with CONTRACTOR to perform a portion of the Work, and also unless logic dictates otherwise, sub-subcontractors and persons or firms doing work through such sub-subcontractors.

"*Substantial Completion*" means the completion of the Work, or an agreed upon portion of the Work, so as to allow the OWNER to occupy and use the Project or a portion thereof for its intended purposes.

"*Sub-subcontractor*" means a person or firm who has a direct or indirect contract at any tier with a subcontractor to perform a portion of the Work.

"*Supplemental General Conditions*" means that part of the Contract labeled as such and identified in the Table of Contents or otherwise incorporated into the Contract, that amends and supplements these General Conditions.

"*Supplier*" means a person or firm having a contract with CONTRACTOR or with any subcontractor of any tier to furnish materials to be incorporated in the Work.

"*Technical Provisions*" means those provisions of the Contract containing or referencing required technical specifications and standards. The term includes all such technical specifications and standards of other governmental jurisdictions, or professional association where referenced in the Contract, including any exceptions thereto regardless of whether these are attached to or enumerated within the Contract.

Whenever this Contract refers to but does not include a specific Technical Provision, the reference will be deemed to be to the version of the referenced Technical Provision included in the applicable CITY engineering or utility standard unless logic dictates otherwise.

"*Unilateral Change Instrument*" means a Change Instrument issued by the OWNER and not executed by CONTRACTOR.

"*Unit Price Schedule*" means the Bid Schedule.

"*Working Hours*" means 7:00 am through 6:00 pm, Monday through Friday excluding holidays designated by the CITY.

1.2 Abbreviations. The following abbreviations, when used in the Contract, represent the full text shown.

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
DIPRA	Ductile Iron Pipe Research Association
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government

FDHR	Florida Division of Historical Resources
FEMA	Federal Emergency Management Agency
FDEP	Florida Department of Environmental Protection
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IFAS	Institute of Food and Agricultural Sciences
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ISA	International Society of Arboriculture
ISO	International Organization for Standards
MPO	Volusia County Metropolitan Planning Organization
MSTCSD	Minimum Specifications for Traffic Control Signals and Devices
MUTCD	Manual on Uniform Traffic Control Devices
NACE	National Association of Corrosion Engineers
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NSPE	National Society of Professional Engineers
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
SJWRMD	St. Johns River Water Management District
SI	International System of Units
SSPC	Society of Protective Coatings
UL	Underwriters' Laboratories
USACOE	United States Army Corps of Engineers
USGS	United States Geological Service

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown. Where the above-referenced abbreviations refer to a written standard, specifications, test method, or other code, the reference will be deemed to be the edition of the code promulgated at the time of Bid opening.

1.3 Use of Terms.

1.3.1 Singular and Plural. The OWNER, E/A, CONTRACTOR, subcontractor, sub-subcontractor, supplier, other contractors, surety, insurer and others may be referred to in the Contract Documents as if singular in number. In the event that more than one person or entity occupies the position referred to and unless otherwise indicated, the term is interpreted to include all such persons or entities.

1.3.2 Technical Terms and Trade Usage. Terms in the Contract which have well-known technical or construction industry meanings and are not otherwise defined are used in accordance with such recognized meanings unless the context clearly indicates otherwise.

ARTICLE 2 –ORGANIZATION AND INTENT OF CONTRACT

2.1 Interpreting the Contract.

2.1.1 Order of Precedence. In cases of conflict or discrepancy among Contract Documents, interpretations will generally be based on the following order of precedence, ranked from highest to lowest priority:

- .1 Change Orders;
- .2 The Construction Contract form;
- .3 Supplemental General Conditions, if any;
- .4 General Conditions;
- .5 Technical Provisions;
- .6 Plans (figured dimensions will govern over scaled dimensions);
- .7 The Invitation to Bid and General and Supplemental Instructions to Bidders, including Addenda thereto;
- .8 The Bid Schedule;
- .9 All other documents required to be submitted and submitted as part of CONTRACTOR's Bid Proposal; and
- .10 All other Contract Documents that are neither listed above nor expressly incorporated into one of the foregoing Contract Documents;

with the understanding that a common sense approach will be used as necessary so that the Contract Documents produce the intended response.

2.1.2 Contract Documents Complementary. The Contract Documents are complementary, and what is required by one is as binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, are of like effect as if shown or mentioned in both.

2.1.3 Intent to Require Completed Project. The intent of the Contract Documents is to require that CONTRACTOR provide all materials and labor, including tools, equipment and supervision, necessary for the proper execution and completion of the Work as a functioning whole or required for a completed Project.

2.1.4 Work Required if Reasonably Inferable. Performance by CONTRACTOR is required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. Where no explicit quality or standards for materials or workmanship are established for the Work, the Work is to be of good quality for the intended use and consistent with the quality of surrounding Work which conforms to the requirements of the Contract Documents and to the standards for construction of the Project generally.

2.1.5 Organization of Drawings and Specifications. Organization of the Drawings around professional disciplines such as civil, architectural, structural, plumbing, mechanical, and electrical, and of the Specifications into divisions, sections, and articles, does not control CONTRACTOR in dividing the Work among sub-contractors or in establishing the extent of Work to be performed by any trade or excuse CONTRACTOR of its obligation to properly allocate and provide for the performance of all Work under the Contract.

2.1.6 Documents Excluded from the Contract. The Contract Documents do not include the Site-Related Reports referenced herein or other documents issued or provided to CONTRACTOR for the information of CONTRACTOR or for reference purposes and which are not specifically incorporated in the Contract Documents.

2.1.7 Titles, Headings, and Capitalization. The titles and headings of the various sections and subsections of these General Conditions and other Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents. The use, or inadvertent failure to use, capitalization of terms used in the Contract Documents is not intended to define or limit the meaning of the term.

1.1.8 Other Interpretive Rules.

2.1.8.1 Provisions of the Contract Documents that use the active voice-imperative mood writing style are directions to CONTRACTOR and are intended as commands. In such instance, the subject "the Bidder" or "CONTRACTOR" is understood.

2.1.8.2 Provisions of the Contract Documents that use the passive voice writing style are also directions to CONTRACTOR and intended as commands unless logic clearly dictates otherwise.

2.1.8.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

2.2 Referenced Standards.

2.2.1 Standards Incorporated. All Referenced Standards are incorporated into the Contract as fully as if printed and bound with the Specifications, but only to the limited extent that such standards are applicable to the Work.

2.2.2 Availability of Referenced Standards. CONTRACTOR is responsible for obtaining and having available at the Project Site a copy of each Referenced Standard insofar as it is applicable to the Work.

2.2.3 Precedence of Contract Documents Over Referenced Standards. No provision of a Referenced Standard is effective to change (i) the procedures established in the Contract Documents or by any applicable laws or regulations, or (ii) the duties and responsibilities of the OWNER, E/A or CONTRACTOR from those set forth in the Contract Documents; nor is any provision of a Referenced Standard effective to assign to the OWNER or the E/A any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the Contract.

ARTICLE 3 - PRELIMINARY MATTERS

3.1 Pre-Contract Submittals. The OWNER reserves the right to require certain Submittals before executing the Contract. Submittals required before execution of the Contract include, but are not limited to insurance certificates acceptable to the OWNER as provided in the Contract and any other submittals required by the Bid Documents. Bidders are requested to provide copies of MBE/WBE subcontracts and purchase orders from subcontractors and suppliers listed on Attachment D from the Bid Proposal Letter documenting subcontractor and supplier minority and women employment levels,

3.2 Project Information. Within ten days after the Effective Date, the OWNER will furnish CONTRACTOR free of charge, two signed, sealed, hard copies and one electronic copy of the Plans in AutoCAD and the Technical Provisions in PDF format, and one copy of each of the Site Related Reports, if any. All Site Related Reports are given to CONTRACTOR for information only, are not warranted as to accuracy, and are not a part of the Contract Documents. CONTRACTOR will not be entitled to rely on the accuracy or the completeness of any information contained in these Reports in performing the Work required herein, or in seeking claims for Contract Price or Contract Time adjustments. It is the CONTRACTOR's responsibility to determine and verify all information provided by OWNER including, but not limited to grades and elevations.

3.3 CONTRACTOR's Review of Contract Documents and Site Related Reports. Before undertaking a project, CONTRACTOR will carefully study the Contract Documents and any Site Related Reports provided by OWNER, to check and verify pertinent figures shown thereon compares accurately to all applicable field measurements. CONTRACTOR will promptly report in writing to the Contract Administrator any conflict, error, ambiguity, or discrepancy that CONTRACTOR discovers and will obtain a written interpretation or clarification from the Contract Administrator before proceeding with any Work affected thereby. CONTRACTOR will be liable to the OWNER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents or Site Related Reports of which CONTRACTOR knew or reasonably should have known.

3.4 Pre-Construction Submittals.

3.4.1 CONTRACTOR will prepare and submit all required pre-construction submittals within 15 Days after the Effective Date, except where the Contract Administrator extends time for submittal in writing. The submittals will include each of the following:

3.4.1.1 A proposed Progress Schedule, developed using Microsoft Project software unless otherwise approved by the Contract Administrator. The Progress Schedule will (i) indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, (ii) identify the Critical Path for completing the Work, (iii) identify when all subcontractors will be utilized, and (iv) take into consideration any Working Hours limitations. The Progress Schedule will contain sufficient detail to indicate that CONTRACTOR has identified all required Work elements and tasks, has provided for a sufficient and proper workforce and integration of subcontractor, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed in accordance with any Milestones and within required completion deadlines.

3.4.1.2 A proposed Schedule of Values, except where the Contract Price is based solely on Unit Prices set forth in the Bid Schedule. The Schedule of Values will be prepared in such a manner that each item of Work is shown as one or more line items on AIA Document G703, Continuation Sheet (latest ed.) or such other form as the OWNER may prescribe, and will contain such detail and be supported by such data as to allow the OWNER and the E/A to substantiate accuracy. Upon approval by the OWNER, the Schedule of Values will be used as the basis for reviewing progress payment requests. After the OWNER has approved the initial Schedule, CONTRACTOR will revise and resubmit for the OWNER's approval, amended Schedules of Values as necessary to reflect adjustments in the Contract Price resulting from approved Change Orders. A schedule of values may be required if a substantial portion of the contract price is a lump sum bid item.

3.4.1.3 An organizational chart showing the principals and management personnel who will be involved with the Work, including each one's responsibilities for the Work.

3.4.1.4 Preliminary Shop Drawings. Shop Drawings will be neat, legible, and drawn to scale. CONTRACTOR will specifically identify any proposed deviations from dimensions, details, and other requirements as provided by the Plans and specifications. When submitting Shop Drawings, CONTRACTOR will also provide a written narrative explanation itemizing each proposed deviation from the Specifications or other Contract requirements. No such deviations will be deemed to be accepted unless they are specifically approved in accordance with the procedures for substitutes and Change Orders.

3.4.1.5 To the extent not set forth in the Contract, a letter designating the Superintendent and, if such designation is required by the Supplemental General Conditions, the Project Manager.

3.4.1.6 A letter designating CONTRACTOR's safety representative, who will be responsible for general safety and excavation safety measures along with certifications or other documentation of the safety representative's qualifications.

3.4.1.7 If applicable, an excavation safety system plan.

3.4.1.8 If applicable, a plan illustrating proposed locations of temporary facilities.

3.4.1.9 A completed Non-Use of Asbestos Affidavit (prior to construction).

3.4.1.10 A map of proposed "haul routes" for delivery of materials and transportation of equipment to the Project Site.

3.4.1.11 A letter designating the Florida Registered Professional Land Surveyor for layout of the Work, if the Work requires the services of a surveyor.

3.4.1.12 Any other documents as required by the OWNER, consistent with the terms of the Contract.

The Supplemental General Conditions (if any) or the Technical Provisions may amplify, waive, or otherwise amend requirements for the above-referenced submittals.

3.4.2 The OWNER will have the right to accept or reject each of the required submittals. The OWNER will provide CONTRACTOR written notice as to any submittals that are rejected, in which instance CONTRACTOR will promptly resubmit them. Alternatively in such instance, the OWNER will have the right but not the obligation to schedule a preconstruction meeting; provided that the preconstruction meeting is scheduled no later than 30 days after the Effective Date, and the OWNER may delay issuance of the Notice to Proceed until the OWNER and CONTRACTOR have held the meeting.

3.4.3 The OWNER's acceptance of the above-referenced submittals will be deemed to be general only relating solely to their sufficiency and compliance with the intent of the Contract. Such acceptance does not constitute the OWNER's adoption, affirmation, or direction of CONTRACTOR's means and methods, and does not constitute a Change Instrument. OWNER's acceptance of the Progress Schedule will not impose on the OWNER, responsibility or liability for the sequencing, scheduling, or progress of the Work, and will not relieve CONTRACTOR from CONTRACTOR's responsibility for complying with the terms and conditions of this Contract. CONTRACTOR will at all times remain responsible for the factual accuracy of all such submittals.

3.5 Notice to Proceed. No work will proceed until the OWNER has issued a written Notice to Proceed. The OWNER will issue a Notice to Proceed within 60 days after the Effective Date, provided that CONTRACTOR has submitted all required documents, including insurance and, where applicable, Performance Security. The OWNER in its sole discretion may delay issuing the Notice if CONTRACTOR has not completed its preconstruction submittals within that time, or with CONTRACTOR's written concurrence for any other or no reason.

3.6 Limitations on Custody and Use of Plans. CONTRACTOR will not re-use the Plans and Technical Provisions, including modifications thereto, on any other project or for any other client. CONTRACTOR may not own or claim a copyright in the Site-Related Reports, or the Plans or any other Contract Documents. With the exception of the signed Contract Documents, all sets of the above-referenced documents are the property of the OWNER, and will be returned to the OWNER on request or at the completion of the Work prior to issuance of Final Payment.

3.7 Availability of Lands. The OWNER will provide access to the Project Site, secure any easements necessary therefore, and notify CONTRACTOR of any restrictions in such access. The OWNER may identify in the Contract Documents encumbrances or restrictions not of general application which are known by the OWNER and specifically related to use of the Site, but which are not of public record. CONTRACTOR will comply with such encumbrances and restrictions in performing the Work. Permanent easements for the completed facility or for changes in existing facilities will be obtained and paid for by the OWNER, unless otherwise provided in the Contract Documents.

ARTICLE 4 – OWNER'S RESPONSIBILITIES

4.1 Contract Administrator. The Contract Administrator is authorized to administer the Contract on behalf of the OWNER, commencing on the Effective Date and terminating on the date CONTRACTOR performance is completed (including final payment) or terminated.

4.1.1 The Contract Administrator's authority is limited as follows:

- .1** Provide direction to CONTRACTOR to ensure satisfactory and complete performance;
- .2** Issue Field Directives;
- .3** Monitor and inspect CONTRACTOR performance to ensure acceptable timeliness and quality;
- .4** Maintain necessary documentation and records regarding CONTRACTOR performance and other pertinent matters;

- .5 Furnish timely written notice of CONTRACTOR performance failures to the City Manager and to the City Attorney, as appropriate;
- .6 Determine acceptance or rejection of CONTRACTOR's performance;
- .7 Approve or reject applications for payment, other than application for final payment;
- .8 Furnish necessary reports to the City Manager;
- .9 Recommend Change Instruments or stop work orders to the City Manager; and
- .10 Recommend termination of Contract or work authorizations for default or convenience to the City Manager.

4.1.2 The authority of the Contract Administrator is limited to the functions set forth above. In particular, the Contract Administrator is NOT authorized to make determinations (as opposed to recommendations) that:

- .1 Alter or modify Contracts;
- .2 Terminate or cancel Contracts;
- .3 Approve, as opposed to recommend, Change Orders or Contract Amendments;
- .4 **Except as expressly provided herein**, interpret ambiguities in Contract language; or
- .5 Approve final applications for payment; or
- .6 Waive the OWNER's contract rights.

4.2 City Manager. The City Manager has all of the authority of the Contract Administrator. The City Manager has authority to approve final applications for payment except where approval also requires approval of a change order that is not within the City Manager's authority, below. In addition, the City Manager is authorized to issue (i) Change Orders increasing Contract Price or Contract Time as provided in the Purchasing Code or as specifically authorized by the City Commission; (ii) Change Orders reducing Contract Price or Contract Time; and (iii) stop work orders where reasonably necessary to preserve property or prevent injury.

4.3 Authority Reserved in City Commission. All administrative authority not specifically conferred upon the Contract Administrator or City Manager is reserved to the City Commission. Modifications to the Contract required to be approved by the Commission may be in the form of Change Orders or formal amendments, as appropriate.

4.4 General Obligation to Avoid Delays. Information or services under the OWNER's control will be furnished by the OWNER with reasonable promptness to avoid delay in orderly progress of the Work. The OWNER will have a reasonable amount of time to investigate site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. CONTRACTOR will notify the OWNER in writing, if the time for the investigation, review, analysis of any submittals, required for changes or otherwise required for the OWNER's decision, impacts in any way the Critical Path of the current approved Progress Schedule.

4.5 Owner-Provided Inspectors. The OWNER will provide persons to perform OWNER-required inspections.

ARTICLE 5 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS

CONTRACTOR will obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided. CONTRACTOR will be responsible for providing at his own expense and without liability to the OWNER, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. CONTRACTOR will be required to obtain approval of any private property owner for such additional lands and access unless specifically provided otherwise in the Contract Documents.

5.1 Subsurface and Physical Conditions.

5.1.1 CONTRACTOR affirms that CONTRACTOR has carefully examined the Plans and the Site-Related Reports, if any. CONTRACTOR acknowledges that the Site-Related Reports are **not** a guarantee of specific site conditions which may vary between boring locations, and that the Project Site is unwarranted.

5.1.2 CONTRACTOR affirms that prior to executing this Contract, CONTRACTOR has had the opportunity to become familiar with the Project Site and the local conditions under which the Project is to be constructed and operated, and to undertake its own geotechnical studies to the extent that CONTRACTOR deems appropriate. CONTRACTOR will not be entitled to any additional time or compensation as a result of any conditions at the Project Site which would have been disclosed to CONTRACTOR by a site visit or by undertaking its own geotechnical studies.

5.1.3 CONTRACTOR will provide the OWNER written notice as soon as reasonably possible, but no later than three days, if unforeseen conditions are encountered at the Project Site which are subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature that differ materially from those normally encountered in the type of work being performed under this Contract. CONTRACTOR may not disturb the conditions until the OWNER conducts an investigation. The OWNER will promptly investigate such conditions.

5.1.3.1 If it is determined that such conditions differ materially and cause an increase or decrease in CONTRACTOR's cost of or time required for performance of any part of the Work, the Contract Administrator will recommend an equitable adjustment in the Contract Price or Contract Time, or both. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the Contract Administrator will notify CONTRACTOR in writing of such findings and the Contract will not be adjusted.

5.1.3.2 CONTRACTOR will be liable to the OWNER for failure to report any such conflict, error, ambiguity, or discrepancy of which CONTRACTOR knew or reasonably should have known, and for CONTRACTOR's failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents within said three-day period, and for any increases in Project costs, or damages accruing, in association with CONTRACTOR's disturbance of the conditions pending OWNER's investigation.

5.1.4 Notwithstanding any other provision of this Contract, CONTRACTOR is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. "Public utility lines" means the utility distribution and supply system, and "utility customer service lines" means the utility lines connecting customers to the utility distribution and collection system. Generally, existing utility customer service line connections are not shown on the Plans. CONTRACTOR will notify "One Call" and exercise due care to locate, mark, uncover and otherwise protect all such lines in the construction zone and any of CONTRACTOR's work or storage areas. CONTRACTOR's responsibility for the location and protection of utilities is primary and non-delegable. CONTRACTOR will indemnify or reimburse such expenses or costs (including fines that may be levied against the OWNER) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area. The OWNER reserves the right to repair any damage CONTRACTOR causes to such utilities at CONTRACTOR's expense. If a public or customer service line is damaged by CONTRACTOR, CONTRACTOR will give verbal notice within one hour and written notice within 24 hours, to the OWNER and to the utility representatives identified on the Plans.

5.1.5 CONTRACTOR will take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature will be disturbed without written permission of the OWNER and the FDHR. When such objects are uncovered unexpectedly, CONTRACTOR will stop all Work in close proximity and notify the OWNER and the FDHR of their presence and will not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on the OWNER's property will remain property of FDHR conforming to applicable provisions of Florida Statutes. If the OWNER, in consultation with the FDHR, determines that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, CONTRACTOR will perform salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CONTRACTOR's cost of, or time required for, performance of the Work, the Contract Price or Contract Time will be equitably adjusted subject to compliance with the provisions herein for Changes and Delays.

5.2 Protection of Reference Points. Unless otherwise specified, the OWNER will furnish a base line and a suitable number of bench marks adjacent to the work. From the information provided by the OWNER, CONTRACTOR will develop and make all detailed surveys, stakes, lines, and elevations, as CONTRACTOR

deems necessary. CONTRACTOR will carefully protect and preserve benchmarks, reference points, and stakes. If these benchmarks, reference points, or stakes are disturbed or destroyed due to CONTRACTOR's failure to comply with the above-referenced requirement, CONTRACTOR will bear the cost of expenses of relocating and replacing them, including the costs of a Registered Professional Land Surveyor if the OWNER determines the same to be necessary.

5.3 Hazardous Materials.

5.3.1 To the extent provided by applicable law, the OWNER will be responsible for any pre-existing hazardous material uncovered or revealed at the Project Site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work.

5.3.1.1 CONTRACTOR will immediately stop Work in the affected area and will take all necessary precautions to avoid further disturbance of the materials. CONTRACTOR will also will immediately notify the OWNER and, if required by applicable law or regulations, all government or quasi-government entities with jurisdiction over the Project or Project Site.

5.3.1.2 Upon receiving notice of the presence of suspected Hazardous Materials, the OWNER will take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures will include the OWNER retaining qualified independent experts to (i) ascertain whether Hazardous Materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that the OWNER will take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

5.3.1.3 CONTRACTOR will be obligated to resume Work at the affected area of the Project only after the OWNER provides written certification that (i) the Hazardous Materials have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site. CONTRACTOR will be responsible for continuing the Work in the unaffected portion of the Project and the Project Site.

5.3.1.4 CONTRACTOR will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Price or Contract Time(s) to the extent CONTRACTOR's cost or time of performance have been adversely impacted by the presence of Hazardous Materials.

5.3.2 CONTRACTOR will maintain at the Project Site, available to the OWNER, appropriate information pertaining to all Hazardous Materials brought to the Project Site by CONTRACTOR or any subcontractor, and as may be required by the Supplemental General Conditions, if any. CONTRACTOR will ensure that all such materials are properly labeled or identified, and will properly store, handle and use them at all times. In accordance with federal Hazard Communication Standard (29 CFR § 1910.1200) and all other applicable Legal Requirements, manufacturers and distributors are required to label each Hazardous Material or chemical container, and to provide Material Safety Data sheets to the purchaser. CONTRACTOR will comply with these laws and will provide the OWNER with copies of all relevant documents, including Material Safety Data sheets prior to performance or services or contemporaneous with delivery of goods. CONTRACTOR will provide and designate appropriate and secure areas for their storage and will notify the OWNER of their presence and location at Project Site. CONTRACTOR will not store Hazardous Materials at the Project Site in excess of those reasonably needed for CONTRACTOR's prosecution of the Work, and will properly remove or dispose of all Hazardous Materials, including combustible waste, as soon as possible after completion of the operations in which they are utilized.

5.3.3 No asbestos-containing materials will be incorporated into the Work or brought on Project Site without prior approval of the OWNER. CONTRACTOR will not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the OWNER's written approval. When a specific product is specified, CONTRACTOR will endeavor to verify that the product does not include asbestos containing material.

5.3.4 CONTRACTOR will be solely responsible for use, storage and remediation of any Hazardous Materials brought to Project Site by CONTRACTOR, subcontractors, sub-subcontractors, suppliers, and anyone else for whom CONTRACTOR is responsible. CONTRACTOR will indemnify, defend and hold harmless the

OWNER and the OWNER's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Materials introduced to Project Site by CONTRACTOR, subcontractors, sub-subcontractors, suppliers, or anyone for whose acts they may be liable.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 General Responsibilities.

6.1.1 Scope of Work. CONTRACTOR will provide, perform, and complete all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data and other means and items necessary to accomplish the Project at the Work Site, including measures for sediment control, storm water management, and waste disposal, in compliance with this Contract. CONTRACTOR is required to perform all Work specified in the Contract Documents and reasonably inferable from these Documents as being necessary to produce the intended results.

6.1.2 Quality. All materials and Work will be of good quality for the intended use and consistent with the quality of surrounding Work, and will conform to the requirements of the Contract Documents and to the standards for construction of the Project generally. All materials will be new.

6.1.3 Construction Means and Methods. CONTRACTOR will provide continuous on-site supervision and direction of the Work using CONTRACTOR's best efforts. CONTRACTOR will have control over construction means, methods, techniques, sequences, and procedures, unless the Contract Documents give other specific instructions concerning these matters, and is solely responsible therefore.

6.1.4 Discipline at the Project Site. CONTRACTOR will enforce strict discipline and good order among CONTRACTOR's employees and other persons for whose Work CONTRACTOR is responsible, including CONTRACTOR's employees, subcontractors, sub-subcontractors, and suppliers, and the agents and employees of any of them.

6.1.5 Responsibility for Subordinates. CONTRACTOR is responsible for the acts and omissions of all persons performing portions of the Work at the Project Site, including but not limited to CONTRACTOR's employees, subcontractors, sub-subcontractors, and suppliers, and the agents and employees of any of them.

6.1.6 Assignment, Scheduling and Coordination. CONTRACTOR is solely responsible for and has control over assigning, scheduling and coordinating all portions of the work under the Contract performed by CONTRACTOR's own forces and by its subcontractors, sub-subcontractors, and suppliers, in accordance with the approved Progress Schedule, unless the Contract Documents give other specific instructions concerning these matters.

6.1.7 Obligations Not Relieved. CONTRACTOR is not relieved of its obligations to perform the Work in accordance with the Contract Documents, by the activities or duties of the OWNER or the E/A in the administration of the Contract or of construction, or by tests, inspections, or approvals required or performed by persons other than CONTRACTOR.

6.1.8 Ongoing Duty to Report Problems with Contract Documents. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between any Contract Document and any Legal Requirement or of any such standard, specification, manual, or code or instructions of any manufacturer or supplier, CONTRACTOR will within three days of such discovery report it to the OWNER in writing, and CONTRACTOR will not proceed with the Work affected thereby until a Change Order has been issued. CONTRACTOR will be liable to the OWNER for failure to report any such conflict, error, ambiguity, or discrepancy of which CONTRACTOR knew or reasonably should have known. CONTRACTOR will be liable to the OWNER for CONTRACTOR's failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents within said three-day period.

6.1.9 Inspection of Work. CONTRACTOR will make frequent inspections during the progress of the Work to confirm that work previously performed by CONTRACTOR is in compliance with the requirements of this Contract, and that any portion of Work previously performed by CONTRACTOR or by others is in proper condition to receive subsequent Work.

6.2 Diligent Prosecution. CONTRACTOR will at all times be responsible for the diligent prosecution of the Work so as to complete the Work within the Contract Time.

6.2.1 CONTRACTOR will have an affirmative obligation to rearrange Milestones, notwithstanding the manner in which they are scheduled in the current approved Progress Schedule, as circumstances may require. If in order to meet this obligation CONTRACTOR rearranges the order of Work in a manner that materially departs from the current approved Progress Schedule, CONTRACTOR will within 3 days thereafter provide notice to the OWNER, who may require CONTRACTOR to submit a revised Progress Schedule reflecting the rearrangement. No revised Progress Schedule extending the Contract Time will be approved without the issuance of a Change Order in compliance with the Contract Documents.

6.2.2 CONTRACTOR will carry on the Work and adhere to the current approved Progress Schedule, including during all disputes or disagreements with the OWNER. No Work will be delayed or postponed pending resolution of any disputes or disagreements, except as the OWNER and CONTRACTOR may otherwise agree through a Change Order or Contract amendment.

6.3 Supervision and Superintendence.

6.3.1 CONTRACTOR will supervise the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

6.3.2 CONTRACTOR will have an English-speaking, competent Superintendent on the Work at all times that work is in progress. The Superintendent will be CONTRACTOR's representative on the Work and will have the authority to act on the behalf of CONTRACTOR. All communications given to the Superintendent will be as binding as if given to CONTRACTOR, even where written notice is otherwise required. Either CONTRACTOR or the Superintendent will provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when Work is not in progress. The Superintendent will be an employee of CONTRACTOR, unless waived in writing by the OWNER. If CONTRACTOR proposes a management structure with a Project Manager supervising, directing, and managing construction of the work in addition to or in substitution of a Superintendent, the requirements of these Construction Documents with respect to the Superintendent will likewise apply to any such Project Manager.

6.3.2.1 CONTRACTOR will present the resume of the proposed Superintendent to the OWNER showing evidence of experience and successful superintendence and direction of work of a similar scale and complexity. The OWNER may reject the proposed Superintendent if the OWNER determines that the proposed Superintendent does not have sufficient experience in line with the Work, in which instance CONTRACTOR will propose a different Superintendent for OWNER approval.

6.3.2.2 CONTRACTOR will not replace the Superintendent without written notice to the OWNER. If CONTRACTOR deems it necessary to replace the Superintendent, CONTRACTOR will provide the necessary information for approval, as stated above, on the proposed new Superintendent.

6.3.2.3 CONTRACTOR may designate a qualified substitute Superintendent if the designated Superintendent is temporarily away from the Work, subject to OWNER approval.

6.3.2.4 CONTRACTOR will replace the Superintendent upon the OWNER's request, if the Superintendent is unable to perform to the OWNER's satisfaction.

6.4 Labor, Materials, and Equipment.

6.4.1 CONTRACTOR will employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CONTRACTOR will prohibit the use and possess any alcoholic or other intoxicating beverages, illegal drugs, or controlled substances while on the job or on the OWNER's property. Subject to the applicable provisions of Florida law, neither CONTRACTOR, nor subcontractors, suppliers, or other agents of CONTRACTOR, may use or possess any firearms or other weapons while on the job or on the OWNER's property. If the OWNER notifies CONTRACTOR that any officer, employee, subcontractor, supplier, or other agent is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Florida law, or has possessed or was under the influence of alcohol or drugs on the job, CONTRACTOR will immediately remove that person from performing Contract Work, and may not employ that person again on the Work without the OWNER's prior written consent. CONTRACTOR will at all times maintain good discipline and order on- and off-Project Site in all matters pertaining to the Project. CONTRACTOR will pay workers no less than the wage rates established by law, and maintain weekly payroll reports as evidence thereof.

6.4.2 CONTRACTOR will not use any preexisting facilities of the OWNER without the specific written consent of the OWNER, except as indicated in the Contract Documents. CONTRACTOR is solely responsible for temporary facilities and services provided or utilized by CONTRACTOR and will remove those not required to remain at the completion of the Work or any portion thereof, will promptly correct any damage caused by the erection, use or removal of temporary facilities; and will restore the Project Site and any adjacent areas to their original condition or that required by the Contract Documents upon completion of the Work.

6.4.3 CONTRACTOR will store, handle, install, and test all materials in accordance with the manufacturer's or suppliers' most recent instructions and recommendations. CONTRACTOR will promptly notify the OWNER if these instructions and recommendations are in conflict with any provision of the Contract Documents.

6.4.4 All materials and equipment will be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable manufacturer and supplier, except as otherwise provided in the Contract Documents. The Contract Administrator or E/A may require CONTRACTOR to furnish one or more of the following:

6.4.4.1 Satisfactory evidence (i.e., reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment.

6.4.4.2 Samples of required equipment and materials prior to having such equipment and materials delivered to the Project Site. Each sample submitted by CONTRACTOR will carry a label giving the name of CONTRACTOR, the Project, and the name of the producer. The accompanying certificate or letter from CONTRACTOR will state that the sample complies with the contract requirements, will give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the OWNER in reviewing the sample promptly. It will also include the statement that all materials or equipment furnished for use in the Project will comply with the samples or certified statements. In addition, the accompanying certificate will include a written narrative explanation itemizing the extent to which the sample deviates from the Specifications or other Contract requirements.

6.4.5 The OWNER will not be required to consider delays in the Work caused by delivery of non-complying materials or equipment, or by late or improper submission test reports or manufacturer's certificates for OWNER approval, as just cause for an extension of the Contract Time. The OWNER's acceptance of any test report, certificate, or sample will be general only and will not constitute a waiver of the OWNER's right to demand full compliance with Contract requirements, nor relieve CONTRACTOR from ensuring full compliance with the Contract.

6.4.6 CONTRACTOR will assign to the OWNER, any rights CONTRACTOR may have to bring antitrust suits against suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CONTRACTOR will cooperate with the OWNER should the OWNER wish to prosecute suits against suppliers for illegal price fixing.

6.4.7. Upon CONTRACTOR's request and the Contract Administrator's written approval, CONTRACTOR may locate stored materials off-site, so long as they are in a bonded and insured facility, accessible to the OWNER, and are clearly marked as OWNER's property.

6.4.8 Title to materials delivered to the Project Site or stored off-site will not be deemed to pass to the OWNER until the OWNER accepts such title by paying for same. The OWNER will be entitled but is not required to request title documentation. Risk of loss will not pass to the OWNER until title passes.

6.5 Concerning Subcontractors, Suppliers, and Others.

6.5.1 CONTRACTOR will retain direct control of and give direct attention to the fulfillment of this Contract. CONTRACTOR agrees not to assign this Contract, by power of attorney or otherwise, without the OWNER's prior written consent.

6.5.2 Unless the Supplemental General Conditions provide otherwise, CONTRACTOR will not subcontract the performance of the entire Project or the supervision and direction of the Work without the OWNER's prior written consent. CONTRACTOR will not employ any subcontractor or other person or organization, whether initially or as a substitute, against whom the OWNER may have reasonable objection. The OWNER will communicate such objections by written notice. CONTRACTOR will not substitute any subcontractor that has been accepted by the OWNER, unless the OWNER first accepts the substitute in writing.

6.5.3 CONTRACTOR will enter into written agreements with all subcontractors and suppliers which specifically bind the subcontractors and suppliers to the applicable terms and conditions of the Contract Documents for the OWNER's benefit. The OWNER reserves the right to specify that certain requirements will be adhered to by all subcontractors and sub-subcontractors as indicated in other portions of the Contract Documents, in which instance these requirements will be made a part of the written agreement between CONTRACTOR and each subcontractor. CONTRACTOR's standard subcontract form is subject to the OWNER's review and approval. Within five working days of the OWNER's request for subcontractor contract documents, CONTRACTOR will provide them to the OWNER.

6.5.3.1 CONTRACTOR is asked to provide copies of all subcontracts and purchase orders issued to MBE/WBE subcontractors and suppliers. MBE/WBE subcontractors or suppliers may not be replaced without good cause. CONTRACTOR shall make a good faith effort to replace any terminated MBE/WBE subcontractor or supplier with another MBE/WBE certified subcontractor or supplier.

6.5.4 CONTRACTOR will be fully responsible to the OWNER for all acts and omissions of the subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work under contract with CONTRACTOR and under contract with CONTRACTOR's subcontractors or suppliers, just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents will create for the benefit of any such subcontractor or other person or organization any contractual relationship between the OWNER and any such subcontractor or other person or organization, nor will it create any obligation on the part of the OWNER or E/A to pay or to see to the payment of any moneys due any such subcontractor or other person or organization except as may otherwise be required by Legal Requirements.

6.5.5 CONTRACTOR will be solely responsible for efficiently scheduling and coordinating the Work of subcontractors and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR in order to avoid any delays or inefficiencies in the prosecution of the Work. CONTRACTOR will require all subcontractors and such other persons and organizations performing or furnishing any of the Work to communicate with the OWNER through CONTRACTOR.

6.5.6 The divisions and sections of the Technical Provisions and the identification of any Plans will not control CONTRACTOR in dividing or delineating the Work to be performed by any specific trade.

6.5.7 CONTRACTOR will pay each subcontractor their appropriate share of payments made to CONTRACTOR not later than ten days of CONTRACTOR's receipt of payment from the OWNER.

6.5.7.1 CONTRACTOR will submit Attachment E, MBE/WBE Usage, outlining the payments made to MBE/WBE subcontractors and suppliers pursuant to each progress payment.

6.5.8 To the extent allowed by Florida law, the OWNER will be deemed to be a third party beneficiary to each subcontract and may, if the OWNER elects, following a termination of CONTRACTOR, require that the subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the OWNER, rather than CONTRACTOR; however, if the OWNER requires any such performance by a subcontractor for the OWNER's direct benefit, then the OWNER will be bound and obligated to pay such subcontractor the reasonable value for all Work performed by such subcontractor to the date of the termination of CONTRACTOR, less previous payments, and for all Work performed thereafter. If the OWNER elects to invoke the OWNER's right under this Section, the OWNER will provide notice of such election to CONTRACTOR and the affected subcontractor(s).

6.6 Patent Fees and Royalties.

6.6.1 CONTRACTOR will be responsible at all times for compliance with applicable patents and copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.

6.6.2 CONTRACTOR will pay all royalties and license fees and will provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not the OWNER specifies a particular design, device, material, or process.

6.6.3 CONTRACTOR will defend all suits or claims for infringement of any patent or copyright and will save the OWNER harmless from any loss or liability, direct or indirect, arising with respect to CONTRACTOR's process in the formulation of its Bid or the performance of the Work or otherwise arising in connection therewith. The OWNER reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CONTRACTOR will indemnify and save harmless the OWNER from all costs and expenses of such defense as well as satisfaction of all judgments entered against the OWNER.

6.6.4 The OWNER will have the right to stop the Work or terminate this Contract at any time if CONTRACTOR fails to disclose to the OWNER that CONTRACTOR's work methodology includes the use of any infringing design, device, material, or process.

6.7 Permits, Fees. CONTRACTOR will secure and pay for at CONTRACTOR's expense, all permits and licenses of a temporary nature that are required for the prosecution of the Work; provided, however, that the OWNER will reimburse CONTRACTOR for any CITY-required permits unless specified otherwise in the Supplemental General Conditions.

Unless the Supplemental General Conditions provide otherwise, the OWNER will obtain licenses and easements for permanent structures and or permanent changes in existing facilities.

6.8 Construction Operations.

6.8.1 CONTRACTOR will confine operations at the Project Site to those areas permitted by all Legal Requirements, and will not unreasonably encumber the Project Site with materials and equipment. CONTRACTOR will assume full responsibility for any damage to any portion of the Project Site, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. If an adjacent property owner or occupant files a claim because of or in connection with the performance of the Work, CONTRACTOR will promptly settle the claim by negotiation or as otherwise provided by law. CONTRACTOR will indemnify, defend and hold harmless the OWNER and anyone directly or indirectly employed by the OWNER, from and against all claims, costs, losses, and damages (including court costs and reasonable attorney's fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such the owner or occupant against the OWNER, E/A or any

other party indemnified hereunder to the extent caused by or based upon performance of the Work or failure to perform the Work.

6.8.2 CONTRACTOR will establish the exterior lines and elevations of all buildings and structures to be erected on the Project Site, and lines and grades of site work such as roads, utilities, and site grading, based on reference points, the location of existing structures and improvements, or benchmarks identified in the site surveys provided by the OWNER. CONTRACTOR will provide a professional certification by a professional engineer or land surveyor as to the actual location of building lines prior to constructing any foundations. CONTRACTOR will establish the building grades, lines, and levels, and column, wall, and partition lines required by subcontractors in laying out the Work. At the completion of the Work, CONTRACTOR will provide another professional certification by a registered engineer or land surveyor as to the location of completed improvements in relation to property lines, building lines, easements, and other boundaries.

6.8.3 CONTRACTOR will not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor will CONTRACTOR subject any part of the Work, the Project Site, or adjacent property to stresses or pressures that will endanger it.

6.8.4 All Work will be performed solely during Working Hours, unless (i) more restrictive hours are required by CITY ordinances or other Legal Requirements governing CONTRACTOR's performance of the Work, or (ii) the Contract Administrator approves expanded Working Hours in writing, such as in the event of emergencies, in which instance the Contract Administrator's approval may be terminated at any time and for any reason without recourse to CONTRACTOR. The OWNER has the right to impose further restrictions on working hours reasonably related to the use of occupied facilities. No delays resulting from compliance with applicable Legal Requirements may form the basis for any claim by CONTRACTOR for delay damages or additional compensation or for any extensions of the Contract Time; any delays arising from restrictions related to the use of occupied facilities are non-compensable and any claims for extensions of the Contract Time relating to them will be filed in accord with Article 11 or the same will be conclusively deemed to have been waived. CONTRACTOR will not permit Work outside of Working Hours without the written consent of the OWNER; such consent, if given, may be conditioned upon payment by CONTRACTOR of the OWNER's additional costs and fees incurred in monitoring such off-hours Work. CONTRACTOR will notify the OWNER as soon as possible if Work will be performed outside such times in the interest of the safety and protection of persons or property at the Project Site or adjacent thereto, or in the event of an emergency. In no event will CONTRACTOR permit Work to be performed at the Project Site without the presence of CONTRACTOR's Superintendent and person responsible for the protection of persons and property at the Project Site and compliance with all Legal Requirements, if different from the Superintendent.

6.8.5 Temporary Utilities. CONTRACTOR, at its own expense, will:

6.8.5.1 Furnish all temporary heat, cooling ventilation, and humidity control including all required apparatus and fuel as may be necessary to protect the Work fully, both during its execution and until Final Completion and acceptance. CONTRACTOR will not use any method of heating, cooling, ventilation, or humidity control of the building unless approved by the OWNER in advance.

6.8.5.2 Provide all temporary on-Site water service required to perform the Work, to assure safety at the Site, and as otherwise required. All temporary services will be removed by CONTRACTOR.

6.8.5.3 Furnish all temporary electric service required to perform the Work, to assure safety at the Site, and as otherwise required.

6.8.5.4 CONTRACTOR will provide and maintain in a neat, sanitary condition such accommodations for the use of CONTRACTOR's employees, subcontractors, and others for whom CONTRACTOR may be responsible, as may be necessary to comply with Legal Requirements, and will commit no public nuisance.

6.8.6 Site Maintenance. During the progress of the Work and on a daily basis, CONTRACTOR will keep the Project Site free from accumulation of waste materials, rubbish, and other debris resulting from the Work. If CONTRACTOR fails to do so in a manner reasonably satisfactory to the OWNER within 48 hours after notice or as otherwise required by the Contract Documents, the OWNER may clean the Project Site and back charge CONTRACTOR for all costs associated with the cleaning. At Substantial Completion, CONTRACTOR will leave the Project Site clean, including but not limited to the cleaning of manholes, inlets, and gravity underground piping

systems, and ready for the OWNER's occupancy, and will at this point also remove all temporary buildings, waste, trash, debris, and surplus materials. At Final Completion, CONTRACTOR will remove all tools, appliances, construction equipment, and machinery, in addition to the above-referenced materials, and leave the Project Site clean and ready for OWNER's occupancy. This requirement will not apply to property used for permanent disposal of rubbish or waste materials in accordance with permission for such disposal granted to CONTRACTOR by the OWNER. CONTRACTOR will, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If CONTRACTOR fails to clean up at the completion of the Work, the OWNER may do so and the cost thereof will be charged against CONTRACTOR.

6.8.7 Risk of Performance. If CONTRACTOR performs any work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission, or violation of Legal Requirements in the Contract Documents of which CONTRACTOR is aware, or which could reasonably have been discovered by the review required by CONTRACTOR by this Contract, without prompt written notice to the OWNER and the E/A and request for correction, clarification or additional information, as appropriate, CONTRACTOR does so at its own risk and expense and all claims relating thereafter are specifically waived.

6.9 Legal Requirements.

6.9.1 CONTRACTOR will diligently and promptly call for locates required, in accordance with Sunshine State One Call of Florida requirements.

6.9.2 CONTRACTOR will give all other notices and comply with all other Legal Requirements, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof. Except where these Legal Requirements provide otherwise, neither the OWNER nor the E/A will be responsible for monitoring CONTRACTOR's compliance with any Legal Requirements.

6.9.3 Maintaining clean water, air, and earth or improving thereon will be regarded as of prime importance. CONTRACTOR will plan and execute its operations in compliance with all applicable Legal Requirements concerning control and abatement of water pollution and prevention and control of air pollution, including where applicable the terms and conditions of the CITY's current National Pollutant Discharge Elimination System (NPDES) permit.

6.10 Taxes.

6.10.1 CONTRACTOR will pay only those sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida in the performance of this Contract.

6.10.2 The OWNER is an exempt organization as defined by Florida Statutes and is therefore exempt from payment of sales and use taxes.

6.11 Maintenance of Records and Documents.

6.11.1 CONTRACTOR will maintain at the Site, available to the OWNER for reference during the progress of the Work, a copy of the current approved Progress Schedule and any approved revisions thereto. CONTRACTOR will keep current records of and mark on a copy of the current approved Progress Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Progress Schedule.

6.11.2 CONTRACTOR will maintain in a safe place at the Project Site, or other location acceptable to the OWNER, one record copy of all Drawings, Specifications, Addenda, Change Instruments and written interpretations and clarifications issued pursuant to this Contract (collectively, "Record Documents") in good order and annotated to show all changes made during construction. The Record Documents and all final samples and final Shop Drawings will be available to the OWNER and E/A for reference during performance of the Work. Upon Substantial

Completion of the Work, CONTRACTOR will deliver these Record Documents, and final samples and Shop Drawings, to the OWNER.

6.11.3 To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

6.11.3.1 Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

6.11.3.2 Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the CITY Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

6.11.3.3 Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

6.11.3.4 Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provide to the CITY upon request from the CITY Clerk, in a format that is compatible with the CITY's information technology systems.

6.11.3.5 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

6.11.4 Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

6.12 Safety and Protection.

6.12.1 CONTRACTOR will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Upon request, and prior to installation of measures, CONTRACTOR will submit a site security plan to the OWNER. By reviewing the plan or making recommendations or comments, the OWNER will not assume liability nor will CONTRACTOR be relieved of liability for damage, injury, or loss. CONTRACTOR will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury, and loss to:

6.12.1.1 The public;

6.12.1.2 All persons on the Project Site or who may be affected by the Work;

6.12.1.3 All the Work and materials and equipment to be incorporated therein, whether in storage on or off Project Site; and

6.12.1.4 Other personal property, fixtures and other items at the Project Site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

6.12.2 CONTRACTOR will comply with the Occupational Safety and Health Administration's (OSHA) Excavation Safety Standard, 29 U.S.C § 651 et seq., 29 C.F.R. 1926.650 Sub Part P., and the Trench Safety Act, Section 553.60 et seq. In addition CONTRACTOR will comply with all other applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss, and will erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR will notify owners of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them, and will cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Subparagraphs 6.12.1.3 and 6.12.1.4, above, caused, directly or indirectly, in whole or in part, by CONTRACTOR, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, will be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the OWNER, or E/A, or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CONTRACTOR or any subcontractor, supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and protection of the Work will continue until such time as all the Work is completed and the OWNER has issued a Certificate of Final Completion (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, CONTRACTOR will comply with the following specific provisions:

6.12.3 CONTRACTOR will designate in writing a qualified and experienced safety representative at Project Site whose duties and responsibilities will be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Upon request of the OWNER, CONTRACTOR will provide certifications or other documentation of the safety representative's qualifications.

6.12.4 CONTRACTOR will be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at Project Site in accordance with Legal Requirements.

6.12.5 CONTRACTOR will comply with the following requirements in emergencies:

6.12.5.1 In emergencies affecting the safety or protection of persons or the Work at Project Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from the OWNER or E/A, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CONTRACTOR will give the OWNER telephone notification as soon as reasonably practical and a prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the express provisions of this Contract Documents have been caused thereby. If the OWNER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued; otherwise the OWNER will not be responsible for CONTRACTOR's emergency action.

6.12.5.2 Authorized agents of CONTRACTOR will respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project Site of CONTRACTOR or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CONTRACTOR or CONTRACTOR's agent fail to respond and take action to alleviate such an emergency situation, the OWNER may direct other forces to take action as necessary to remedy the emergency condition, and the OWNER will deduct any cost of such remedial action from the funds due CONTRACTOR under this Contract.

6.12.5.3 If there is an accident involving injury to any individual or damage to any property on or near the Work, CONTRACTOR will provide to the Contract Administrator verbal notification within one hour and written notification within 24 hours of the event and will be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports,

police accident reports and other documentation that describes the event. CONTRACTOR will provide the OWNER copies of such documentation within 48 hours of the event.

6.12.5.4 CONTRACTOR will cooperate with the OWNER in any investigation of any such incident. CONTRACTOR will immediately report such incidents to any other governmental or quasi-governmental authorities having jurisdiction over safety-related matters as may be required by law.

6.13 Indemnification.

6.13.1 Any obligation of CONTRACTOR to indemnify or hold harmless under this Contract will not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CONTRACTOR or any such subcontractor, supplier, or other person or organization for whom CONTRACTOR may be responsible under workers' compensation acts, disability benefit acts, or other employee benefit acts.

6.13.2 Any obligation of CONTRACTOR to indemnify and hold harmless under this Contract, will not extend to the liability of the OWNER, E/A, E/A's consultants, and their officers, directors, partners, employees or agents, when caused primarily by negligent preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of the OWNER, E/A, or OWNER's or E/A's consultant's, officers, directors, partners, employees or agents.

6.13.3 If CONTRACTOR fails to follow the OWNER's directives concerning use of Project Site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CONTRACTOR will indemnify the OWNER against all costs resulting from such claims.

6.13.4 If CONTRACTOR unreasonably delays progress of the Work being done by others on Project Site so as to cause loss for which the OWNER becomes liable, then CONTRACTOR will indemnify the OWNER from and reimburse the OWNER for such loss.

6.14 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Contract, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

6.15 Losses from Natural Causes. Unless otherwise specified, all loss or damage to CONTRACTOR arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, will be sustained and borne by CONTRACTOR at its own cost and expense.

6.16. Notice of Claim. Should CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of OWNER or of any of OWNER's employees or agents or others for whose acts OWNER is liable, CONTRACTOR must file a claim within 30 calendar days of the event giving rise to such injury or damage. The provisions of this Section will not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

6.17 Financial Records.

6.17.1 For purposes of this Section 6.17, "financial records" means all records generated by or on behalf of CONTRACTOR and each Subcontractor and supplier of CONTRACTOR, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:

- .1 Accounting records;
- .2 Written policies and procedures;
- .3 Subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.);

- .4 Original estimates and estimating work sheets;
- .5 Correspondence;
- .6 Change Order files (including documentation covering negotiated settlements);
- .7 Back charge logs and supporting documentation;
- .8 General ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
- .9 Lump sum agreements between CONTRACTOR and any Subcontractor or supplier;
- .10 Records necessary to evaluate: Contract compliance, Change Order pricing, and any Claim submitted by CONTRACTOR or any of its payees; and
- .11 Any other CONTRACTOR record that may substantiate any charge related to this Contract.

6.17.2 CONTRACTOR will allow the OWNER, and the OWNER's authorized representatives, to inspect, audit, and reproduce all Records generated by or on behalf of CONTRACTOR and each subcontractor and supplier, upon the OWNER's written request. Further, CONTRACTOR will allow the OWNER, and the OWNER's authorized representatives, to interview any of CONTRACTOR's employees, all Subcontractors, all suppliers, and all of their respective employees.

6.17.3 CONTRACTOR will retain all its Records, and require all its subcontractors and suppliers to retain their respective Records, during this Contract and for three years after final payment, until all audit and litigation matters that the OWNER has brought to the attention of CONTRACTOR are resolved, or as otherwise required by law, whichever is longer. The OWNER's right to inspect, audit, or reproduce Records, or interview employees of CONTRACTOR or its respective subcontractors or suppliers, exists during this Contract, and for three years after final payment, until all audit and litigation matters that the OWNER has brought to CONTRACTOR's attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to the OWNER, either from CONTRACTOR or any of its subcontractors or suppliers that may furnish Records or make employees available for interviewing.

6.17.4 CONTRACTOR must provide sufficient and accessible facilities during its normal business hours for the OWNER to inspect, audit, or reproduce Records, or all three, and to interview any person about the Records.

6.17.5 CONTRACTOR must insert these requirements in each written contract between CONTRACTOR and any subcontractor or supplier and require each subcontractor and supplier to comply with these provisions.

ARTICLE 7 - OTHER WORK

7.1 Coordinating Other Work. The OWNER may perform other work related to the Project at Project Site by the OWNER's own forces, or let other contracts for the Project or Project Site, or have other work performed by utility owners. CONTRACTOR and the OWNER agree to and will use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts and delays in the Work. If CONTRACTOR believes that delay or additional cost is involved because of such action by the OWNER, CONTRACTOR may make a Claim as provided in Article 11.

7.2 Proper and Safe Access by Other Contractors. CONTRACTOR will afford other contractors and each utility owner (and the OWNER, if the OWNER is performing the additional work with the OWNER's employees) proper and safe access to the Project Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and will properly connect and coordinate the Work with theirs. CONTRACTOR will do all cutting, fitting, patching, and finishing of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the OWNER and the other contractors whose work will be affected. CONTRACTOR will promptly remedy damage wrongfully caused by CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.

7.3 CONTRACTOR's Inspection and Reports. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR will inspect such other work and promptly report to the OWNER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.

7.4 Progress Schedules. The OWNER will provide for coordination of the activities of the OWNER's own forces, of each separate CITY contractor, and of any other utility owners performing work in relation to the Work of CONTRACTOR, who will cooperate with them. CONTRACTOR will participate with the OWNER any other contractors retained by the OWNER, in reviewing their construction progress schedules when directed to do so. On the basis of such review, CONTRACTOR will make any revisions to the current approved Progress Schedule deemed necessary after a joint review and mutual agreement. The agreed-upon progress schedules will then constitute the progress schedules to be used by CONTRACTOR, the OWNER, and any other contractor retained by the OWNER until subsequently revised.

7.5 Improper Timing or Delays. Costs caused by delays or by improperly timed activities or defective construction will be borne by the party responsible therefore.

ARTICLE 8 – WARRANTIES

8.1 General Warranty.

CONTRACTOR warrants that the Work and all of its components will be free from defects and flaws in design, workmanship, and materials for the duration of the General Warranty Period described below; will strictly conform to the requirements of the Contract; and will be fit, sufficient and suitable for the purposes expressed in, or reasonably inferred from, the Contract. This general warranty is in addition to any other warranties expressed or implied by law, which are hereby reserved unto the OWNER.

8.1.1 General Warranty Period. The General Warranty Period will be one year from Substantial Completion, except for those items of equipment or those aspects of work placed in service or approved by the OWNER after Substantial Completion, in which instance the warranty for the particular equipment or aspect of work will be one year from the date of OWNER approval; provided, however, that the General Warranty Period for particular equipment placed in continuous service before Substantial Completion may start to run from an earlier date, if expressly provided in this Contract.

8.1.2 Duty to Correct. CONTRACTOR will correct any and all defects that defects in material or workmanship which may appear during the General Warranty Period, even if discovered after the General Warranty Period, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the OWNER, within a reasonable period of time, and to the OWNER's satisfaction.

8.1.3 General Warranty is Absolute. The only exceptions to the General Warranty will be defects or damage caused by abuse, modification or improper maintenance or operation by persons other than CONTRACTOR or CONTRACTOR's subcontractors, sub-subcontractors or suppliers; or normal wear and tear under normal usage. In all other respects the General Warranty will be absolute.

8.2 Special Warranties. CONTRACTOR will furnish all additional special warranties required by this Contract no later than Substantial Completion. The OWNER may require special warranties in connection with the approval of accepted equals and other substitute materials, equipment, methods, and procedures, and in connection with Work which is defective or nonconforming.

8.3. Limitation as to Certain Equipment. As to any equipment which the OWNER has reserved the sole right to have installed, the Warranties under this Article 8 will extend to ensure that the equipment is installed according to the Plans and Technical Provisions, and that any manufacturer or product warranties are conveyed to the OWNER; but in such instance CONTRACTOR will not be held liable for the operating performance of such equipment.

8.4 Relation to Specific Correction Provisions and Other Remedies. CONTRACTOR's general warranty and any additional or special warranties are not limited by CONTRACTOR's obligations to specifically correct Defective/Nonconforming Work, nor are they limited by any other remedies provided in the Contract Documents. CONTRACTOR will also be liable for any damage to property or persons (including death), including consequential and direct damages, relating to any breach of the General Warranty or any additional or special warranties required.

8.5 Third Party Warranties. CONTRACTOR will obtain and assign or transfer to the OWNER, all product warranties available from manufacturers or suppliers of materials to be used in the Project. CONTRACTOR will also obtain and assign or transfer to OWNER, any additional third party warranties as to materials or methods as specified in the Contract Documents. The OWNER's acceptance of any assigned warranties or guaranties will be a precondition to final payment and will not relieve CONTRACTOR of any of CONTRACTOR's guaranty or warranty obligations under this Contract.

ARTICLE 9 – E/A'S STATUS DURING CONSTRUCTION

9.1 Applicability. The provisions of this Article will apply only where the Contract Documents specifically authorize a consultant of the OWNER to act as the E/A to review and modify Technical Provisions, Plans, and other technical specifications associated with the Work. In all instances in which there is no such specific authorization, the provisions of this Article will have no effect, and any authorization or delegation within the Contract Documents to the E/A, will be deemed to be to the Contract Administrator. In addition, where the Contract Documents contain language specifically authorizing a consultant of the OWNER to act as E/A, the OWNER retains the right to assign or assume such authority upon written notice to CONTRACTOR.

9.2 The OWNER's Sole Benefit. The assignment, if any, of any authority, duties or responsibilities to the E/A under this Contract, or under any agreement between the OWNER and the E/A, or any undertaking, exercise or performance thereof by the E/A, is intended to be for the sole and exclusive benefit of the OWNER and not for the benefit of CONTRACTOR, subcontractor, supplier, or any other person or organization, or for any surety or employee or agent of any of them.

9.3. CONTRACTOR Remains Responsible. The E/A will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. The E/A is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performing the Work. The E/A is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with this Contract. Failure or omission of the E/A to discover, or object to or condemn any defective Work or material will not release CONTRACTOR from the obligation to properly and fully perform the Contract.

9.3.1 The E/A is not responsible for the acts or omissions of CONTRACTOR, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

9.3.2 If the OWNER and E/A agree, the E/A will review each Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered, but only to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, this Contract.

9.4 Applicability to E/A's Agents. The limitations upon authority and responsibility set forth in this Article 9 will also apply to the E/A's consultants, Resident Project Representative and assistants.

9.5 Visits to Project Site. If the OWNER and E/A agree, the E/A will make visits to the Project Site at intervals appropriate to the various stages of construction as E/A deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, the E/A will endeavor for the benefit of the OWNER to determine, in general, if the Work is proceeding in accordance with this Contract. The E/A will not be required to make exhaustive or continuous on-site inspections to check the quality or

quantity of the Work. The E/A's efforts will be directed toward providing for the OWNER a greater degree of confidence that the completed Work will conform generally to this Contract. On the basis of such visits and on-site observations, E/A will keep the OWNER informed of the progress of the Work and will endeavor to guard the OWNER against Defective Work. The E/A's visits and on-site observations are subject to all the limitations on the E/A's authority and responsibility set forth in this Article 9.

9.6 Resident Project Representative. If the OWNER and E/A agree, E/A will furnish a Resident Project Representative to assist the E/A in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in this Article 9 and in the Supplemental General Conditions. The OWNER may designate another representative or agent to represent the OWNER at Project Site who is not the E/A, E/A's consultant, agent or employee.

9.7 Clarifications and Interpretations. The E/A may determine that written clarifications or interpretations of the requirements of the Technical Provisions (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness by the OWNER and will be binding on the OWNER and CONTRACTOR. If the OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times, the OWNER or CONTRACTOR may make a Claim therefore as provided in these General Conditions.

9.8 Recommendations as to Defective Work. The E/A will recommend that the OWNER disapprove or reject Work which the E/A believes to be defective, or believes will not produce a completed Project that conforms to this Contract or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by this Contract.

ARTICLE 10 – ACCEPTED EQUALS AND SUBSTITUTIONS

10.1 Accepted Equals. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item, the specification or description is intended to require the item named, unless the Contract Documents, in specifying the name, specifically authorize the use of functionally equivalent item through the use of terms such as "as equal," "or equal," or "equivalent." For purposes herein, an item is only "functionally equivalent" if it is available at the same or lower cost, and if it is sufficiently similar to the item specified, including as to durability, warranty, acquisition time, and availability, so that no change in related Work will be required, and no change in the useful life, maintenance, repair cost, or quality of the completed work is anticipated.

10.2 CONTRACTOR May Propose Substitutions. CONTRACTOR may propose a substitution for any item of material or equipment, and for any means, method, technique, sequence, or procedure of construction, specified in the Contract Documents. CONTRACTOR's will propose such substitutes at CONTRACTOR's sole cost and expense, and at CONTRACTOR's sole risk as to disruptions to the Critical Path of the current approved Progress Schedule. CONTRACTOR will provide OWNER sufficient data and documentation to allow the OWNER to review the proposal.

10.3 OWNER's Evaluation. The OWNER will be allowed a reasonable time within which to evaluate each proposal made by CONTRACTOR pursuant to this Section. The OWNER will be the sole judge of acceptability. No accepted equal or substitute will be ordered, installed, or utilized until the OWNER's review is complete, which will be evidenced by a Change Instrument. The OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety bond with respect to any accepted equal or substitution or for any other delay or disruption to the Critical Path of the Project Schedule attributable to any such substitution. The OWNER will not be responsible for any delay due to review time for any proposed substitution, unless such an extension is due to CONTRACTOR, consistent with the requirements of this Contract for changes and delays. The OWNER will not be responsible for increased costs associated with the review or approval of a proposed substitution, unless the increase is required as provided in association with changes and delays. In any event, no such extension or increase will be deemed provided unless specified in the Change Instrument approving the substitution.

10.4 CONTRACTOR to Remain Responsible. The OWNER's acceptance of a substitution will not relieve CONTRACTOR from primary responsibility and liability for the suitability and performance of any proposed substitute item or substituted method or procedure, and will not relieve CONTRACTOR from its primary responsibility and liability for curing Defective Work and performing warranty work, which CONTRACTOR will cure and perform, regardless of any claim CONTRACTOR may choose to advance against the OWNER or manufacturer.

ARTICLE 11 – DELAYS AND ADJUSTMENTS TO CONTRACT TIME AND CONTRACT PRICE

11.1 Delay. Delays are classified in one of the following categories:

11.1.1 An excusable delay is a delay caused by a Force Majeure event. An excusable delay may entitle CONTRACTOR to an extension of Contract Time but not an increase in Contract Price.

11.1.2 A compensable delay is a delay which is caused solely and exclusively by acts or omissions of the OWNER, excepting actions taken by the OWNER to protect the public health or safety or to conform to law. A compensable delay may entitle CONTRACTOR to both an extension of Contract Time and an increase in Contract Price.

11.1.3 An unexcused delay is any delay other than an excusable or compensable delay. An unexcused delay entitles CONTRACTOR to no adjustment to Contract Time or Contract Price.

11.2 Events Not Constituting a Delay. The following events will not be considered an excusable delay of any kind even though they are not anticipated by CONTRACTOR, not within CONTRACTOR's control, and are not reasonably foreseeable:

11.2.1 Events that pose no delay to items of Work on the Critical Path of the current approved Progress Schedule.

11.2.2 Events that would not prevent CONTRACTOR from achieving Final Completion before the expiration of the Contract Time, where CONTRACTOR may otherwise accelerate other items of Work without undue expense.

11.2.3 Weather, unless the weather is more severe than the adverse weather normally anticipated for the Project Site for the month in question, based on a generally accepted source of data such as the National Weather Service.

11.2.4 Events, including actions of the OWNER, that impact Critical Path activity, because the activity was previously delayed due to unexcused delays.

11.3 Notice of Delay Required. CONTRACTOR will provide written notice of any actual or prospective delay promptly, and in no event later than ten days after the occurrence of the event giving rise to such delay. CONTRACTOR will give the notice to both the E/A and the Contract Administrator within the specified time. In the case of a continuing delay, CONTRACTOR will provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice will contain all of the specific information required in the following Subsection.

11.4 Contents/Supporting Documents. CONTRACTOR's notice of delay will identify those portions of the current approved Progress Schedule affected by the delay and will include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation will include, but is not limited to:

11.4.1 A written detailed statement of the reasons and causes for the delay;

11.4.2 Inclusive dates of the delay;

11.4.3 Specific trades and portions of the Work affected by the delay;

11.4.4 Status of Work affected before commencement of the delay;

11.4.5 Effect of the delay on available "float" time;

11.4.6 A Critical Path Method (CPM) analysis demonstrating that the delay has affected an activity then on the Critical Path at the time of the occurrence of the delay as shown on the most current approved Progress Schedule; and

11.4.7 If CONTRACTOR claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond CONTRACTOR's control, and without the fault or negligence of CONTRACTOR or the negligence of anyone for whose acts CONTRACTOR is responsible including any subcontractor, sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the OWNER (excepting actions taken by the OWNER to protect the public health or safety or to conform to law) or anyone for whose acts the OWNER is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

11.5 Failure to Comply with Notice Requirements. The notice required by this Article 11 operates as a condition precedent to the assertion of any claim for extension of Contract Time, increase in Contract Price, or damages by CONTRACTOR. If CONTRACTOR fails to give the OWNER timely written notice of a claim as required by this Article 11, CONTRACTOR will be deemed to have waived the claim, and the OWNER will have no further liability respecting the claim.

11.6 Review and Adjustment of Schedules. Upon receipt of a notice from CONTRACTOR of the occurrence of a delay complying with the requirements of this Article, the OWNER will review the current approved Progress Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Progress Schedule, including the application of any unused "float" time available in the Schedule. The OWNER may require CONTRACTOR to submit a more detailed Progress Schedule than previously required in order to permit the OWNER to evaluate the delay. Based on such review, CONTRACTOR will, if required by the OWNER, submit for the OWNER's approval a revised Progress Schedule, which minimizes the adverse effects of the delay.

11.7 Limitation on Adjustments Due to Delays Generally. No extension of the Contract Time or increase in the Contract Price will be allowed for an unexcused delay. No extension of the Contract Time or increase in the Contract Price will be made to the extent that performance is, was or would have been suspended, delayed or interrupted by another cause for which CONTRACTOR is responsible. No increase in the Contract Price will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the OWNER is not solely and exclusively responsible.

11.8 Additional Limitations on Adjustments to Contract Time Due to Delays. No extension of Contract Time will be provided where, notwithstanding a Force Majeure event or other claimed delay, CONTRACTOR may achieve Final Completion within the Contract Time through adjustments to the current approved Progress Schedule.

11.9 Additional Limitations on Adjustments to Contract Price Due to Delays. Any obligation on the part of the OWNER to pay CONTRACTOR for compensable delay is solely intended to reimburse CONTRACTOR for actual expense arising out of the compensable delay. No consequential damages will be allowed to CONTRACTOR in connection with any claimed delays. Damages for compensable delay will be determined by the Force Account method set forth in Subsection 13.3.2.

11.9.1 Standby equipment costs will not be allowed during periods when the equipment would have otherwise been idle. Standby equipment time will not exceed more than eight hours per day, 40 hours per week, and 176 hours per month. Standby equipment costs will be paid at 50 percent of the applicable Rental Rate Blue Book rates and calculated by dividing the monthly rate by 176, multiplying the result by the number of standby hours and multiplying that number by the regional adjustment factor and the rate adjustment factor contained in the Blue Book. Operating costs will not be allowed.

11.10 Liquidated Damages Due to CONTRACTOR's Delays. Liquidated Damages, if any, are set forth in the Contract form.

11.11 No Damages are Due to CONTRACTOR for Prevention of Early Completion. CONTRACTOR represents that its Bid includes all costs, overhead and profit which may be incurred throughout the Contract Time, including the period between Substantial and Final Completion. Accordingly, CONTRACTOR may not make any claim for delay damages based in whole or in part on the premise that CONTRACTOR would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

11.12 Acceleration to Avoid Delays. If CONTRACTOR's progress is not maintained in accordance with the current approved Progress Schedule, or the OWNER determines that CONTRACTOR is not diligently proceeding with the Work or has evidence reasonably indicating that CONTRACTOR will not be able to conform to the current approved Progress Schedule, CONTRACTOR will, promptly and at no additional cost to the OWNER, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the OWNER thereof. Any extension of working hours requires approval of the OWNER, which will not be unreasonably withheld but may be subject to reasonable conditions including payment for additional or overtime services of the OWNER the Architect/Engineer and any other applicable consultants, testing or regulatory agency costs.

ARTICLE 12 – CHANGES

12.1 Materially Different Site Conditions. For purposes herein, "materially different site conditions" means conditions that are different from those indicated in the Contract Documents, that are unknown to CONTRACTOR, and that could not be reasonably anticipated based upon on the following: (i) typical soil or subsurface conditions for the area in which the Project Site is located; (ii) site visits CONTRACTOR made, or was encouraged or permitted to make by the Bid Documents, prior to Bid submission; or (iii) a careful review of any Site-Related Reports.

12.1.1 CONTRACTOR may be entitled to an increase in Contract Time for materially differing site conditions as an excusable delay as provided in Article 11, subject to the exclusions and conditions of that article including notice requirements.

12.1.2 CONTRACTOR may also be entitled to an increase in Contract Price for materially different site conditions, where these conditions will require additional labor or materials, or both, exceeding the amount estimated in the Schedule of Values or Bid Schedule, as applicable, by 5% or more, provided, that CONTRACTOR complies with the notice requirements in Section 12.3. In such instance, the basis for adjusting Contract Price is set forth in Section 13.3.

12.2 Materially Different Structural Conditions (Remodeling or Renovation Contracts). If this is a Contract for a remodeling or renovation of an existing structure and CONTRACTOR encounters materially different conditions in the structure (not as to the Site or subsurface conditions) from those indicated in the Contract Documents provided by the OWNER as part of the Bid or Proposal Documents, CONTRACTOR will give written notice thereof to the OWNER and the E/A promptly before conditions are disturbed and in no event later than ten days after first observing such conditions. Failure of CONTRACTOR either (i) to provide notice before disturbing the existing conditions or (ii) failure to give notice within ten days of first observing such conditions is conclusively deemed a waiver of any claim relating to such conditions.

12.2.1 Investigation and Determination. The E/A will promptly investigate any alleged differing conditions as to the structure (but not as to the Site or subsurface conditions) and provide a written report of its findings to the OWNER. If the OWNER finds that the conditions of the structure differ materially and require a change in the Work and cause an increase or decrease in CONTRACTOR's cost of, or time required for, performance of any part of the Work, the OWNER may make an adjustment in the amount payable to CONTRACTOR or the Contract Time, as applicable. If the OWNER determines that the conditions of the structure are not materially different or that no change in the terms of the Contract is justified, the OWNER will so notify CONTRACTOR in writing.

12.3 Constructive Changes and Disputed Adjustments.

12.3.1 Notice to the OWNER and E/A. CONTRACTOR will advise the OWNER and the E/A in writing promptly and in no event later than ten days after (i) issuance of any interpretation, clarification, instruction, direction or order whether orally or in writing from either the OWNER or the E/A, or (ii) the occurrence of any event or discovery of any condition (including any condition as provided in Section 12.1 and if applicable, 12.2), which CONTRACTOR believes or has reason to believe entitles CONTRACTOR to an increase in the amount payable to CONTRACTOR or an extension of the Contract Time; and except in the case of an emergency involving possible loss of life or bodily injury or significant property damage, the required written notice will be provided prior to proceeding with the Work. Failure of CONTRACTOR to provide such notice constitutes an acceptance of the interpretation, clarification, instruction, direction, order, event, or condition without adjustment to the Contract Price or the Contract Time and a conclusive waiver of any claim relating to the same. In order to be valid, a claim for an adjustment of Contract Price or Contract Time must contain the specific adjustment requested and must be supported by a detailed explanation of the basis for the claim. In addition to be valid, a claim for increase in Contract Time must be supported by the documentation specified in Subsection 11.4, and a claim for an increase in the Contract Price must be documented and calculated as specified in Subsection 13.3.2. Failure of CONTRACTOR to object as and when specified in this Subsection is deemed an acceptance of interpretation, clarification, instruction, direction or order as issued and a waiver of any claim by CONTRACTOR to any adjustment to the Contract Price or the Contract Time.

12.3.2 Disputed Adjustments. All disputed adjustments under this Contract will be determined in accordance with the Contract, Article IX if, as conditions precedent thereto, CONTRACTOR has timely provided all notices and objections required under the terms of the Contract.

ARTICLE 13 - CHANGE INSTRUMENTS

13.1 Introduction.

13.1.1 The OWNER may issue a Change Instrument to require changes in the Work without invalidating the Contract.

13.1.1.1 A Field Directive may be issued to require minor changes in the Work that, in the OWNER's view, do not change the Scope of Work, present a delay, or require an adjustment to Contract Time or Contract Price. Examples of such situations where Field Directives may be appropriate are unanticipated field conditions or unavailability of specified materials and equipment.

13.1.1.2 All other changes to the Work will require the issuance of a Change Order issued in conformance with these General Conditions.

13.2 Change Order Required for Contract Time and Contract Price Adjustments. Adjustments to Contract Time or Contract Price will be granted only through a properly-issued Change Order.

13.3 Change Orders Adjusting Contract Price. All Change Orders adjusting Contract Price will be invalid unless approved in accordance with the authority provided by the Purchasing Code.

13.3.1 Basis for Contract Price Adjustment. Subject to any federal procurement standards that may apply if the Project is a federally funded project, in which case the standards will govern to the extent of conflict, a Change Order may provide for an adjustment in the Contract Price based only on one of the following methods:

.1 Unit Prices as stated in the Bid Schedule.

.2 A fixed not-to-exceed or lump sum agreed to by the OWNER and CONTRACTOR and stated in the Change Order, properly itemized and supported by sufficient substantiating data to permit evaluation which will be limited to estimated costs of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of 10% if the Work is performed by CONTRACTOR, or 5% if the Work is performed by a subcontractor or sub-subcontractor. The subcontractors' or sub-subcontractors' overhead and profit

in turn will not exceed 10%. The total percentage of overhead and profit payable by the OWNER (to both CONTRACTOR and all sub tier subcontractors), regardless of the sub-tier which performs the work, will not exceed 15%.

.3 Actual costs, properly itemized, plus a profit factor, using the Force Account method set forth in Section 13.3.2.

.4 In the absence of an agreement between the OWNER and CONTRACTOR, the OWNER will determine the amount of the Contract Price Adjustment using any of the methods outlined in Subsections 13.3.1.1 – 13.3.1.3, above, whichever will result in the lowest cost to the OWNER.

.5 No cost will be included in a Change Order for time spent preparing the Change Order, nor will costs be included for an estimate of time to negotiate the Change Order costs for machinery, tools, or equipment.

13.3.2 Force Account Method for Contract Price Increases. Before using the Force Account method provided for herein, the OWNER and CONTRACTOR agree to negotiate a Change Order using the other methods identified in Subsection 13.3.1, above, as appropriate, to determine the adjustment in the Contract Price. If neither of these methods can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Price, then the change in the Work will be performed by a Change Order using the Force Account method, and payment will be made as follows:

13.3.2.1 For all personnel, CONTRACTOR will receive actual field cost wage rates for each hour that said personnel are actually engaged in such Work, as substantiated by its certified payroll, to which will be added an amount equal to 15% of the sum thereof as compensation for CONTRACTOR's and any effected subcontractor's total overhead and profit. No separate charge will be made by CONTRACTOR or its subcontractor(s) for organization or overhead expenses. CONTRACTOR will also receive an amount equal to 55% of the wages paid personnel, excluding the 15% compensation provided above, for CONTRACTOR's and any effected subcontractor's cost of premiums on liability insurance, workers' compensation insurance, social security and unemployment insurance. The actual cost of CONTRACTOR's bond(s) on the extra Work will be paid based on invoices from surety. No charge for superintendence will be made unless considered necessary and ordered by the OWNER.

13.3.2.2 CONTRACTOR will receive the actual cost, including freight charges, of the materials used and installed on such Work, to which costs will be added a sum equal to 20% thereof as compensation for CONTRACTOR's and any effected subcontractor's total overhead and profit. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.

13.3.2.3 For machinery, trucks, power tools, or other similar equipment (the "equipment") agreed to be necessary by the OWNER and CONTRACTOR, the OWNER will allow CONTRACTOR the applicable daily, weekly or monthly rate as given in the latest edition of the "Rental Rate Blue Book" as published by EquipmentWatch (1-800-669-3282) for each hour that said equipment is in use on such work, which rate includes the cost of fuel, lubricants and repairs. The established equipment rates will be paid for each hour that the equipment is utilized in the Work. If the equipment is used intermittently during the Work, full payment for an eight-hour day will be made if the equipment is not idle more than four hours of the day. If the equipment is idle more than four hours in a day, then payment will be made only for the actual hours worked. No additional compensation will be allowed on the equipment for CONTRACTOR's or any affected subcontractor's overhead and profit. The OWNER may accept an actual rental invoice in lieu of the method of calculation set forth in this Paragraph for equipment rented exclusively for Force Account Work or for equipment not included in the Rental Rate Blue Book.

13.3.2.4 The compensation provided for herein, will be received by as payment in full for work done pursuant to the Change Order and will include use of small tools, and total overhead expense and profit. CONTRACTOR and the OWNER will compare records of work done by Change Order at the end of each day. Copies of these records will be made upon forms provided for this purpose by the OWNER and signed by both the OWNER and CONTRACTOR, with one copy being retained by the OWNER and one by CONTRACTOR. Refusal

by CONTRACTOR to sign these records within two working days of presentation does not invalidate the accuracy of the record.

13.3.3 Additional Performance Security in Conjunction with Change Order. The CITY may require CONTRACTOR to increase or supplement previously-provided Performance Security to cover any additional costs of performing services required under a Change Order that increases Contract Price, commensurate with such additional cost. In such instance, any compensation due CONTRACTOR for CONTRACTOR's cost of providing such increase or supplement will be reflected in the Change Order or otherwise borne by CONTRACTOR.

13.4 Payment for Work Covered by Change Order. Additional monies due CONTRACTOR pursuant to a valid Change Order providing for an adjustment to the Contract Price, will be paid for in accordance with the Progress Payment schedule established by the Contract, in which case payment will be subject to retainage requirements set forth in the Contract; or at the time of Final Payment.

13.5 Absence of Proposed Adjustments. If a Change Instrument is silent as to any adjustment to the Contract Price or the Contract Time, it will be conclusively presumed that none is intended and none will be allowed unless CONTRACTOR files an objection as and when specified in the following Subsection.

13.6 Action upon Receipt of Change Instrument. Upon receipt of a Change Instrument, CONTRACTOR will promptly proceed with the change in the Work involved.

13.6.1 CONTRACTOR will advise the OWNER in writing, promptly and in any event no later than ten days after issuance of the Unilateral Change Instrument, of CONTRACTOR's objection (i) to the amount or method, if any, provided for in the Change Instrument for adjustment to Contract Price or Contract Time, or (ii) to the absence of any adjustment to the Contract Price or Contract Time. In order to be valid, a claim for an adjustment of Contract Price or Contract Time, must contain the specific adjustment requested, must be supported by a detailed explanation of the basis for the claim. In addition, to be valid a claim for increase in Contract Time must be supported by the documentation specified in Subsection 11.4, and a claim for an increase in the Contract Price must be documented and calculated as specified in Subsection 13.3.1. Failure of CONTRACTOR to object as and when specified in this Subsection is deemed an acceptance of the Unilateral Change Order as issued and a waiver of any claim by CONTRACTOR to any adjustment to the Contract Price or the Contract Time.

13.7 Waiver of Claim. Except for emergencies involving possible loss of life or bodily injury or significant property damage, CONTRACTOR's commencement of the Work that is subject to a Change Instrument will constitute a complete waiver by CONTRACTOR as to such claim regardless of whether CONTRACTOR has within the ten-day period notified the OWNER of a claim consistent with the requirements of Subsection 13.6.1.

13.8 OWNER's Right to Use Third Parties for Additional Work. If the OWNER and CONTRACTOR are unable to negotiate the terms of a Change Order for the performance of additional Work, the OWNER may, at its election, perform such additional Work with its own forces or with another CONTRACTOR and such work will be considered "Other Work."

13.9 OWNER's Right to Accelerate Schedule. The OWNER reserves the right to issue a Change Instrument to accelerate the Work which may be subject to an appropriate adjustment, if any, in the Contract Price. If the OWNER requires an acceleration of the Project Schedule and no adjustment is made in the Contract Price, or if CONTRACTOR disagrees with any adjustment made, any claim an adjustment must comply with the requirements of Subsection 13.6.1 or be deemed to be conclusively waived.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTIONS, REMOVAL AND ACCEPTANCE OF DEFECTIVE WORK

14.1 Access to Work. The OWNER, including the Contract Administrator and other employees and agents, including E/A and E/A's consultants, independent testing laboratories, and governmental agencies having jurisdiction, will each have access to the Work at reasonable times for observing, inspecting and testing. CONTRACTOR will provide them proper and safe conditions for such access, and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

14.2 Tests and Inspections.

14.2.1 CONTRACTOR will give timely notice of readiness of the Work for all required inspections, tests or approvals, and will cooperate with inspection and testing personnel to facilitate required inspections or tests. All testing will be performed by the CONTRACTOR. Only verification testing will be performed by the CITY. CONTRACTOR is not required to enter test results into MAC.

14.2.2 The OWNER will employ and pay for services of an independent testing laboratory to perform all inspections, tests or approvals required by the Contract Documents except:

- .1** For inspections, tests or approvals covered by Paragraph 14.2.3 below;
- .2** That costs incurred with tests or inspections conducted pursuant to Paragraph 14.3.3 below will be paid as provided in Paragraph 14.3.3;
- .3** For re-inspecting or re-testing Defective Work; and
- .4** As otherwise specifically provided in the Contract Documents. All testing laboratories will meet the requirements of ASTM E-329.

14.2.3 If Legal Requirements specifically require any Work (or part thereof) to be inspected, tested, or approved by an employee or other representative of a governmental or related authority, CONTRACTOR will assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish the OWNER the required certificates of inspection or approval.

14.2.4 CONTRACTOR will also be responsible for arranging and obtaining and will pay all costs in connection with any inspections, tests or approvals required for the OWNER's and E/A's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CONTRACTOR's purchase thereof for incorporation in the Work.

14.3 Uncovering Work.

14.3.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of the Contract Administrator, or if any Work is covered contrary to the written request of the Contract Administrator, it will, if requested by the Contract Administrator, be uncovered and recovered at CONTRACTOR's expense.

14.3.2 Uncovering Work as provided in Paragraph 14.3.1 above, will be at CONTRACTOR's expense unless CONTRACTOR has given the OWNER timely notice of CONTRACTOR's intention to cover the same and the OWNER has not acted within five working days to such notice.

14.3.3 If the OWNER considers it necessary or advisable that covered Work be observed, inspected or tested, CONTRACTOR will uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If the OWNER determines that such Work is defective, CONTRACTOR will pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and the OWNER will be entitled to an appropriate decrease in the Contract Price, and may make a Claim therefore as provided in these General Conditions. However, if such Work is not found to be defective, CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and CONTRACTOR may make a Claim therefore as provided in these General Conditions.

14.4 The OWNER May Stop the Work.

14.4.1 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform

to this Contract, the OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the OWNER to stop the Work will not give rise to any duty on the part of the OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

14.4.2 If CONTRACTOR fails to correct Defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, the OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, will not stop calendar or Working Days charged to the Project.

14.5 Correction or Removal of Defective Work. If required by the OWNER, CONTRACTOR will promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the OWNER, remove it from Project Site and replace it with Work that is not defective. CONTRACTOR will correct or remove and replace Defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of Defective Work. CONTRACTOR will pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

14.6 Correction Required. If within the Warranty Period, or such longer period of time as may be prescribed by Legal Requirements or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work, including Work performed after the Substantial Completion date, is found to be defective, CONTRACTOR will promptly, without cost to the OWNER and in accordance with the OWNER's written instructions:

14.6.1 Correct such Defective Work, or, if it has been rejected by the OWNER, remove it from Project Site and replace it with Work that is not defective, and

14.6.2 Satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the Defective Work.

If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the OWNER may have the Defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR. The warranty period will be deemed to be renewed and recommenced in connection with the completed items of Work requiring correction.

14.7 Coordination with OWNER. If correction of Defective Work will affect the function or use of the facility, CONTRACTOR will not proceed with correction of Defective Work without prior coordination and approval of the OWNER.

14.8 Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of Defective Work, the OWNER decides to accept it, the OWNER may do so. CONTRACTOR will pay all claims, costs, losses and damages attributable to the OWNER's evaluation of and determination to accept such Defective Work. For purposes of this Section, the OWNER's acceptance of sample materials or equipment will not be deemed to be acceptance of Defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating the OWNER for the diminished value of the Defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to the OWNER after a calculation by the OWNER of the diminution in value of the Defective Work.

14.9 The OWNER May Correct Defective Work. If CONTRACTOR fails within a reasonable time after written notice of the OWNER to correct Defective Work, or to remove and replace rejected Work, or if CONTRACTOR fails to perform the Work in accordance with this Contract, or if CONTRACTOR fails to comply with any other provision of this Contract, the OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. If, in the opinion of the Contract Administrator, significant progress has not been made during this seven-day period to correct the deficiency, the OWNER may exercise any actions necessary to remedy the deficiency. In

exercising the rights and remedies under this paragraph, the OWNER will proceed expeditiously. In connection with such corrective and remedial action, the OWNER may exclude CONTRACTOR from all or part of Project Site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at Project Site or for which the OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR will allow the OWNER, its agents and employees, the OWNER's other contractors, E/A and E/A's consultants access to Project Site to enable the OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions to this Contract with respect to the Work. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's Defective Work. CONTRACTOR will not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by the OWNER of the OWNER's rights and remedies hereunder.

14.10 Testing and Inspections Outside of Working Hours. This Contract contemplates that all testing and inspections will be done during Working Hours as defined herein. Whenever the OWNER is required to test or inspect outside of Working Hours, on weekends, or during Holidays observed by the OWNER, the OWNER will be entitled to a reduction in the Contract Price to the extent of any overtime costs incurred by the OWNER, unless such testing or inspection is required to be performed at that time due to:

14.10.1 Emergency conditions that are not the fault of CONTRACTOR, and subcontractors, sub-subcontractors, suppliers, or other persons for whom CONTRACTOR is responsible;

14.10.2 A Force Majeure event, the OWNER's disruption, or other events which, pursuant to this Contract, would otherwise require an extension of the Contract Time.

14.11 CONTRACTOR Remains Responsible for the Work. The following will not be deemed to be a release of CONTRACTOR's obligation to perform the Work in accordance with this Contract:

14.11.1 Observations by the E/A;

14.11.2 The issuance of a Certificate of Substantial Completion or any payment by the OWNER to CONTRACTOR under this Contract;

14.11.3 Partial use or occupancy of the Work or any part thereof by the OWNER;

14.11.4 Any acceptance by the OWNER or any failure to do so;

14.11.5 Any review of a Shop Drawing or sample submittal;

14.11.6 Any inspection, test or approval by others; or

14.11.7 Any correction of Defective Work by the OWNER.

ARTICLE 15 – PROGRESS PAYMENTS, PARTIAL UTILIZATION AND FINAL COMPLETION

15.1 General Method of Payment. Payment of the Contract Price will be made in a series of Progress Payments and after Final Completion, a Final Payment, in accordance with this Article.

15.1.1 If CONTRACTOR has provided Payment and Performance Bonds, no payment will be made unless and until CONTRACTOR records the bonds and provides the OWNER certified copies of the recorded bonds in accordance with Florida Statutes Section 255.05(b).

15.2 Application for Payment. CONTRACTOR may submit to the OWNER, no more than once a month and no sooner than 30 days following commencement of the Work, an application for payment for those portions of the Work completed as of the date of the application. The OWNER may, by notice, designate a specific day of each month for submission of the application for payment. Each application for payment will be in a form acceptable to the OWNER, and will include the following documentation and information:

15.2.1 The current approved Progress Schedule;

15.2.2 If applicable, the Schedule of Values;

15.2.3 Unless CONTRACTOR has provided payment and performance bonds and recorded them in the public records as provided in Florida Statutes Section 255.05, releases of liens from subcontractors or suppliers;

15.2.4 CONTRACTOR's written certification (i) as to the value of the Work completed, (ii) that partial or final waivers of lien have been received covering all such Work, (iii) and that all prior Progress Payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid;

15.2.5 If payment is requested on the basis of materials or equipment not incorporated in the Work but delivered and suitably stored at Project Site or at another location agreed to in writing, the application for payment by such bills of sale, data, and other procedures satisfactory to the OWNER substantiating the OWNER's title to such materials or equipment or otherwise protecting the OWNER's interest;

15.2.6 A completed Minority and Women-Owned Business Enterprise (MBE/WBE) Usage Report, using forms provided by the OWNER. CONTRACTOR will complete all blank spaces shown on these Report forms. If no amounts have been paid to MBE/WBE subcontractors, the completed form will so indicate; and

15.2.7 The consent of the surety, if any, to the requested payment.

15.2.8 Documentation of payments made to MBE and WBE subcontractors and suppliers, on Attachment E, Minority and Women Owned Business Enterprise Usage Form.

Each application for payment will be deemed to be a warranty and guarantee by CONTRACTOR that title to all Work, materials and equipment covered by the application, whether incorporated in the Project or not, will pass to the OWNER free and clear of all liens no later than the time of payment to CONTRACTOR.

15.3 Review of Application for Payment. As soon as practicable after receipt of an application for Payment, and within the 20-day period following receipt of the application as provided by the Prompt Payment Act, the OWNER will approve, partially approve, or reject the application. The OWNER will provide written notice if payment is rejected or partially rejected, specifying the deficiency in the application for payment and the action necessary to make the request proper. In addition to rejecting payment of all or a portion of the application for failure to comply with submittal requirements referenced above, the OWNER will have the right to reject all or a portion of the application for any of the following reasons:

15.3.1 Defective Work not remedied;

15.3.2 Third party Claims filed or reasonable evidence indicating probable filing of such Claims;

15.3.3 Unless CONTRACTOR has provided payment and performance bonds and complied procedurally with Florida Statutes Section 255.05, failure of CONTRACTOR to make payments properly to subcontractor or for labor, materials or equipment;

15.3.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

15.3.5 Damage to the OWNER or another CONTRACTOR;

15.3.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

15.3.7 Failure of CONTRACTOR to submit a Schedule of Values in accordance with the Contract Documents, if one is required;

15.3.8 Failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;

15.3.9 Failure of CONTRACTOR to submit and update a Progress Schedule in accordance with the Contract Documents;

15.3.10 Failure of CONTRACTOR to maintain a record of changes on drawings and documents;

15.3.11 Failure of CONTRACTOR to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of the OWNER;

15.3.12 CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up; or

15.3.13 CONTRACTOR's failure to comply with the submittal requirements of Section 15.2, above, or with any other provision of this Contract.

If any portion of the application is rejected the OWNER will provide CONTRACTOR a written notice as to the reasons for rejection, within the time frame provided in the Prompt Payment Act. CONTRACTOR will then make the necessary corrections and re-submit the application or portion of application rejected.

15.4 Progress Payments. The OWNER will make payment on an approved or partially approved application, less amounts set aside for retainage within the deadlines provided by the Prompt Payment Act. If CONTRACTOR and the OWNER disagree on the basis or amount of the payment, or if CONTRACTOR is unwilling to make the necessary corrections or modifications and re-submit the Request as to those items rejected by the OWNER, then the OWNER may approve and process the Request by making such adjustments thereto as the OWNER deems appropriate so that CONTRACTOR receives without delay, payment of the amount determined by the OWNER to have been earned and owing to CONTRACTOR. Each payment application will be accompanied by Attachment E, Minority and Women Owned Business Enterprise Usage Form.

15.5 Amounts Withheld from Progress Payments. The OWNER will withhold an amount from each such approved progress payment, as follows:

15.5.1 If the Contract Price is \$200,000 or more, the amount of retainage will be determined by the Prompt Payment Act, which as of the Effective Date provides for a 10% retainage until 50-Percent Completion, and a 5% retainage thereafter.

15.5.2 In all other instances, the amount of retainage will be ten percent for each progress payment.

Subject to any limitations that may be imposed by the Prompt Payment Act if applicable, the OWNER will hold all retainage until Final Payment. However, if the Work is near Substantial or Final Completion and delay occurs due to no fault or neglect of CONTRACTOR, the OWNER may pay a portion of the retained amount to CONTRACTOR. CONTRACTOR, at the OWNER's option, may be relieved of the obligation to complete the Work and thereupon, CONTRACTOR will receive payment of the balance due for the work completed and accepted, subject to the conditions applicable to OWNER's termination of work without cause.

15.6 Delayed Payments. Should the OWNER fail to make payment to CONTRACTOR of the amount approved for any application for payment within the time frames provided in the Prompt Payment Act, the OWNER will pay to CONTRACTOR, in addition to amount approved, interest thereon at the rate specified in the Act, from date due until fully paid, which will fully liquidate any injury to CONTRACTOR growing out of such delay in payment.

15.7 Substantial Completion.

15.7.1 When CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, CONTRACTOR will notify the OWNER and request a determination

as to whether the Work or designated portion thereof is substantially complete. If the OWNER does not consider the Work substantially complete, the OWNER will notify CONTRACTOR giving reasons therefore. After performing any required Work, CONTRACTOR will then submit another request for the OWNER to determine Substantial Completion. If the OWNER considers the Work substantially complete, the OWNER will prepare and deliver a certificate of Substantial Completion which will establish the date of Substantial Completion, will include a punch list of items to be completed or corrected before Final Payment, will establish the time within which CONTRACTOR will finish the punch list, and will establish responsibilities of the OWNER and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with this Contract. The Work will not be deemed to be substantially or finally complete until any certificates of occupancy required to occupy the Project are issued. The OWNER and CONTRACTOR will both sign the certificate of Substantial Completion, to evince acceptance of the responsibilities assigned to them in such certificate.

15.8 Partial Utilization. The OWNER will have the option to use any portion of the Work prior to Substantial Completion of the Project where:

15.8.1 The Contract Documents specifically provide for such portion to be partially utilized prior to Substantial Completion; or

15.8.2 Upon the OWNER's request, if CONTRACTOR agrees and, upon joint inspection, the parties agree that the portion of the Work in question is Substantially Complete. In such instance, the OWNER will issue a certificate of Substantial Completion, attaching thereto a punch list of items to be completed or corrected before Final Payment and fixing the responsibility between the OWNER and CONTRACTOR for maintenance, heat and utilities as to that part of the Work.

The OWNER will have the right to exclude CONTRACTOR from any part of the Work which is so certified to be Substantially Complete but the OWNER will allow CONTRACTOR reasonable access to complete or correct items on the punch list.

15.9 Final Inspection and Final Completion. CONTRACTOR will provide the OWNER the Notice of Completion sufficiently in advance of the Completion Date to allow for scheduling of the final inspection and for completion or correction of all Punch List Work before the Completion Date. Upon receipt of CONTRACTOR's Notice of Completion, the OWNER will make a review of the Work and notify CONTRACTOR in writing of all Punch List Work, if any, to be completed or corrected. Following CONTRACTOR's completion or correction of all Punch List Work, the OWNER again review the Work and prepare and deliver to CONTRACTOR either a written notice of additional Punch List Work to be completed or corrected or a written Certificate of Final Completion, signifying final acceptance of the Work.

15.9.1 If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation, at the OWNER's option the OWNER may issue a Certificate of Final Completion on the condition that CONTRACTOR executes a re-vegetation letter, with letter of credit or other guarantee in form and amount satisfactory to the OWNER, to ensure completion of this item. This Work will be accomplished within 120 days of the date of Final Completion of the Work. When permanent erosion control has been established, the OWNER will initiate an inspection for final acceptance of the erosion controls. If the re-vegetation is not completed within the 120 days, the OWNER, at its option, may complete the Work using the posted guarantee.

15.9.2 In all other instances, the OWNER will only be obligated to issue a Certificate of Final Completion accepting the Work as finally complete, when the whole and all parts thereof will have been completed to the satisfaction of the OWNER in full compliance with this Contract.

15.10 Final Application for Payment. As soon as practical after the OWNER's issuance of the Certificate of Final Completion, CONTRACTOR will submit to the OWNER a properly completed application for Final Payment in the form approved or provided by the OWNER. The application will include or attach the following:

15.10.1 Three complete manuals containing all maintenance and operating instructions, warranties, and other associated documents for equipment or other materials that have been installed or otherwise included in the Work;

15.10.2 Record documents (as provided in Paragraph 6.11.2 of these General Conditions);

15.10.3 Unless CONTRACTOR has provided payment and performance bonds and procedurally complied with Florida Statutes, Section 255.05:

15.10.3.1 Legally effective final releases or waivers of liens from CONTRACTOR, and from all subcontractors and sub-subcontractors which performed services for CONTRACTOR and all suppliers of material or equipment to CONTRACTOR;

15.10.3.2 An affidavit that all of CONTRACTOR's debts, and claims, including from all subcontractors, subcontractors, and suppliers in connection with the Work, have been paid or otherwise satisfied;

15.10.4 Complete and legally effective releases or waivers satisfactory to the OWNER of all claims other than claims of subcontractors, Sub-subcontractors, and suppliers, filed in association with the Work;

15.10.5 The consent of the surety, if any, to final payment;

15.10.6 Non-Use of Asbestos Affidavit (After Construction);

15.10.7 Certificate evidencing that required insurance will remain in force after final payment and through the warranty period; and

15.10.8 Any other documentation required pursuant to this Contract.

15.11 If Final Application is Rejected. If the OWNER rejects the request for Final Payment, the OWNER will provide CONTRACTOR written notice stating the reasons therefore within the time required by the Prompt Payment Act.

15.12 Final Payment; Waiver of Claims. Final Payment will be deemed to have taken place when CONTRACTOR or any of its representatives negotiates the OWNER's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return. The making and acceptance of Final Payment will constitute:

15.12.1 A waiver of claims by the OWNER against CONTRACTOR, except claims arising from unsettled claims, from Defective Work appearing after final inspection, from failure to comply with this Contract or the terms of any warranty specified therein, or from CONTRACTOR's continuing obligations under this Contract; and

15.12.2 A waiver of all claims by CONTRACTOR against the OWNER other than those which were made in writing through the date that the check for final payment was issued and which are unsettled.

15.13 Partial Final Payment in Extenuating Circumstances. If the OWNER determines that after CONTRACTOR has achieved Substantial Completion, Final Completion is materially delayed through no fault of CONTRACTOR, the OWNER may without terminating this Contract, make payment of balance due for that portion of the Work fully completed and accepted. Such payment will be made under the terms and conditions governing Final Payment, except that it will not constitute a waiver of claims by the OWNER, and will not cause a transfer of title or relieve CONTRACTOR for responsibility for the Substantially Completed Work.

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

16.1 The OWNER May Suspend Work Without Cause. At any time and without cause, the OWNER may suspend the Work or any portion thereof for a period of not more than 90 days by written notice to CONTRACTOR which will fix the date on which the Work will be resumed. CONTRACTOR will resume the Work on the date so

fixed. CONTRACTOR will be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim for such an adjustment as provided herein.

16.2 The OWNER May Terminate Without Cause. Upon seven days' notice to CONTRACTOR, the OWNER may, without cause and without prejudice to any right or remedy of the OWNER, elect to terminate the Contract. In such case, CONTRACTOR will be paid for completed and acceptable Work executed in accordance with this Contract prior to the date of termination, and if the Contract Price is **NOT** based on unit prices, the following:

16.2.1.1 Reasonable demobilization costs;

16.2.1.2 Reasonable anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity; and

16.2.1.3 All claims incurred in settlement of terminated contracts with subcontractor and others, including for anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity. CONTRACTOR agrees to negotiate in good faith with subcontractors and others to mitigate the OWNER's cost.

16.3 The OWNER May Terminate With Cause.

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

- .1 If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents
- .2 If CONTRACTOR disregards or fails to comply with Legal Requirements;
- .3 If CONTRACTOR disregards the authority of the Contract Administrator or the City Manager;
- .4 If CONTRACTOR makes fraudulent statements;
- .5 If CONTRACTOR fails to maintain a work force adequate to accomplish the Work within the Contract Time;
- .6 If CONTRACTOR fails to make adequate progress and endangers successful completion of the Contract; or
- .7 If CONTRACTOR otherwise materially breaches the Contract;

The OWNER may, after giving CONTRACTOR (and the surety, if any) seven days' notice terminate the Contract. The OWNER, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, the OWNER may under these circumstances exclude CONTRACTOR from the Project Site and take possession of the Work (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at Project Site or for which the OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as the OWNER may deem expedient. In such case CONTRACTOR will not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by the OWNER arising out of or resulting from completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses and damage exceed such unpaid balance, CONTRACTOR or surety will pay the difference to the OWNER. If a termination for cause is found to be wrongful, the termination will be converted to a termination without cause, and CONTRACTOR's remedy for wrongful termination is limited to the recovery of the payments permitted for termination without cause.

16.3.2 Where CONTRACTOR's services have been so terminated by the OWNER, the termination will not affect any rights or remedies of the OWNER against CONTRACTOR and surety then existing or which may

thereafter accrue. Any retention or payment of moneys due CONTRACTOR by the OWNER will not release CONTRACTOR from liability.

16.4 CONTRACTOR May Stop Work or Terminate. If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than 90 days by the OWNER or under an order of court or other public authority, or (except during disputes) the Contract Administrator fails to forward for processing any mutually acceptable Application for Payment within 30 days after it is submitted, or (except during disputes) the OWNER fails for 60 days after it is submitted to pay CONTRACTOR any sum finally determined by the OWNER to be due, then CONTRACTOR may, upon seven days' written notice to the OWNER, and provided the OWNER does not remedy such suspension or failure within that time, terminate the Agreement and recover from the OWNER payment on the same terms as if OWNER terminated without cause pursuant to this Contract. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) the Contract Administrator has failed to forward for processing any mutually acceptable Application for Payment within 30 days after it is submitted, or (except during disputes) the OWNER has failed for 60 days after it is submitted to pay CONTRACTOR any sum finally determined by the OWNER to be due, CONTRACTOR may upon seven days' written notice to the OWNER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this Section are not intended to preclude CONTRACTOR from making a Claim for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this Section.

16.5 Discretionary Notice to Cure. In its complete discretion, the OWNER may, but is not required to, provide a Notice to Cure to CONTRACTOR and its surety to cure any of the conditions constituting a breach of Contract or an anticipatory breach of contract and, if required by the OWNER, to attend a meeting with the OWNER, regarding the Notice to Cure, the event of default or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, CONTRACTOR will prepare a report describing its program and measures to affect the cure of the event of default or anticipatory breach of contract within the time required by the Notice to Cure. The CONTRACTOR's report will be delivered to the OWNER at least three days prior to any requested meeting with the OWNER and surety.

16.6 Bankruptcy. If CONTRACTOR declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver is appointed for the benefit of creditors or if a receiver is appointed by reason of CONTRACTOR's insolvency, CONTRACTOR may be unable to perform this Contract in accordance with the Contract requirements. In such an event, the OWNER may demand CONTRACTOR or its successor in interest provide the OWNER with adequate assurance of CONTRACTOR's future performance in accordance with the terms and conditions of the Contract. If CONTRACTOR fails to provide adequate assurance of future performance to the OWNER's reasonable satisfaction within ten days of such a request, the OWNER may terminate the Contract for cause or without cause, as set forth above. If CONTRACTOR fails to provide timely adequate assurance of its performance and actual performance, the OWNER may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the cost of which will be charged against the balance of the Contract Price otherwise due to CONTRACTOR.

16.7 Duty to Mitigate. If the OWNER terminates this Contract or suspends CONTRACTOR's work, CONTRACTOR agrees to and will take all reasonable actions to mitigate its damages and any and all claims which may be asserted against the OWNER.

16.8 Responsibility during Demobilization. While demobilizing, CONTRACTOR will take all necessary and reasonable actions to preserve and protect the Work, the Project Site and other property of the OWNER or others at the Project Site.

16.9 CONTRACTOR to Remove Equipment. In the case of termination of this Contract before completion for any cause whatsoever, CONTRACTOR, if notified to do so by the OWNER, will promptly remove any part or all of his equipment or supplies from the property of the OWNER; failing to, the OWNER will have the right to remove such equipment and supplies at the expense of CONTRACTOR.

16.10 CONTRACTOR to Clean Up Project Site. If either OWNER or CONTRACTOR terminates the Contract before Substantial or Final Completion, CONTRACTOR will leave the Project Site in a clean condition as if Final Completion had been achieved, unless OWNER directs otherwise; and if CONTRACTOR fails to comply clean up the Project Site as required, the OWNER may do so and the cost thereof will be charged against CONTRACTOR.

END OF GENERAL CONDITIONS SECTION

THE CITY OF DAYTONA BEACH

Main Street Piling Replacement
Project No. 2017-56
Project Specific Construction Services



THE CITY OF DAYTONA BEACH
PUBLIC WORKS DEPARTMENT-TECHNICAL SERVICES DIVISION
P.O. BOX 2451
DAYTONA BEACH, FLA. 32115

ISSUE DATE: May 2020

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**APPENDIX - FDEP Permit for Construction
Seaward of the Coastal Construction
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**Army Corp of Engineers Permit
SAJ-2000-00644**

SECTION 01010

SUMMARY OF WORK

PART 1 - GENERAL

1.1 PROJECT WORK SCOPE:

The Project Work includes but not limited to construction of replacement pilings and associated bracing and connections on the Main Street Pier in Daytona Beach. Project includes furnishing all labor, materials, equipment, supervision and permitting necessary to complete the work shown in the contract documents.

2. CONTRACTOR SHALL PROVIDE AND PAY FOR:

Labor, materials, equipment and supervision.
Tools, construction equipment and machinery.
Water, heat and utilities required for construction.
Other facilities and services necessary for proper execution and completion of the work.

3. CONTRACTOR SHALL SECURE AND PAY FOR:

Government Permit Fees
Licenses

4. CONTRACTOR SHALL COMPLY WITH:

Codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear on performance of work.
All conditions of Issued FDEP Costal Construction Control Line Permit
All conditions of the Army Corp of Engineers Permit

5. MAINTAINING OPERATIONS:

Operations shall be maintained to all pier operations unless written approval to close part of pier is received from the City's assigned Project Manager. Construction Inspection personal shall not be authorized to grant this permission. Written request from contractor shall be given to City's Project Manager 21 days in advance of the requested date.

PART 2 - PRODUCTS

(Not Applicable)

PART 3 - EXECUTION

END OF SECTION

The CONTRACTOR shall be responsible for reviewing the site conditions, reviewing the bid documents, verifying the quantities and bid schedule and costs necessary to complete the work prior to submitting a bid.

END OF SECTION

SECTION 01014-MAINTENANCE OF OPERATIONS

1.1 GENERAL

- A. The intent of these specifications is to have the CONTRACTOR schedule and perform the Work in a manner such that the OWNER can keep existing facilities in continuous dependable operation. It is required as a part of this Contract that the CONTRACTOR adhere to the constraints listed in this Section.
- B. The CONTRACTOR will:
 - 1. Keep existing facilities in operation unless otherwise specifically permitted in these specifications or approved by the OWNER in writing.
 - 2. Coordinate any system shutdowns with the OWNER and limit the shutdown periods to acceptable times.

1.2 GENERAL CONSTRAINTS

- A. Any temporary work, facilities, roads, walks, protection of existing structures, piping, blind flanges, valves, equipment, etc. that may be required within the CONTRACTOR'S work limits to maintain continuous and dependable operation of existing systems shall be furnished by the CONTRACTOR at no extra cost to the OWNER.
- B. The CONTRACTOR shall schedule the Work in such a manner so that all existing systems are maintained in continuous operation. All short-term system or partial system shutdowns shall be approved in writing by the OWNER. If, in the opinion of the ENGINEER or OWNER, a shutdown is not required in order for the CONTRACTOR to perform the Work, the CONTRACTOR shall utilize alternative methods to accomplish the Work. All shutdowns shall be coordinated with and scheduled at times suitable to the OWNER. OWNER shall be provided a minimum of one-week notice of CONTRACTOR'S need for any system shutdown.
- C. Required shutdowns shall not begin until all materials are on-hand, pre-assembled as possible and ready for installation. At a time approved by the OWNER, the shutdown period will commence and the CONTRACTOR shall proceed with the Work continuously, start to finish, until the Work is completed and the system is tested, cleared for service, and ready for operation. If the CONTRACTOR completes all required Work before the specified shutdown period has ended the OWNER may immediately place the system back in service.
- D. The OWNER shall have the authority to order Work stopped or prohibited which would, in his opinion, unreasonably result in stopping or inhibiting the necessary functions of existing utilities.
- E. The OWNER reserves the right to cancel scheduled shutdowns if conditions warrant. Delays to the CONTRACTOR caused by cancellations will be considered in evaluating requests for time

extension.

- G. All facilities shall be tested and in operating condition before final tie-ins are made.

1.4 SUBMITTALS

- A. Submit detailed critical path method schedule for this project, electronically transmitted.
- B. Submit detailed shop drawings with all calculations, electronically transmitted.
- C. Submit as built drawings, electronically transmitted.
- D. Submit detailed Manufacturer's Data information, electronically transmitted.
- E. Submit all Progress Schedules and Reports, electronically transmitted.
- F. Submit Material and Equipment cut sheets, electronically transmitted.
- G. Submit Certificate of Compliance, electronically transmitted.

1.5 WORK SEQUENCE

- A. The CONTRACTOR shall submit a proposed work sequence two weeks prior to the pre-construction meeting. See section 01310, Construction Schedules for detail of the schedule.

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.01 Scope of Work

- A. The following explanation of the Measurement and Payment of the bid form items is made for information and guidance. The omission of reference to any item in this description shall not, however, alter the intent of the bid form or relieve the Contractor of the necessity of furnishing such as a part of the contract.
- B. The quantities set forth in the Bid Form are approximate and are given to establish a uniform basis for the comparison of bids. The Owner reserves the right to increase or decrease the quantities of any class or portion of the work during the progress of construction in accordance with the terms of the Contract.

1.02 Engineer's Estimate of Quantities

- A. The Engineer's estimated quantities for unit bid prices, as listed in the Bid Form, are approximate only and are included solely for the purpose of comparison of bids. The Owner does not expressly or by implication agree that the nature of the materials encountered below the surface of the ground or the actual quantities of material encountered or required will correspond therewith and reserves the right to increase or decrease any quantity or to eliminate any quantity as Owner may deem necessary. Contractor will not be entitled to any adjustment in a unit bid price as a result of any change in an estimated quantity and agrees to accept the aforesaid unit bid prices as complete and total compensation for any additions or deductions caused by a variation in quantities as a result of more accurate measurement, or by any changes or alterations in the Work ordered by the Owner, and for use in the computation of the value of the work performed for progress payments.

1.03 DESCRIPTION

- A. The items listed in Part 2 refer to and are the same pay items listed in the Bid Proposal. They constitute all of the pay items for the completion of the Work. No separate payment will be made for additional work items necessary to complete the work; including, but not limited to:
 - Labor, materials and equipment required for tests.
 - Maintaining the existing quality of service during construction.
 - Appurtenant work required for the complete and operable system/facility intended by the City.
 - Field offices.
 - Layout surveys.
 - Job signs.
 - Sanitary and potable water supplies.
 - Power.
 - Removal of waste.

- Watchmen.
 - Bonds and Insurance.
 - All other requirements of the General Conditions, Supplementary Conditions, and the General Requirements.
- B. Compensation for all such services, things and materials shall be included in the prices stipulated for the lump sum and unit pay items listed herein.

PART 2 PAY ITEMS

2.01 BASE BID

Mobilization/Demobilization (25% maximum) (Item 1)

A. Measurement and Payment

1. Payment for Mobilization/Demobilization will be limited to 25 % of the contract value. Such payment shall be full compensation for selling and delivering to the Owner all necessary materials, equipment, supplies including installation of all materials, equipment, supplies, all other labor, excavating, filling, permit fees, taxes, mobilization, demobilization, performance and payment bond premiums, insurance, general and administration and other miscellaneous costs, overhead and profit for the project complete except for those costs specifically included in other bid items listed in the Schedule of Bid Items.

Environmental Compliance (Item 2)

A.

1. Measurement and payment for Environmental Compliance will be made on lump sum basis. Such payments shall be full compensation for including but not limited to the necessary manpower, equipment and materials needed to maintain regulatory compliance during all phases of construction. Contactor shall comply with all federal, state and local water quality standards throughout the duration of the project.

A copy of the Florida Department of Environmental Protection (FDEP) permits and US Army Corp of Engineers (USACE) are included in the project documents for the contractor to keep on site at all times.

Remove Damaged Pile at Bent # (Item 3 through 6)

A. Measurement and Payment

1. Measurement and payment for replacement of loose bolts at the bulkhead will be made on a lump sum basis. Such payments shall be full compensation for including but not limited to the necessary manpower, equipment, materials and labor necessary to demolish and remove damaged piles at the location indicated.

Furnish and Install Piling at Bent # (Item 7 through 14)

A. Measurement and Payment

1. Measurement and payment to furnish and install a new Piling at the designated bent and pile location will be made on a per each basis. Such payments shall be full compensation for including but not limited to the necessary manpower, equipment, materials and labor necessary to furnish and install a new piling at locations shown on the plans and in accordance with design documents. All wood and timber piles shall be pressure treated as specified in the design documents. Pile shall be of size indicated on contract drawings and to orientation, length and embedment depth shown on plans.

Compensation for connections and hardware for connections attachments to existing cross bracing, new cross bracing and bents are as indicated in other payment items

Furnish & Install (F & I) New Pile to Bent Connection (Item 15)

A. Measurement and Payment

1. Measurement and payment to furnish and install of new pile to bent connection will be made on per each basis. Such payments shall be full compensation for including but not limited to the necessary manpower, equipment, materials and labor necessary to remove or demo the existing bent connection hardware and provide as new pile to existing bent connection as shown on the plans All new hardware or straps shall be 316 Stainless Steel as shown in the design documents.

Furnish & Install (F & I) New Cross Bracing & Connection Hardware at Bents 36, 40 and 54 (Item 16)

A. Measurement and Payment

1. Measurement and payment to furnish and install of new cross bracing and connection hardware at the designated bent will be made on per each basis. Such payments shall be full compensation for including but not limited to the necessary manpower, equipment, materials and labor necessary to remove or demo the existing cross bracing and connection hardware and install new cross bracing and new connection hardware, including but not limited to nuts, threaded rods, bolts, and washer and cut plates. All new hardware shall be 316 Stainless Steel as shown in the design documents.

Connections and connection hardware between all new or existing piles to new cross bracing will be paid for under this item for new cross bracing

Furnish & Install (F & I) New Connection Hardware at New pile & Existing Cross Bracing at Bents 33 and 43 (Item 17)

A. Measurement and Payment

1. Measurement and payment to furnish and install new connection hardware at the new piling and existing cross bracing connection point will be made on per each basis. Such payments shall be full compensation for including but not limited to the

necessary manpower, equipment, materials and labor necessary to remove or demo the existing connection hardware and install a new pier bolted connection for complete connection between new piling and existing cross bracing. All replacement connection hardware including nuts, threaded rods, bolts, and washer and cut plates shall be 316 Stainless Steel as shown in the design documents.

END OF SECTION

SECTION 01050 - FIELD ENGINEERING

PART 1 - GENERAL

1.01 DESCRIPTION OF WORK

CONTRACTOR shall provide and pay for all field engineering service required for the project. Such work shall include survey work to establish lines and levels and to locate and lay out site improvements, structures, and controlling lines and levels required for the construction of the work. Also included are such Engineering services as are specified or required to execute CONTRACTOR'S construction methods. Engineers and Surveyors shall be licensed professionals under the laws of the state where the project is located.

1.02 GRADES, LINES AND LEVELS

Existing basic horizontal and vertical control points for the project are those designated on the DRAWINGS. CONTRACTOR shall locate and protect control points prior to starting site work and shall preserve all permanent reference points during construction. In working near any permanent property corners or reference markers, CONTRACTOR shall use care not to remove or disturb any such markers. In the event that markers must be removed or are disturbed due to proximity of the construction work, CONTRACTOR shall have them referenced and reset by a Land Surveyor qualified under the laws of the state of the project.

1.03 LAYOUT DATA

CONTRACTOR shall lay out the work at the location and to the lines and grades shown on the DRAWINGS. Survey notes indicating the information and measurements used in establishing locations and grades shall be kept in notebooks and furnished to ENGINEER with the record drawings for the project.

For all pipelines which have grades or elevations required, for all pipelines which are indicated to be installed to clear future construction and for all pipelines for which profile elevations are shown, CONTRACTOR shall prepare cut sheets and lay out lines at the locations shown or as directed. He shall verify lengths between junction points shown on the DRAWINGS, and verify the location and elevations of possible conflicts.

SECTION 01200 - PROJECT MEETINGS

PART 1 - GENERAL

1.01 DESCRIPTION OF WORK

Project meetings shall be scheduled as needed throughout the progress of the work. ENGINEER shall be responsible for scheduling the meetings, preparing the agenda, distributing written notice of each meeting not less than four days in advance of the meeting date, making physical arrangements for the meeting, presiding at the meeting, recording the minutes (including all significant proceedings and decisions), and reproducing and distributing copies of the minutes to all participants and all parties affected by decisions made.

Representatives attending the meetings shall be qualified and authorized to act on behalf of the entity that they represent.

1.02 PRE-CONSTRUCTION CONFERENCE

A pre-construction conference will be held prior to beginning any work under the Contract. ENGINEER will schedule the conference in consultation with OWNER and CONTRACTOR.

CONTRACTOR shall be ready to submit his anticipated progress schedule, a preliminary schedule of shop drawing submissions, and a preliminary schedule of values of work.

The pre-construction conference will be attended by representatives of OWNER, ENGINEER, utility companies who will be affected by the work, and such of CONTRACTOR'S subcontractors as he wishes to attend.

1.03 PROGRESS MEETINGS

Regular progress meetings shall be held during the construction period. At these meetings the CONTRACTOR shall submit any updated progress schedules, advise OWNER and ENGINEER of any anticipated delays or problems in the progress of the work, and discuss any problems or events which affect the progress.

END OF SECTION

SECTION 01310 - CONSTRUCTION SCHEDULES

1.1 GENERAL

- A. Provide construction schedule which conforms to the requirements below, unless otherwise approved by ENGINEER.
- B. Update schedules every month unless otherwise specified or directed by ENGINEER.

1.2 CONTENT

- A. Shop Drawing submittal dates and required approval dates.
- B. Product delivery dates.
- C. Factory and field testing dates.
- D. Dates for beginning and completing each phase of the Work by activity and by trades.

1.3 FORMAT

- A. Type: Horizontal bar chart.
- B. Sheet Size: 8 1/2-inches by 11-inches, 11-inches by 17-inches, or electronically.
- C. Time Scale: Indicate first date in each work week.
- D. Organization:
 - 1. Group Shop Drawing submittals and reviews.
 - 2. Group product deliveries.
 - 3. Group construction work by activity.
 - 4. Identify critical activities which dictate the rate of progress.

1.4 SUBMITTALS

- A. Submit initial schedule at least 20 days prior to submitting first application for a progress payment but no later than 30 days after date of execution of Agreement.
- B. Submit updated schedules at progress meetings. If a schedule remains unchanged from one period to the next, submit a written notice to that effect.

- C. Make submittals to ENGINEER.
- D. Attach a letter of transmittal to each submittal and include the following information in the letter:
 - 1. A listing of items which have changed since the last submittal.
 - 2. Discussion of problems causing delays, anticipated length of delays, and proposed countermeasures.

END OF SECTION

SECTION 01340 - SHOP DRAWING PROCEDURES

PART 1 - GENERAL

1.1 GENERAL REQUIREMENTS

- A. Shop drawing procedures shall conform to requirements of Section 01300, and as described in this Section.

1.2 PROCEDURE

- A. Submit Shop Drawings to: Engineer or Architect of Record as indicated on the Plans.
- B. A letter of transmittal shall accompany each submittal. If data for more than one Section of the Specifications is submitted, a separate transmittal letter shall accompany the data submitted for each Section.
- C. At the beginning of each letter of transmittal provide a reference heading indicating the following:
 - 1. OWNER'S Name
 - 2. Project Name
 - 3. Contract Number
 - 4. Transmittal Number
 - 5. Section Number
- D. If a Shop Drawing deviates from the requirements of the Contract Documents, CONTRACTOR shall specifically note each variation in his letter of transmittal.
- E. All Shop Drawings submitted for approval shall have a title block with complete identifying information satisfactory to ENGINEER.
- F. All Shop Drawings submitted shall bear the stamp of approval and signature of CONTRACTOR as evidence that they have been reviewed by CONTRACTOR. Submittals without this stamp of approval will not be reviewed by ENGINEER and will be returned to CONTRACTOR. CONTRACTOR'S stamp shall contain the following minimum information:

Project Name/ CODB Contract No.: _____

CONTRACTOR'S Name: _____

Date: _____

-----Reference-----

Item: _____

Approved By: _____

- G. A number shall be assigned to each submittal by CONTRACTOR starting with No. 1 and thence numbered consecutively. Re-submittals shall be identified by the original submittal number followed by the suffix "A" for the first re-submittal, the suffix "B" for the second re-submittal, etc.
- H. CONTRACTOR shall initially submit to ENGINEER an electronic copy or at a minimum of six (6) copies of all submittals that are on 11-inch by 17-inch or smaller sheets (no less than 8 1/2-inch x 11-inch), and one unfolded sepia and 2 prints made from that sepia for all submittals on sheets larger than 11-inch by 17-inch.
- I. After ENGINEER completes his review, Shop Drawings will be marked with one of the following notations:
 - 1. Approved
 - 2. Approved as Corrected
 - 3. Revise and Resubmit
 - 4. Not Approved
- J. If a submittal is acceptable, it will be marked "Approved" or "Approved as Corrected". Three (3) prints or copies of the submittal will be returned to CONTRACTOR.
- K. Upon return of a submittal marked "Approved" or "Approved as Corrected", CONTRACTOR may order, ship or fabricate the materials included on the submittal, provided it is in accordance with the corrections indicated.
- L. If a Shop Drawing marked "Approved as Corrected" has extensive corrections or corrections affecting other drawings or Work, ENGINEER may require that CONTRACTOR make the corrections indicated thereon and resubmit the Shop Drawings for record purposes. Such drawings will have the notation, "Approved as Corrected - Resubmit."
- M. If a submittal is unacceptable, three (3) copies will be returned to CONTRACTOR with one of the following notations:
 - 1. "Revise and Resubmit"
 - 2. "Not Approved"
- N. Upon return of a submittal marked "Revise and Resubmit", CONTRACTOR shall make the corrections indicated and repeat the initial approval procedure. The "Not

Approved" notation is used to indicate material or equipment that is not acceptable. Upon return of a submittal so marked, CONTRACTOR shall repeat the initial approval procedure utilizing acceptable material or equipment.

- O. Any related Work performed or equipment installed without an "Approved" or "Approved as Corrected" Shop Drawing will be at the sole responsibility of the CONTRACTOR.
- P. Shop Drawings shall be submitted well in advance of the need for the material or equipment for construction and with ample allowance for the time required to make delivery of material or equipment after data covering such is approved. CONTRACTOR shall assume the risk for all materials or equipment which are fabricated or delivered prior to the approval of Shop Drawings. Materials or equipment will not be included in periodic progress payments until approval thereof has been obtained in the specified manner.
- Q. ENGINEER will review and process all submittals promptly, but a reasonable time should be allowed for this, for the Shop Drawings being revised and resubmitted, and for time required to return the approved Shop Drawings to CONTRACTOR.
- R. It is CONTRACTOR'S responsibility to review submittals made by his suppliers and SUBCONTRACTORS before transmitting them to ENGINEER to assure proper coordination of the Work and to determine that each submittal is in accordance with his desires and that there is sufficient information about materials and equipment for ENGINEER to determine compliance with the Contract Documents. Incomplete or inadequate submittals will be returned for revision without review.
- S. CONTRACTOR shall furnish required submittals with complete information and accuracy in order to achieve required approval of an item within three submittals. All costs to ENGINEER involved with subsequent submittals of Shop Drawings, Samples or other items requiring approval, will be back charged to CONTRACTOR, at the rate of 3.0 times direct technical labor cost, by deducting such costs from payments due CONTRACTOR for Work completed. In the event that CONTRACTOR requests a substitution for a previously approved item, all of ENGINEER'S costs in the reviewing and approval of the substitution will be back charged to CONTRACTOR unless the need for such substitution is beyond the control of CONTRACTOR.
- T. Close out Submittals: Refer to Section 1700 for specific general requirements on the submittal of closeout information, materials, tools, and similar items.

END OF SECTION

**SECTION 01400
GENERAL QUALITY CONTROL**

PART 1 - GENERAL REQUIREMENTS

1.1. SUMMARY

Specific quality control requirements for the work are indicated throughout the contract documents. The requirements of this section are primarily related to the performance of the work beyond the furnishing of manufactured products. The term "Quality Control" includes, but is not necessarily limited to inspection and testing and associated requirements. This section does not specify or modify the CITY's duties relating to quality review and Contract surveillance."

1.01 TESTING LABORATORY SERVICES

Arrangements for testing laboratory services will be made by OWNER. Payment for testing to show compliance with specified requirements will be paid for by OWNER. The cost of retesting when materials and workmanship fail to meet specified requirements will be deducted from monies due CONTRACTOR.

1.02 LABORATORY STANDARDS

Testing laboratories shall conform to the applicable requirements of ASTM E329-77 (1983) STANDARD RECOMMENDED PRACTICE FOR INSPECTION AND TESTING AGENCIES FOR CONCRETE, STEEL AND BITUMINOUS MATERIALS AS USED IN CONSTRUCTION and shall be inspected and approved by the ELF/FC&PA Joint Technical Committee, Inc., or by an equivalent recognized national authority.

Agents of testing laboratories performing field sampling and field testing of concrete shall be certified by the American Concrete Institute as Concrete Field Testing Technicians Grade 1 or by an equivalent recognized national authority for an equivalent level of competence, or shall be licensed Professional Engineers.

1.02 ACCESS FOR INSPECTION

OWNER, ENGINEER and their authorized representatives shall be permitted free access and every reasonable facility for the inspection of all Work, materials and equipment. OWNER and his authorized representatives shall also be permitted to inspect payrolls, invoices for materials and equipment. OWNER and his authorized representatives shall also be permitted to inspect payrolls, invoices for materials and equipment and other relevant data and records.

Authorized representatives of Federal, State or local agencies shall be permitted access to inspect for compliance with applicable laws, regulations and permit requirements.

On projects where Federal or State agency funding is used, authorized representatives of those agencies shall be permitted to inspect all work, materials, equipment, payrolls, records of personnel, invoices for materials and equipment and other relevant data and records.

1.03 INSPECTION OF WORK AWAY FROM SITE

When work to be done away from the construction site is to be inspected on behalf of OWNER during its fabrication, manufacture or testing or before shipment, CONTRACTOR shall give notice to ENGINEER of the time and place where such fabrication, manufacturing, testing or shipping is to be done. Such notice shall be in writing and delivered to ENGINEER in ample time so that the necessary arrangements for the inspection can be made.

1.2 RESPONSIBILITY FOR INSPECTIONS AND TESTS

- A. The CITY will employ and pay for the services of independent testing laboratories to perform required onsite inspections, sampling and tests to include but not be limited to soil density, asphalt density and / or stability, road base and sub grade compaction, stability, etc.
- B. No failure of test agencies, whether engaged by the CITY or CONTRACTOR, to perform adequate inspections of tests or to properly analyze or report results, shall relieve the CONTRACTOR of responsibility for the fulfillment of the requirements of the contract documents. It is recognized that the required inspection and testing program is intended to assist the CONTRACTOR, CITY and governing authorities in the determination of probable compliance with requirements for certain crucial elements of work. The program is not intended to limit the CONTRACTOR in his regular quality control program, as needed for general assurance of compliance.
- C. The CONTRACTOR is responsible for providing all data required by the CITY to ensure that the construction materials and equipment used are in compliance with the contract bid documents and subsequent changes.

1.3 QUALITY ASSURANCE

General Workmanship Standards: It is a requirement that each category of management, tradesman or installer performing the work be prequalified, to the extent of being familiar with the applicable and recognized quality standards for his category of work, and being capable of workmanship complying with those standards. All errors, omissions or

ambiguities that will materially affect the work shall be brought to the CITY's attention as soon as they are discovered.

PART 2 – PRODUCTS

(See General Conditions)

PART 3 - EXECUTION

3.1 SUBMITTALS

(See General Conditions)

3.4 PRODUCT DELIVERY-STORAGE HANDLING

CONTRACTOR shall handle, store and protect new and salvaged project materials and products, including fabricated components, by methods and means which will prevent damage, deterioration and losses (and resulting delays), thereby ensuring highest quality results as the performance of the work progresses. Control delivery schedules so as to minimize unnecessary long-term storage at the project site prior to installation.

3.5 PREPARATION FOR INSTALLATION

- A. Pre-Installation Conferences: Well in advance of the installation of every major unit of work which requires coordination with other work, meet at the project site with installers and representatives of manufacturers and fabricators, utility owners and facility owners who are involved in or affected by the unit of work, and in its coordination or integration with other work which has preceded or will follow. Advise the CITY of scheduled meeting dates. At each meeting review the progress of other work and preparations for the particular work under consideration, including the requirements of the contract documents, options, related change orders, purchases, deliveries, shop drawings, product data, quality control samples, possible conflicts, compatibility problems, time schedules, weather limitations, temporary facilities, space and access limitations, structural limitations, governing regulations, safety, inspection and testing requirements, required performance results, recording requirements, and protection. Record the significant discussions of each conference, and the agreements and disagreements, along with the final plan of action. Distribute record of meeting promptly to everyone concerned, including the CITY.
- B. Do not proceed with the work if the associated pre-installation conference cannot be concluded successfully, investigate actions to resolve impediments to the performance of the work, and reconvene the conference at the earliest date feasible.
- C. Installer's Inspection of Conditions; Require the Installer of each major unit of work to inspect the substrate to receive the work, and the conditions under which

the work will be performed, and to report (in writing to the CONTRACTOR and CITY) unsatisfactory conditions. Do not proceed with the work until unsatisfactory conditions have been corrected in a manner acceptable to the Installer.

3.6 COORDINATION OF TEST AGENCY WORK

- A. Afford access and reasonable time in the construction sequence for CITY's inspections and tests to be performed. Cooperate with agencies and provide incidental labor and services needed for the removal and delivery of test samples, and for inspections and taking measurements. Provide patching and restoration services where test samples have been removed. Test agencies, regardless of whether engaged by the CITY or CONTRACTOR, are not authorized to change or negate the requirements of the contract documents. Each agency shall coordinate its assigned work with the construction schedule as maintained by the CONTRACTOR, and shall perform its work promptly so as not to delay the work avoidably. observances (by agencies) having a bearing on the work shall be reported to the CITY, in the most expeditious way possible, and shall be recorded in writing by the agency. Test agency personnel shall not interfere with or assume the duties of the CONTRACTOR.

3.6 PROJECT PHOTOGRAPHS/ VIDEOS

Video all line work, water, sanitary sewer, drainage, etc. The CONTRACTOR shall make provisions at his expense for DVD video of all line work just prior to construction, and during construction. The videos will show pertinent physical features along the line of construction. The purpose of the videos is to determine any damage to private or public property during construction. For some projects, such as parking lots, building structures, water, wastewater facilities, etc., a combination of photographs and DVD video will be required. A copy of the video and photographs shall be provided to the CITY.

3.7 INSTALLATION QUALITY CONTROL

- A. Manufacturer's Instructions: Where installations include manufactured products, comply with the manufacturer's applicable instructions and recommendations for installation, to whatever extent these are more explicit or more stringent than applicable requirements indicated in the contract documents.
- B. Inspect each item of materials or equipment immediately prior to installation, and reject damaged and defective items.
- C. Recheck measurements and dimensions of work, as an integral step of starting each installation.

- D. Install work during conditions of temperature, humidity, exposure, forecasted weather, and status of project completion which will ensure the best possible results for each unit of work, in coordination with the entire work. Isolate each unit of work from non-compatible work, as required to prevent deterioration.

END OF SECTION

SECTION 01500 – TEMPORARY FACILITIES AND CONTROLS

PART 1 - GENERAL**1.1 DESCRIPTION OF REQUIREMENTS**

This section specifies the minimum requirements for temporary facilities, utilities to be brought to the site, and control required to enable the construction of the project to progress adequately. The providing of adequate facilities at every stage of performing the work is the CONTRACTOR'S sole responsibility, and is not limited by the requirements of this section.

Except as otherwise indicated, the CONTRACTOR may, at his option, provide stand-alone utility plants to provide needed services, in lieu of connected services from available public utilities, provided such stand-alone plant facilities comply with governing regulations. Prior to availability of temporary utility services, provide trucked-in/trucked-out containerized or unitized services for start-up of construction operations at the site.

Except as otherwise indicated, the costs of providing and using temporary utility services shall be included in the Contract Sum.

1.2 TEMPORARY FACILITIES

The types of utility services required for general temporary use at the project site include the following (other specific services may be required for specific construction methods or operations):

- Electrical Power Service
- Water Service (potable for certain uses)
- Sanitary
- Storm Sewer or Open Drainage/Run-off Control
- Gas (fuel) Service
- Telephone Service

Temporary Electricity. The CONTRACTOR shall provide for a temporary power source for his use during construction and arrange for modification of the permanent power supply by the power company as required. The permanent power supply service will remain as the Owner's account throughout the project.

Temporary Water. The CONTRACTOR shall make all necessary application and arrangements, and pay all fees and charges for water necessary for the proper completion of the project up to the time of final acceptance. The CONTRACTOR shall provide and pay for any temporary piping and connections.

Temporary Sanitary Facilities. The CONTRACTOR shall provide adequate sanitary facilities for the use of those employed on the work. Such facilities shall be made available when the first employees arrive on the site of the work, shall be properly secluded from public observation, and shall be constructed and maintained during the progress of the work in suitable numbers and at such points and in such manner as may be required or approved.

The CONTRACTOR shall maintain the sanitary facilities in a satisfactory and sanitary condition at all times and shall enforce their use. He shall rigorously prohibit the committing of nuisances on the site of the work, on the lands of the OWNER, or on adjacent property.

Termination and Removal. At the time the need for temporary utility service or a substantial portion thereof has ended, or when its service has been replaced by use of permanent services, or not later than the time of substantial completion, promptly remove the installation unless requested by the ENGINEER to retain it for a longer period. Complete and restore work, which may have been delayed or affected by the installation and use of the temporary utility, including repairs to construction and grades and restoration and cleaning of exposed surfaces. Replace work damaged beyond acceptable restoration.

1.3 TEMPORARY CONTROLS

Noise Control. The CONTRACTOR shall provide adequate protection against objectionable noise levels caused by the operation of construction equipment.

Dust Control. The CONTRACTOR shall provide for adequate protection against raising objectionable dust clouds caused by moving construction equipment, high winds or any other cause.

Water Control. The CONTRACTOR shall provide for satisfactory disposal of surplus water and shall submit a plan to the ENGINEER for his review prior to initiation and implementation of the plan. Prior approval shall be obtained from the proper authorities for the use of public or private lands or facilities for such disposal. CONTRACTOR shall be responsible for obtaining and complying with the requirements of any dewatering or consumptive use permits required by regulatory authorities.

Pollution Control. The CONTRACTOR shall provide for adequate protection against polluting any public or private lands, lakes, ponds, rivers, streams, creeks, and other such areas, by the disposal of surplus material in the form of solids, liquids, or gases or from any other cause.

The CONTRACTOR shall evaluate and assess the impact of any adverse effects on the natural environment which may result from construction operations and shall operate to minimize pollution of air, ground or surface waters vegetation, and afford the neighboring community the maximum protection during and up to completion of the construction project.

The CONTRACTOR shall take sufficient precautions to prevent pollution of streams, lakes and reservoirs with fuels, oils, bitumens, calcium chloride or other harmful materials. He shall conduct and schedule his operations so as to avoid or otherwise prevent pollution of siltation of streams, lakes and reservoirs and to avoid interference with movement of migratory fish.

All chemicals used during project construction or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer, reactant or of other classification, must show approval of either EPA or USDA. Use of all such chemicals and disposal of residues shall be in strict conformance with instructions.

Erosion Control. The CONTRACTOR shall not expose, by construction operations, a larger area of erosive land at any one time than the minimum necessary for efficient construction operations, and the duration of exposure of the uncompleted construction to the elements shall be as short as practicable.

Erosion control features shall be constructed concurrently with other work and at the earliest practicable time.

Paint Splatter Control. The CONTRACTOR shall take precautions necessary to prevent paint splatter and wind-blown splatter from falling on adjacent buildings, vehicles and vehicular traffic and shall be solely responsible for any damage resulting from the work.

Sandblasting, Dust & Debris Control. The CONTRACTOR shall provide for adequate protection of the work area to prevent nuisance and damage to adjacent properties and vehicular traffic from cleaning and sandblasting debris and shall be solely responsible for any damage therefrom.

1.4 STORAGE FACILITIES

All products, materials and equipment shall be stored in accordance with the manufacturer's instructions, with seals and labels intact and legible. Products subject to damage by the elements shall be stored in weathertight enclosures. Temperature and humidity shall be maintained within the ranges required by the manufacturer's instructions. Fabricated products shall be stored above the ground on blocking or skids. Products, which are subject to deterioration, shall be covered with impervious coatings with adequate ventilation to avoid condensation. Loose granular materials shall be stored in a well-drained area on solid surfaces to prevent mixing with foreign matter. Any products, which will come in contact with potable water, shall be stored off the ground so as to prevent contamination.

The City will refuse to accept, or sample for testing, materials, supplies or equipment that have been improperly stored, as determined by the City. Materials found unfit for use shall not be incorporated in the work and shall immediately be removed from the construction or storage site. Delivered materials shall be stored in a manner acceptable to the City before any payment for same will be made.

Storage shall be arranged in such a manner to provide easy access for inspection. Periodic inspections shall be made of all stored products to assure that they are maintained under specified conditions, and free from damage or deterioration.

After installation, CONTRACTOR shall provide substantial coverings as necessary to installed products to protect from damage from traffic and subsequent construction operations. Coverings shall be removed when no longer needed.

1.5 QUALITY ASSURANCE:

Regulations: Comply with governing regulations and utility company regulations and recommendations for the construction of temporary utility services; including (but not necessarily limited to) code compliance, permits, inspections, testing, and health and safety compliance.

Comply with pollution and environmental protection regulations for the use of water and other services, and for the discharge of wastes and stormwater drainage from the project site. Comply with whatever "Environmental Impact" commitments may have been made by the owner or previous owners of the site in securing approval to proceed with the construction of the project.

Contractor must control turbidity in rivers or canals so that it does not exceed established background turbidity by more than 50 Jackson Units at a distance greater than 100 feet from the point of work. This shall be done by the use of a "diaper" or screen suspended by floats or other methods approved by the Project Representative.

Standards: Comply with the "Manual of Accident Prevention in Construction" by AGC. Comply with NFPA Code 241 "Building Construction and Demolition Operations".

1.6 OPERATIONS AND TERMINATIONS:

Inspections: Prior to placing temporary utility services into use, inspect and test each service and arrange for governing authorities required inspection and tests, and obtain required certifications and permits for use thereof.

Supervision: Enforce strict discipline in the use of utility services. Limit availability to essential uses, so as to minimize wastes. Do not allow the installations to be abused or endangered.

Protection: Prevent water-filled piping from freezing, by ground cover or insulation or by keeping drained, or by temporary heating. Maintain distinct markers for underground lines, and protect from damage during excavating operations.

The Contractor shall provide adequate signs, barricades, flashing lights, flagmen and watchmen and take all necessary precautions for the protection of the work and the safety of the public. Traffic control warning signs and barricades shall be in strict accordance with the provisions of the Florida Department of Transportation, Manual on Traffic Controls and Safe Practices for

Street and Highway Construction, Maintenance and Utility operations, latest revision. All barricades and obstructions shall be protected at night by flashing signal lights which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and suitable for night visibility. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades, or detours exist.

The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property, in a manner satisfactory to the City. No road or street shall be closed to the public, except with the permission of the City and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches.

Preservation: Preserve from damage all property along the line of the work, or which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not called for by the plans. Wherever such property

is damaged due to the activities of the Contractor, it shall be immediately restored to its original condition by the Contractor at no cost to the Owner.

In case of failure on the part of the Contractor to restore such property, or make good such damage or injury, the owner may, after 48 hours notice to the Contractor, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any moneys due or which may become due the Contractor under this Contract.

The Contractor shall be responsible for the protection of property, in the areas in the vicinity of the project; and for the protection of his equipment, supplies, materials and work, against any damage resulting from the elements, such as flooding, by rainstorm, wind damage, or other elemental cause resulting from the project configuration. The Contractor shall take all precautions against any such damage occurrence, and shall be responsible for damage resulting from same. The Contractor shall provide adequate drainage facilities, tie-downs, or other protection, throughout the Contract period, for the protection of his, the owner's and other properties from such damage.

Termination and Removal: At the time the need for a temporary utility service or a substantial portion thereof has ended, or when its service has been replaced by use of permanent services, or not later than the time of substantial completion, promptly remove the installation unless requested by the City to retain it for a longer period. Complete and restore work, which may have been delayed or affected by the installation and use of the temporary utility, including repairs to construction and grades and restoration and cleaning of exposed surfaces. Replace work damaged beyond acceptable restoration.

1.7 PRESERVATION OF PROPERTY

Preserve from damage all property along the line of the work, or which is in the vicinity of or in any wise affected by the work, the removal or destruction of which is not called for by the plans. Wherever such property is damaged due to the activities of the CONTRACTOR, it shall be immediately restored to its original condition by the CONTRACTOR at no cost to the OWNER.

In case of failure on the part of the CONTRACTOR to restore such property, or make good such damage or injury, the OWNER may, after 48 hours notice to the CONTRACTOR, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any monies due or which may become due the CONTRACTOR under this Contract.

The CONTRACTOR shall be responsible for the protection of property, in the areas in the vicinity of the project; and for the protection of his equipment, supplies, materials and work, against any damage resulting from the elements, such as flooding, by rainstorm, wind damage, or other elemental cause resulting from the project configuration. The CONTRACTOR shall take all precautions against any such damage occurrence, and shall be responsible for damage resulting from same. The CONTRACTOR shall provide adequate drainage facilities, tie-downs, or other protection, throughout the Contract period, for the protection of his, the OWNER's, and other properties from such damage.

END OF SECTION

SECTION 01541-PROTECTION OF THE WORK AND PROPERTY

1.1 GENERAL

- A. CONTRACTOR shall be responsible for taking all precautions, providing all programs, and taking all actions necessary to protect the Work and all public and private property and facilities from damage as specified in the General Conditions and herein.
- B. In order to prevent damage, injury or loss, CONTRACTOR'S actions shall include, but not be limited to, the following:
 - 1. Store apparatus, materials, supplies, and equipment in an orderly, safe manner that will not unduly interfere with the progress of the Work or the Work of any other CONTRACTOR or utility service company.
 - 2. Provide suitable storage facilities for all materials which are subject to injury by exposure to weather, theft, breakage, or otherwise.
 - 3. Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.
 - 4. Clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the Work shall present a safe, orderly and workmanlike appearance.
 - 5. Provide barricades and guard rails around openings, for scaffolding, for temporary stairs and ramps, around excavations, elevated walkways and other hazardous areas.
- C. CONTRACTOR shall not, except after written consent from proper parties, enter or occupy privately-owned land with men, tools, materials or equipment, except on easements provided herein.
- D. CONTRACTOR shall assume full responsibility for the preservation of all public and private property or facility on or adjacent to the site. If any direct or indirect damage is done by or on account of any act, omission, neglect or misconduct in the execution of the Work by the CONTRACTOR, it shall be restored by the CONTRACTOR, at his expense, to a condition equal to that existing before the damage was done.

1.2 BARRICADES AND WARNING SIGNALS

- A. Where Work is performed on or adjacent to any roadway, right-of- way, or public place, CONTRACTOR shall provide barricades, fences, lights, warning signs, danger signals, watchmen, and shall take other precautionary measures for the protection of persons or property and of the Work. Barricades shall be painted to be visible at night. From sunset to sunrise, CONTRACTOR shall furnish and maintain at least one light at each barricade. Sufficient barricades shall be erected to keep vehicles from being driven on or into Work under construction. CONTRACTOR

shall furnish watchmen in sufficient numbers to protect the Work. CONTRACTOR'S responsibility for the maintenance of barricades, signs, lights, and for providing watchmen shall continue until the Project is accepted by OWNER.

1.3 TREE AND PLANT PROTECTION

- A. CONTRACTOR shall protect existing trees, shrubs and plants on or adjacent to the site that are shown or designated to remain in place against unnecessary cutting, breaking or skinning of trunk, branches, bark or roots.
- B. Materials or equipment shall not be stored or parked within the drip line.
- C. Temporary fences or barricades shall be installed to protect trees and plants in areas subject to traffic.
- D. Fires shall not be permitted under or adjacent to trees and plants.
- E. Within the limits of the Work, water trees and plants that are to remain, in order to maintain their health during construction operations.
- F. Cover all exposed roots with burlap that shall be kept continuously wet. Cover all exposed roots with earth as soon as possible. Protect root systems from mechanical damage and damage by erosion, flooding, run-off or noxious materials in solution.
- G. If branches or trunks are damaged, prune branches immediately and protect the cut or damaged areas with emulsified asphalt compounded specifically for horticultural use in a manner approved by the ENGINEER.
- H. All damaged trees and plants that die or suffer permanent injury shall be removed when ordered by the ENGINEER and replaced by a specimen of equal or better quality.
- I. Coordinate Work in this Section with requirements of other sections herein.

1.4 PROTECTION OF EXISTING STRUCTURES

- A. Underground Structures:
 - 1. Underground structures are defined to include, but not be limited to, all sewer, water, gas, and other piping, and manholes, chambers, electrical conduits, tunnels and other existing subsurface work located within or adjacent to the limits of the Work.
 - 2. All underground structures known to ENGINEER except water, sewer, electric, and telephone service connections are shown. This information is shown for the assistance of CONTRACTOR in accordance with the best information available, but is not guaranteed to be correct or complete.

3. CONTRACTOR shall explore ahead of his trenching and excavation Work and shall uncover all obstructing underground structures sufficiently to determine their location, to prevent damage to them and to prevent interruption to the services which such structures provide. If CONTRACTOR damages an underground structure, he shall restore it to original condition at his expense.
4. Necessary changes in the location of the Work may be made by ENGINEER, to avoid unanticipated underground structures.
5. If permanent relocation of an underground structure or other subsurface facility is required and is not otherwise provided for in the Contract Documents, ENGINEER will direct CONTRACTOR in writing to perform the Work, which shall be paid for under the provisions of Article 11 of the General Conditions.

B. Surface Structures:

1. Surface structures are defined as all existing buildings, structures and other facilities above the ground surface. Included with such structures are their foundations or any extension below the surface. Surface structures include, but are not limited to, buildings, tanks, walls, bridges, roads, dams, channels, open drainage, piping, poles, wires, posts, signs, markers, curbs, walks and all other facilities that are visible above the ground surface.

C. Protection of Underground and Surface Structures:

1. CONTRACTOR shall sustain in their places and protect from direct or indirect injury all underground and surface structures located within or adjacent to the limits of the Work. Such sustaining and supporting shall be done carefully and as required by the party owning or controlling such structure. Before proceeding with the work of sustaining and supporting such structure, CONTRACTOR shall satisfy the ENGINEER that the methods and procedures to be used have been approved by the party owning same.
2. CONTRACTOR shall assume all risks attending the presence or proximity of all underground and surface structures within or adjacent to the limits of the Work. CONTRACTOR shall be responsible for all damage and expense for direct or indirect injury caused by his Work to any structure. CONTRACTOR shall repair immediately all damage caused by his work, to the satisfaction of the OWNER of the damaged structure.

- D.** All other existing surface facilities, including but not limited to, guard rails, posts, guard cables, signs, poles, markers, and curbs which are temporarily removed to facilitate installation of the Work shall be replaced and restored to their original condition at CONTRACTOR'S expense.

1.5 PROTECTION OF INSTALLED PRODUCTS AND LANDSCAPING

- A. Provide protection of installed products to prevent damage from subsequent operations. Remove protection facilities when no longer needed, prior to completion of Work.
- B. Control traffic to prevent damage to equipment, materials and surfaces.
- C. Provide coverings to protect equipment and materials from damage.
 - 1. Cover projections, wall corners, and jambs, sills and soffits of openings, in areas used for traffic and for passage of products in subsequent work.

END OF SECTION

SECTION 01600-MATERIALS AND EQUIPMENT

PART 1 - GENERAL

1.01 DESCRIPTION OF REQUIREMENTS

Materials and equipment furnished by CONTRACTOR shall be new and shall not have been in service at any other installation unless otherwise provided. Materials and equipment shall conform to applicable specifications and standards and comply with the size, make, type and quality specified, or as specifically approved in writing by ENGINEER.

Manufactured and fabricated items shall be designed, fabricated and assembled in accordance with the best engineering and shop practices. Like parts of duplicate units shall be manufactured to standard sizes and gages to be interchangeable.

Two or more things of the same kind shall be identical, by the same manufacturer.

Materials and equipment shall be suitable for service conditions shown or specified.

Equipment which requires auxiliary devices or equipment in order to operate properly shall have such auxiliary devices or equipment included as a part of its system.

Equipment sizes, capacities and dimensions shown or specified shall be adhered to unless variations are specifically approved in writing.

Materials and equipment shall not be used for any purpose other than that for which it is designed or is specified.

Where existing materials or equipment is specifically shown or specified to be reused in the work, special care shall be used in removal, handling, storage, and reinstallation, to assure proper function in the completed work.

CONTRACTOR shall arrange for transportation, storage and handling of products which require off-site storage, restoration or renovation.

Salvaged Materials. In the absence of special provisions to the contrary, salvaged materials, equipment or supplies are the property of OWNER and shall be cleaned and stored as directed by ENGINEER.

Manufacturer's Instructions. The installation of all work shall comply with manufacturer's written instructions. CONTRACTOR shall obtain and distribute copies of such instructions to parties involved in the installation including two copies to ENGINEER. One complete set of instructions shall be maintained at the job site during installation and until completion. All products and equipment shall be handled, installed, connected, cleaned, conditioned and adjusted in accordance with the manufacturer's instructions and specified requirements. Should job conditions or specified

requirements conflict with manufacturer's instructions, such conflicts shall be called to ENGINEER'S attention for resolution and revised instructions.

Equipment Guarantee. All mechanical and electrical equipment, together with devices of whatever nature and all components, which are furnished and/or installed by CONTRACTOR shall be guaranteed. The guarantee shall be against manufacturing and/or design inadequacies, materials and workmanship, improper assembly, hidden damage, failure of devices and/or components, excessive leakage or other circumstances which would cause the equipment to fail under normal design and/or specific operating conditions for a period of one year or such longer period as may be shown and/or specified from and after the date of acceptance of the equipment by OWNER. Each piece of equipment, device or component which shall fail within the above specified term shall be replaced with reasonable promptness by CONTRACTOR without cost to OWNER.

Operating Characteristics. Rotating machinery shall be designed and fabricated to provide satisfactory operation without excessive wear and without excessive maintenance during its operating life. Rotating parts shall be statically and dynamically balanced and shall operate without excessive vibration.

Lubrication System. The minimum design criteria for lubrication of moving parts of the equipment shall include one week of continuous operation during which no lubricants shall be added to the system. The system shall also be designed to receive lubricants whether in operation or shut down, and shall not leak or waste lubricants under either condition. The manufacturer's recommendations of grade and quality and a supply of the lubricants so recommended in quantities sufficient to conduct startup and testing operations shall be furnished with the equipment.

Safety Requirements. Screens, guards or cages shall be provided for all exposed, rotating or moving parts in accordance with accepted practices of applicable governmental agencies.

Nameplates. Each major component of equipment shall have the manufacturer's name, catalog and/or model number, serial number and applicable performance requirements and characteristics embossed, stamped, or engraved on a stainless steel plate securely attached to the item of equipment.

Anchor Bolts. The manufacturer shall provide stainless steel anchor bolts for each piece of equipment furnished.

1.02 TRANSPORTATION AND HANDLING

Materials and equipment shall be loaded and unloaded by methods affording adequate protection against damage. Every precaution shall be taken to prevent injury to the materials or equipment during transportation and handling. Suitable power equipment will be used and the materials or equipment shall be under control at all times. Under no condition shall the materials or equipment be dropped, bumped or dragged. When a crane is used, a suitable hook or lift sling shall be used. The crane shall be so placed that all lifting is done in a vertical plane. Materials or equipment skid loaded, palletized or handled on skidways shall not be skidded or rolled against materials or equipment already unloaded.

Materials and equipment shall be delivered to the job site by means that will adequately support it and not subject it to undue stresses. Contractor shall promptly inspect the products for damage and defects and conformance with the specification. Materials and equipment damaged or injured in the process of transportation, unloading or handling will be rejected and shall be immediately removed from the site.

END OF SECTION

SECTION 01611-STORAGE OF MATERIAL

1. GENERAL:

Store and protect materials in accordance with manufacturer recommendations and requirements of Specifications.

Contractor shall make all arrangements and provisions necessary for the storage of materials and equipment. All excavated materials, construction equipment, and materials and equipment to be incorporated into the Work shall be placed so as not to injure any part of the Work or existing facilities and so that free access can be had at all times to all parts of the Work and to all public utility installations in the vicinity of the Work. Materials and equipment shall be kept neatly and compactly stored in locations that will cause a minimum of inconvenience to other contractors, public travel, adjoining owners, tenants and occupants. Arrange storage in a manner to provide easy access for inspection.

Areas available on the construction site for storage of material and equipment shall be as shown or approved by the Engineer.

Materials and equipment which are to become the property of the Owner shall be stored to facilitate their inspection and insure preservation of the quality and fitness of the Work, including proper protection against damage by freezing and moisture. They shall be placed in inside storage areas unless otherwise acceptable to Owner.

Lawns, grass plots or other private property shall not be used for storage purposes without written permission of the Owner or other person in possession or control of such premises.

Contractor shall be fully responsible for loss or damage to stored materials and equipment.

Do not open manufacturers' containers until time of installation unless recommended by the manufacturer or otherwise specified.

Do not store products in the structures being constructed unless approved in writing by the Engineer.

2. UNCOVERED STORAGE:

The following types of materials may be stored out-of-doors without cover; masonry units, reinforcing steel, structural steel, piping, precast concrete items, castings, hand railing.

Store the above materials on wood blocking so there is no contact with the ground.

3. COVERED STORAGE:

The following types of materials may be stored out-of-doors if covered with material impervious to water; rough lumber, filter media.

Tie down covers with rope and slope to prevent accumulation of water on covers.

Store materials on wood blocking.

4. FULLY PROTECTED STORAGE:

Store all products not named above in buildings or trailers that have concrete or wooden floor, a roof, and fully closed walls on all sides.

Provide heated storage space for materials that would be damaged by freezing.

Protect mechanical and electrical equipment from being contaminated by dust, dirt and moisture.

Maintain humidity at levels recommended by manufacturers for electrical and electronic equipment.

5. MAINTENANCE OF STORAGE:

Maintain periodic system of inspection of stored products on scheduled basis to assure that; state of storage facilities is adequate to provide required conditions, required environmental conditions are maintained on continuing basis, products exposed to elements are not adversely affected.

Mechanical and electrical equipment which requires long term storage shall have complete manufacturer's instructions for servicing, accompanying each item, with notice of enclosed instructions shown on exterior of package. Comply with manufacturer's instructions on scheduled basis. Space heaters that are part of electrical equipment shall be connected and operated continuously until equipment is placed in service.

END OF SECTION

Supplemental Technical Provisions

SUPPLEMENTAL TECHNICAL PROVISIONS

1. Contractor to fully comply with all conditions of the Florida Dept. of Environmental Protection Permit issued for project for construction seaward of the coastal construction control line. Prior to commencement of construction activities a preconstruction conference shall be held between contractor, owner, and representatives of FDEP Bureau of Beaches and Coastal Systems
2. All rubble and debris resulting from this construction shall be removed and properly disposed of in a location landward of the coastal construction line.
3. Construction shall be consistent with the current Sovereignty Submerged Lands lease for The Structure as issued by the Florida Legislature and approved by the Governor of the State Of Florida
4. All activity must be consistent with Volusia County Habitat Conservation Plan and coordinated with Volusia County 386-238-4668
5. No temporary lighting of the construction area is authorized within marine turtle nesting habitat at any time during nesting season (May 1st thru Oct. 31st).
6. No additional permanent exterior lighting is authorized.
7. No construction, operation, transportation or storage of equipment or materials shall be authorized within marine turtle nesting habitat between May 1st and October 31st.
8. Contractor shall fully comply with all conditions of the US Army Corp of Engineers Permit No. SAJ-2000-00644 issued for repairs to the Pier

From: [Palmer, John C CIV USARMY CESAJ \(USA\)](#)
To: [Veenstra, Mark](#)
Cc: [Nelson, James](#)
Subject: RE: City of Daytona Beach - Main Street Pier Repair - SAJ-2000-00644 (NW-JCP) (UNCLASSIFIED)
Date: Thursday, January 23, 2020 10:23:14 AM

[EXTERNAL EMAIL. EXERCISE CAUTION.]

CLASSIFICATION: UNCLASSIFIED

Mark,

This email will serve as a waiver, that the floating turbidity barriers are not required in the heavy surf zone work areas. They will be ineffective and possibly a hazard due to the rough conditions. Please attach this email to your permit, and if you have further questions, please feel free to contact me. Thanks
JCP

John Palmer
Chief, Cocoa Permits Section
U.S. Army Corps of Engineers
400 High Point Drive, Suite 600
Cocoa, FL 32926
321-504-3771 extension 10
321-504-3803 (fax)
john.palmer@usace.army.mil

Waiver of Floating Turbidity
Barriers Requirement

Service

“The happiest people are those who do the most for others. The most miserable are those who do the least.” —
Booker T. Washington

“To give real service you must add something which cannot be bought or measured with money, and that is sincerity and integrity”. - Douglas Adams

-----Original Message-----

From: Veenstra, Mark [<mailto:VeenstraMark@CODB.US>]
Sent: Thursday, January 23, 2020 10:16 AM
To: Palmer, John C CIV USARMY CESAJ (USA) <John.Palmer@usace.army.mil>
Cc: Nelson, James <NelsonJames@CODB.US>
Subject: [Non-DoD Source] RE: City of Daytona Beach - Main Street Pier Repair - SAJ-2000-00644 (NW-JCP) (UNCLASSIFIED)

John

Thank you for your work on getting this permit issued.

We have reviewed the permit and have one area of concern on the permit conditions. General Permit Condition 5b requires the installation of floating turbidity barriers around the area of work where the collars are being installed around existing piles. As shown on the attached photograph this work area is directly in the often violently agitated surf zone on Daytona Beach. In addition any product or item placed in the Ocean in this area is subject to battering up against the existing pier pilings.

I have reviewed this potential installation with floating turbidity manufactures and the general opinion is that is not a location where the product would survive due to the high current , high wave action and proximity to a hard structure.

I noted that Condition AP.10 "Turbidity Control Measures during construction allows the waiver of turbidity curtain use by the USACE project manager .

Due to the strong current, high surf zone wave action and proximity to a hard structure, the City of Daytona Beach would like to request this waiver. If another form or contact is needed to make this application please advise us or steer us in the right direction.

Thanks again.

Mark Veenstra
City Of Daytona Beach

-----Original Message-----

From: Palmer, John C CIV USARMY CESAJ (USA) [<mailto:John.Palmer@usace.army.mil>]
Sent: Friday, January 17, 2020 11:44 AM
To: Veenstra, Mark <VeenstraMark@CODB.US>; Nelson, James <NelsonJames@CODB.US>
Subject: City of Daytona Beach - Main Street Pier Repair - SAJ-2000-00644 (NW-JCP) (UNCLASSIFIED)

[EXTERNAL EMAIL. EXERCISE CAUTION.]

CLASSIFICATION: UNCLASSIFIED

Gentlemen,

Please find attached, the permit authorization for the above referenced project. Thank you for your patience, I know this one has been a little slow in getting out, but we are doing our best. We hope to have a couple of new employees in the next month to help with the workload. If you have any questions, please feel free to contact me. Thanks JCP

John Palmer, Project Manager
U.S. Army Corps of Engineers
400 High Point Drive, Suite 600
Cocoa, FL 32926
321-504-3771 extension 10
321-504-3803 (fax)
john.palmer@usace.army.mil

Service

"The happiest people are those who do the most for others. The most miserable are those who do the least." —
Booker T. Washington

"To give real service you must add something which cannot be bought or measured with money, and that is sincerity and integrity". - Douglas Adams

CLASSIFICATION: UNCLASSIFIED

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CLASSIFICATION: UNCLASSIFIED



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
COCOA REGULATORY FIELD OFFICE
400 HIGH POINT DRIVE, SUITE 600
COCOA, FL 32926

REPLY TO
ATTENTION OF

January 17, 2020

North Permits Branch
Cocoa Section
SAJ-2000-00644 (NW-JCP)

City of Daytona Beach
c/o Mr. James Nelson
950 Bellevue Avenue
Daytona Beach, FL 32114

Dear Mr. Nelson:

Your application for a Department of the Army permit has been assigned number SAJ-2000-00644. Per the received application, the proposed action is for maintenance repair of the existing Main Street Pier – Daytona Beach. A review of the information and drawings provided shows the proposed work is to:

- 1) Repair/replace existing structural components of the pier including:
 - a. Deteriorated concrete pilings,
 - b. Superstructure (bracing, connectors, hardware, concrete spalls, etc.),
 - c. Utility lines;
- 2) Install fiberglass pile jackets and grouting on 24 damaged pilings;
- 3) Repair/replace up to 10 additional damaged pilings;
- 4) Repair/replace concrete pile encasements as required.

All work will take place within the existing facility footprint. The project is located at the existing Main Street Pier – Daytona Beach, at the terminus of Main Street at the Atlantic Ocean in Section 4, Township 15 South, Range 33 East, Daytona Beach, Volusia County, Florida. Latitude 29.227432°, Longitude -81.005628°

Your project, as depicted on the enclosed drawings, is authorized by Nationwide Permit (NWP) Number 3. In addition, project specific conditions have been enclosed. This verification is valid until **March 18, 2022**. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit. Please access the U.S. Army Corps of Engineers' (Corps) Jacksonville District's Regulatory Internet page to access Internet links to view the Final Nationwide Permits, Federal Register Vol. 82, dated January 6, 2017, specifically pages 1983 to 2008, and the table of Regional Conditions. The Internet page address is:

<http://www.saj.usace.army.mil/Missions/Regulatory.aspx>

Please be aware this Internet address is case sensitive and should be entered as it appears above. Once there you will need to click on "Source Book"; and, then click on "Nationwide Permits." These files contain the description of the Nationwide Permit authorization, the Nationwide Permit general conditions, and the regional conditions, which apply specifically to this verification for NW-3. Enclosed is a list of the six General Conditions, which apply to all Department of the Army authorizations. You must comply with all of the special and general conditions and any project specific condition of this authorization or you may be subject to enforcement action. In the event you have not completed construction of your project within the specified time limit, a separate application or re-verification may be required.

The following special conditions are included with this verification:

1. Reporting Address: All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address. The Permittee shall reference this permit number, SAJ-2000-00644 (NW-JCP), on all submittals.

- a. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Special Projects and Enforcement Branch, PO Box 4970, Jacksonville, Florida 32232.
- b. For electronic mail: SAJ-RD-Enforcement@usace.army.mil (not to exceed 10 MB).

2. Commencement Notification: Within 10 days from the date of initiating the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of work authorized by this permit.

3. Self-Certification of Compliance: Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.

4. Cultural Resources/Historic Properties:

a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

b. If during the proposed activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.

c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition ; and if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.

d. In the event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist and from the Corps.

5. Turbidity/Erosion Control: Prior to the initiation of any work authorized by this permit, the Permittee shall:

- a. install turbidity/erosion control measures along the perimeter of all work areas to prevent the displacement of fill material or debris. Immediately after completion of the removal of the old materials, all slopes, land surfaces, and disturbed areas adjacent to wetlands shall be stabilized using sod, degradable mats, or a combination of similar stabilizing materials to prevent erosion. The turbidity/erosion control measures shall remain in place and be

maintained until all authorized work has been completed and the site has been stabilized.

- b. install floating turbidity barriers with weighted skirts that extend to within one (1) foot of the bottom around all work areas that are in, or adjacent to, surface waters. Turbidity barriers shall be made of material which listed species cannot become entangled (i.e., reinforced impermeable polycarbonate vinyl fabric [PVC]), and shall be monitored to ensure listed species are not entangled or trapped in the project areas. The turbidity barriers shall remain in place and be maintained until the authorized work has been completed and all suspended and erodible materials have been stabilized. Turbidity barriers shall be removed upon stabilization of the work areas.

6. **Pile Installation:** The maximum number of piles installed per day is limited to no more than 20 piles per day.

7. **National Marine Fisheries Service's Jacksonville District's Programmatic Biological Opinion (JAXBO) Project Design Criteria (PDC) Conditions:** The Permittee shall comply with the following PDCs and special conditions to ensure the project does not have an adverse impact on listed species protected under Section 7 of the Endangered Species Act.

- a. Project Design Criteria (PDCs) for In-Water Activities: The Permittee shall comply with the National Marine Fisheries Service's "PDCs for in-Water Activities" dated November 20, 2017, provided as an attachment to this permit.
- b. Daylight Hours: All activities must be completed during daylight hours.
- c. Listed Species Observers: All construction personnel are responsible for observing water-related activities to detect the presence of listed species and avoid them.

8. **Protected Species - North Atlantic Right Whale:** Information describing the presence of North Atlantic right whales and the Federal regulations governing the approach to North Atlantic right whales is provided as an attachment to this permit.

9. **Protected Species – West Indian Manatee:** The permittee shall comply with the "Standard Manatee Conditions for In-Water Work – 2011" designed to protect the endangered West Indian Manatee provided in Attachment 3 of this permit.

10. **Protected Species - Sea Turtle & Smalltooth Sawfish:** The permittee shall comply with National Marine Fisheries Service's "Sea Turtle and Smalltooth Sawfish

Construction Conditions” dated March 23, 2006 and provided in Attachment 4 of this permit. The permittee will also follow Volusia County’s USFWS approved Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP) for Sea Turtles and Piping Plover as it applies to beach driving for the construction aspect (pile placement) of the project (Attachment).

11. Assurance of Navigation and Maintenance: The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

12. Regulatory Agency Changes: Should any other regulatory agency require changes to the work authorized or obligated by this permit, the Permittee is advised that a modification to this permit instrument is required prior to initiation of those changes. It is the Permittee’s responsibility to request a modification of this permit from the Cocoa Regulatory Office.

This authorization does not obviate the necessity to obtain any other Federal, State, or local permits, which may be required. Prior to the initiation of any construction, projects qualifying for this NWP/RGP permit must qualify for an exemption under section 403.813(1), F.S. or 373.406, F.S., or otherwise be authorized by the applicable permit required under Part IV of Chapter 373, F.S., by the Department of Environmental Protection, a water management district under section 373.069, F.S., or a local government with delegated authority under section 373.441, F.S., and receive Water Quality Certification (WQC) and applicable Coastal Zone Consistency Concurrence (CZCC) or waiver thereto, as well as any authorizations required for the use of state-owned submerged lands under Chapter 253, F.S., and, as applicable, Chapter 258, F.S. You should check State-permitting requirements with the Florida Department of Environmental Protection or the appropriate water management district.

This authorization does not include conditions that would prevent the ‘take’ of a **state-listed** fish or wildlife species. These species are protected under sec. 379.411, Florida Statutes, and listed under Rule 68A-27, Florida Administrative Code. With regard to fish and wildlife species designated as species of special concern or threatened by the State of Florida, you are responsible for coordinating directly with the

Florida Fish and Wildlife Conservation Commission (FWC). You can visit the FWC license and permitting webpage (<http://www.myfwc.com/license/wildlife/>) for more information, including a list of those fish and wildlife species designated as species of special concern or threatened. The Florida Natural Areas Inventory (<http://www.fnai.org/>) also maintains updated lists, by county, of documented occurrences of those species.

If you are unable to access the internet or require a hardcopy of any of the conditions, limitations, or expiration date for the above referenced NWP, please contact John C. Palmer at the letterhead address, by telephone at 321-504-3771 ext.10, or by email at john.palmer@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to be 'JCP', written over a horizontal line.

John C. Palmer
Chief, Cocoa Section

Enclosures
Copy/ies Furnished:
Mark Veenstra via email
CESAJ-RD-PE

GENERAL CONDITIONS
33 CFR PART 320-330
PUBLISHED FEDERAL REGISTER DATED 13 NOVEMBER 1986

1. The time limit for completing the work authorized ends on **date identified in the letter**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow a representative from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

Permit Number: NW-3
Application Number: SAJ-2000-00644

Permittee's Name & Address (please print or type): _____

Telephone Number: _____

Location of the Work: _____

Date Work Started: _____ Date Work Completed: _____

Description of the Work (e.g., bank stabilization, residential or commercial filling, docks, dredging, etc.): _____

Acreage or Square Feet of Impacts to Waters of the United States:

Describe Mitigation completed (if applicable): _____

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

I certify that all work, and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

Signature of Permittee

Attachment 1

Date

DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST

PERMIT NUMBER: SAJ-2000-00644 (NW-JCP)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Section, Post Office Box 4970, Jacksonville, FL 32232-0019.

(TRANSFEREE-SIGNATURE)

(SUBDIVISION)

(DATE)

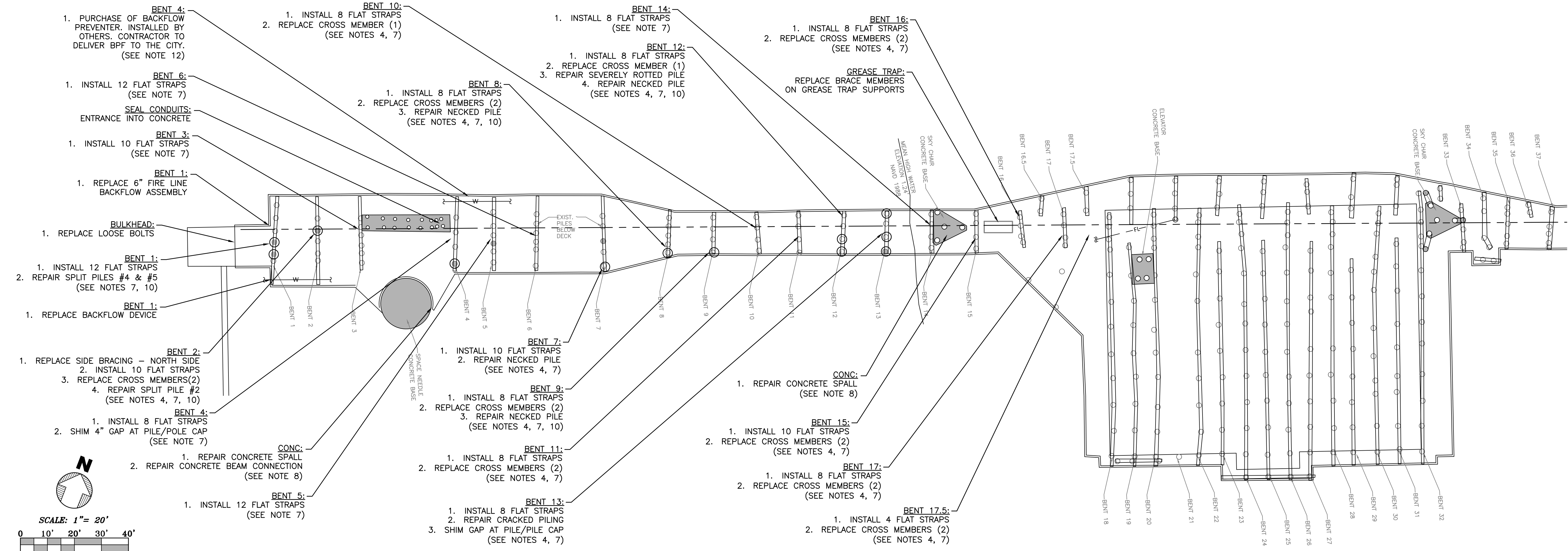
(LOT) (BLOCK)

(NAME-PRINTED)

(STREET ADDRESS)

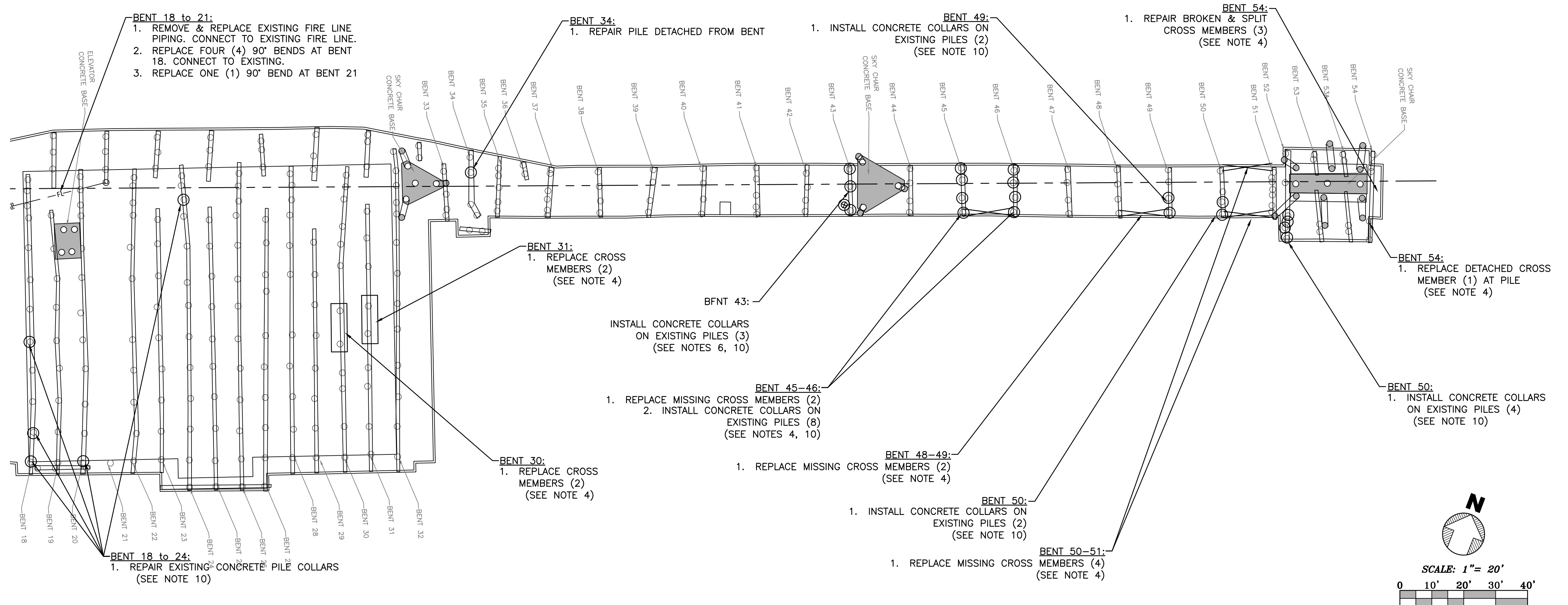
(MAILING ADDRESS)

(CITY, STATE, ZIP CODE)



NOTES:

- CONTRACTOR TO INSPECT & TIGHTEN ALL PIER BOLTED CONNECTIONS. SEE MS STRUCTURAL PLANS.
- CONTRACTOR TO REPLACE HEAVILY CORRODED BOLTED HARDWARE CONNECTIONS INCLUDING THREADED RODS, BOLTS, CUT PLATES, WASHERS AND NUTS PER DETAILS IN MS STRUCTURAL PLANS. ALL HARDWARE TO BE 316 STAINLESS STEEL REPLACE PER MS STRUCTURAL PLANS.
- CONTRACTOR TO APPLY LOCITE 7088 PRIMER & LOCITE 268 THREADLOCK TO ALL NEW & LOOSE CONNECTORS PRIOR TO TIGHTENING. APPLY LOCITE PER MANUFACTURERS RECOMMENDATIONS.
- CONTRACTOR TO REPLACE BRACING CROSS MEMBERS INDICATED PER MS STRUCTURAL PLANS. PAYMENT FOR CROSS MEMBER REPLACEMENT WILL INCLUDE COST OF NEW CONNECTION HARDWARE.
- CROSS MEMBER REPLACEMENTS SHALL BE 4"x10" SYP#2, PRESSURE TREATED, CCA 60
- NEW PILES SHALL BE SIZE INDICATED IN MS STRUCTURAL PLANS, SYP#2, PRESSURE TREATED CCA 2.5
- INSTALLATION OF NEW 316 STAINLESS STEEL FLAT STRAPS AS INDICATED ON MS STRUCTURAL PLANS. PAYMENT WILL INCLUDE ALL NEW 316 STAINLESS STEEL HARDWARE NEEDED FOR INSTALLATION.
- REPAIR OF CONCRETE SPALL (BENTS 3-4 & 14-15) AND REPAIR OF CONCRETE BEAM CONNECTOR (BENT 4) TO BE DONE IN ACCORDANCE WITH GRAEF STRUCTURAL ASSESSMENT MEMO.
- INSTALLATION OF CONCRETE COLLAR ON EXISTING PILING TO BE IN ACCORDANCE WITH MS STRUCTURAL PLANS.
- REPAIR OF PILINGS SHALL BE IN ACCORDANCE WITH MS STRUCTURAL PLANS.
- THE FOLLOWING PLAN SETS AND ENGINEERING REPORTS ARE ATTACHED AND INCORPORATED BY REFERENCE:
 - MAIN STREET PIER EXISTING CONCRETE SLAB AND FOUNDATION STRUCTURAL ASSESSMENT MEMO BY GRAEF ENGINEERING DATED; AUGUST 2019.
 - MAIN STREET PIER STRUCTURAL DRAWING BY MS STRUCTURAL DATED; FEBRUARY 18, 2019.
 - SPECIFIC PURPOSE SURVEY OF MAIN STREET PIER BY SEA DIVERSIFIED DATED; DECEMBER 2018.
- BACKFLOW PREVENTER DEVICE PURCHASE - TO BE DELIVERED TO THE CITY OF DAYTONA BEACH PUBLIC WORK DEPARTMENT AT 950 BELLEVUE AVE. DAYTONA BEACH, FL.



		Drawing Date: 03/28/2019	Scale: 1"= 20'
		Survey Date: N/A	Rotation: 339°
		Survey By:	File Name: 2017-056
		Drawn By: PFT	Project No:
		Checked By: M. VEENSTRA	Contract No:
No:	Revision:	Date:	Image Name:
			Xref Name: 2019-056-base

THE CITY OF DAYTONA BEACH
PUBLIC WORKS DEPARTMENT
TECHNICAL SERVICES DIVISION
950 BELLEVUE AVENUE • DAYTONA BEACH • FLORIDA • 32114
PHONE: (386) 671-8610 FAX: (386) 671-8620



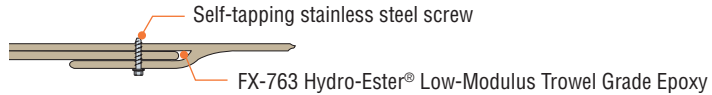
MAIN STREET PIER
REPAIRS
KEY MAP

PROJECT MANAGER

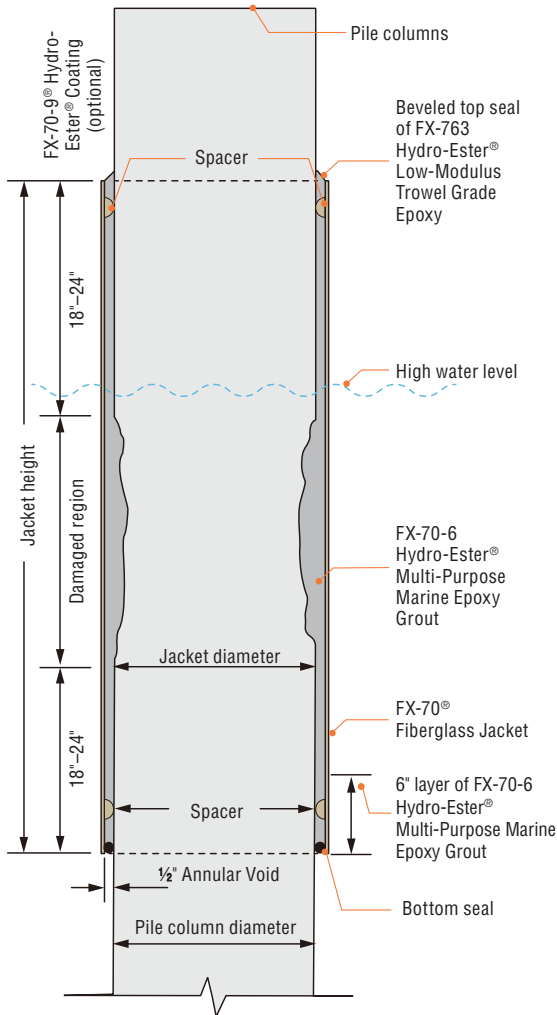
1
of
2

Repair Options Based on Section Loss

CROSS-SECTION OF
TONGUE-AND-GROOVE JOINT



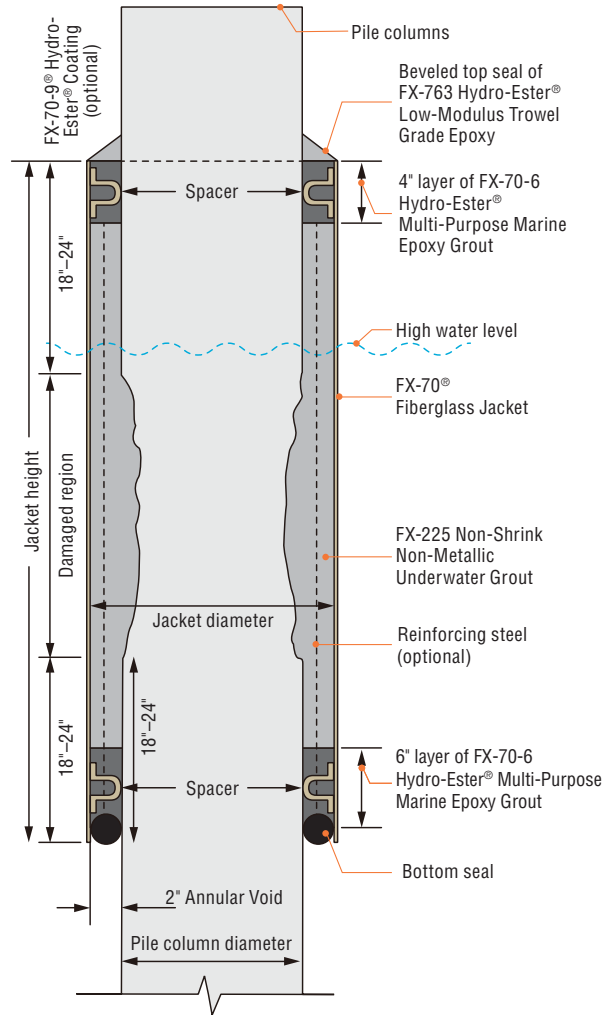
Section Loss ≤ 25%



Section Loss ≤ 25%

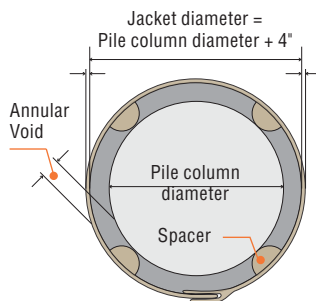
- FX-70-6 Hydro-Ester® Multi-Purpose Marine Epoxy Grout used for bottom seal and repair
- Typical annular void of 1/2"
- 3/4" annular void for H-piles

Section Loss > 25%

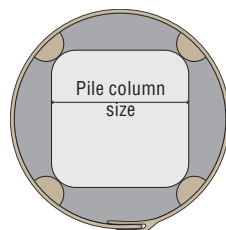


Section Loss > 25%

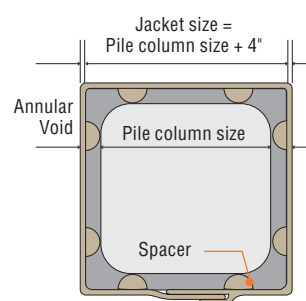
- FX-70-6 Hydro-Ester® Multi-Purpose Marine Epoxy Grout used for top and bottom seal
- FX-225 Non-Shrink Non-Metallic Underwater Grout used for repair
- Typical annular void of 2"



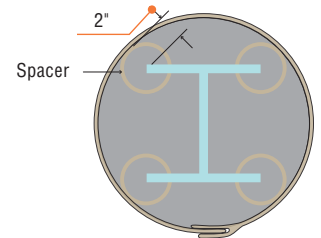
MODEL ONE



MODEL TWO



MODEL THREE



MODEL FOUR

**U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological
Opinion (JaxBO) Project Design Criteria (PDCs) for In-Water Activities**

November 20, 2017

- 1) **(AP.7.) Education and Observation:** The permittee must ensure that all personnel associated with the project are instructed about the potential presence of species protected under the ESA and the Marine Mammal Protection Act (MMPA). All on-site project personnel are responsible for observing water-related activities for the presence of protected species. All personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing ESA-listed species or marine mammals. To determine which species may be found in the project area, please review the relevant Protected Species List at:
http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/index.html
- 2) **(AP.8.) Reporting** of interactions with protected species:
 - a) Any collision(s) with and/or injury to any sea turtle, sawfish, whale, or sturgeon occurring during the construction of a project, shall be reported immediately to NMFS's Protected Resources Division (PRD) at (1-727-824-5312) or by email to takereport.nmfs@noaa.gov and SAJ-RD-Enforcement@usace.army.mil.
 - b) Smalltooth sawfish: Report sightings to 1-844-SAWFISH or email Sawfish@MyFWC.com
 - c) Sturgeon: Report dead sturgeon to 1-844-STURG 911 (1-844-788-7491) or email nmfs.ser.sturgeonnetwork@noaa.gov
 - d) Sea turtles and marine mammals: Report stranded, injured, or dead animals to 1-877-WHALE HELP (1-877-942-5343).
 - e) North Atlantic right whale: Report injured, dead, or entangled right whales to the USCG via VHF Channel 16.
- 3) **(AP.9.) Vessel Traffic and Construction Equipment:** All vessel operators must watch for and avoid collision with species protected under the ESA and MMPA. Vessel operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
 - a) *Construction Equipment:*
 - i) All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while operating in water depths where the draft of the vessel provides less than a 4-foot (ft) clearance from the bottom, and in all depths after a protected species has been observed in and has departed the area.
 - ii) All vessels will follow marked channels and/or routes using the maximum water depth whenever possible.
 - iii) Operation of any mechanical construction equipment, including vessels, shall cease immediately if a listed species is observed within a 50-ft radius of

construction equipment and shall not resume until the species has departed the area of its own volition.

- iv) If the detection of species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.

b) *All Vessels:*

- i) Sea turtles: Maintain a minimum distance of 150 ft.
- ii) North Atlantic right whale: Maintain a minimum 1,500-ft distance (500 yards).
- iii) Vessels 65 ft. in length or longer must comply with the Right Whale Ship Strike Reduction Rule (50 CFR 224.105) which includes reducing speeds to 10 knots or less in Seasonal Management Areas (<http://www.fisheries.noaa.gov/pr/shipstrike/>).
- iv) Mariners shall check various communication media for general information regarding avoiding ship strikes and specific information regarding right whale sightings in the area. These include NOAA weather radio, USCG NAVTEX broadcasts, and Notices to Mariners.
- v) Marine mammals (i.e., dolphins, whales [other than North Atlantic right whales], and porpoises): Maintain a minimum distance of 300 ft.
- vi) When these animals are sighted while the vessel is underway (e.g., bow-riding), attempt to remain parallel to the animal's course. Avoid excessive speed or abrupt changes in direction until they have left the area.
- vii) Reduce speed to 10 knots or less when mother/calf pairs or groups of marine mammals are observed, when safety permits.

- 4) **(AP.10.) Turbidity Control Measures during Construction:** Turbidity must be monitored and controlled. Prior to initiating any of the work covered under this Opinion, the Permittee shall install turbidity curtains as described below. In some instances, the use of turbidity curtains may be waived by the USACE project manager if the project is deemed too minimal to generate turbidity (e.g., certain ATON installation, scientific survey device placement, marine debris removal) or if the current is too strong for the curtains to stay in place. Turbidity curtains specifications:

- a) Install floating turbidity barriers with weighted skirts that extend to within 1 ft. of the bottom around all work areas that are in, or adjacent to, surface waters.
- b) Use these turbidity barriers throughout construction to control erosion and siltation and ensure that turbidity levels within the project area do not exceed background conditions.
- c) Position turbidity barriers in a way that does not block species' entry to or exit from designated critical habitat.
- d) Monitor and maintain turbidity barriers in place until the authorized work has been completed and the water quality in the project area has returned to background conditions.
- e) In the range of ESA-listed corals (St. Lucie Inlet, Martin County south to the Dry Tortugas and the U.S. Caribbean) and Johnson's seagrass (Turkey Creek/Palm

Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida):

- i) Projects that include upland earth moving (e.g., grading to install a building or parking lot associated with a dock and seawall project), must install sediment control barriers to prevent any upland sediments from reaching estuarine or marine waters.
 - ii) The turbidity curtain requirement cannot be waived for any project that moves or removes sediment (e.g., dredging, auger to create a pile, trenching to install a cableline). If turbidity curtains are not feasible in an area based on site conditions such as water current, high wave action, or stormy conditions, the project must undergo individual Section 7 consultation and is not covered under this Programmatic Opinion.
- 5) **(AP.11.) Entanglement:** All turbidity curtains and other in-water equipment must be properly secured with materials that reduce the risk of entanglement of marine species (described below). Turbidity curtains likewise must be made of materials that reduce the risk of entanglement of marine species.
- a) In-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) must be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line is allowed in the water.
 - b) Turbidity curtains and other in-water equipment must be placed in a manner that does not entrap species within the construction area or block access for them to navigate around the construction area.

Activity: Pile-Supported Structures

- 1) **Lighting:** If lighting is necessary, then turtle-friendly lighting shall be installed. Turtle-friendly lighting is explained and examples are provided on the Florida Fish and Wildlife Conservation Commission website:
<http://myfwc.com/wildlifehabitats/managed/sea-turtles/lighting/>



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

O:\forms\Sea Turtle and Smalltooth Sawfish Construction Conditions.doc



STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or in Vero Beach (1-772-562-3909) for south Florida, and emailed to FWC at ImperiledSpecies@myFWC.com.
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8½ " by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at http://www.myfwc.com/WILDLIFEHABITATS/manatee_sign_vendors.htm. Questions concerning these signs can be forwarded to the email address listed above.

CAUTION: MANATEE HABITAT

All project vessels

IDLE SPEED / NO WAKE

When a manatee is within 50 feet of work
all in-water activities must

SHUT DOWN

Report any collision with or injury to a manatee:



Wildlife Alert:

1-888-404-FWCC(3922)

cell *FWC or #FWC

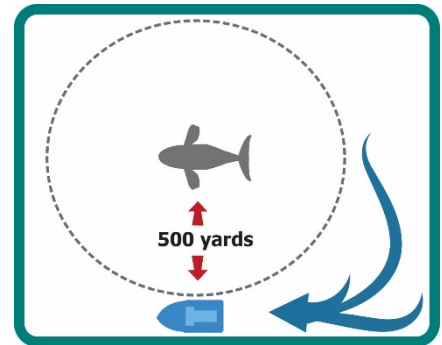
Federal Regulations Governing the Approach to North Atlantic Right Whales



1. Federal regulations governing the approach to North Atlantic right whales can be found at 50 CFR 224.103(c). It is illegal to approach and remain within 500 yards of right whales; 500 yards is equal to the distance of 5 football fields.

Prohibitions on approaching right whales are as follows (Excerpts from 50 CFR 224.103(c), available at www.ecfr.gov): Unless otherwise lawfully allowed or unless doing so would create an imminent and serious threat to a person or vessel, it is unlawful to:

- (i) *Approach (including by interception) within 500 yards (460 m) of a right whale by vessel*
- (ii) *Fail to undertake required right whale avoidance measures. If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.*



2. Updates can be downloaded from:
 - a. http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/rightwhale_northatlantic.htm, or
 - b. www.ecfr.gov

VOLUSIA COUNTY HABITAT CONSERVATION PLAN

not result in the unauthorized take of federally listed species, as determined by the USFWS;

- Scientific monitoring and studies other than those related to the HCP;
- Emergency shoreline protection projects approved by local, State, and/or Federal regulatory agencies; and
- Non-routine beach maintenance and sanitation, such as removal of hazardous materials, debris and/or obstacles from the beach that pose a public health or safety risk following storms, accidents, and other unforeseen circumstances.

To minimize the take of protected species under the HCP, three different BMAs have been established to regulate beach uses on County Beaches (Figure 5):

- Urban (5.0 miles);
- Transitional (11.7 miles); and
- Natural (18.9 miles).

The locations of the BMAs were established with stakeholder input by examining the distribution of sea turtle nest densities and considering human beach uses, historic beach traffic volume and patterns, beach driving conditions, access ramp locations, off-beach parking capacity, and other economic and social factors.

Natural Beach Management Areas

Natural BMAs were established in those areas where sea turtle nesting densities on County Beaches were historically the highest and where off-beach development was less intense than elsewhere in the County. Three separate regions encompassing 18.9 miles of beach are designated as Natural BMAs (Figure 5):

- HCP Region 2 - Southern boundary of North Peninsula State Recreation Area (NPSRA) to 200 feet north of Granada Blvd. in Ormond Beach;
- HCP Region 6 - Emilia Ave. to Beach Street in Ponce Inlet; and
- HCP Region 9 - 27th Street in New Smyrna Beach to the north boundary of Canaveral National Seashore (CNS)

Beachfront development in Natural BMAs includes primarily single- and multi-family residences. Less than 30 percent of the shoreline is armored, and during the Assessment Period (1997-2000), annual nest densities averaged 22.0 nests per mile (Table 29).

Vehicular restrictions for Natural BMAs are summarized in Table 30. Access will be restricted primarily to pedestrian and bicycling beach visitors. No driving, except for public safety, sanitation, protected species monitoring, HCP management activities, scientific research approved by the PSS, and emergency repairs/cleanup will be allowed in these areas. Vehicles used for local, State and/or federally approved coastal construction projects may be allowed



Traffic-Free Zones

Although not part of the Protected Species Beach Management Area system, traffic-free zones (TFZs) will be used by the County to create special use areas within Urban and Transitional BMAs. These areas will restrict public vehicular access, but otherwise activities will be managed as for the general BMA in which they occur.

Presently there is one TFZ on County Beaches. It encompasses a one-mile section of beach between Seabreeze and International Speedway Boulevards in the core commercial area of Daytona Beach (HCP Region 4, Urban BMA). This zone was created to support Daytona Beach's Community Redevelopment Area. The Daytona TFZ was opened in March 2000 upon completion of a \$2 million, 1,500-space parking garage next to the Ocean Center, one block removed from the beach. A tram service was instituted to shuttle beachgoers from the parking garage to the beach. Although there are no immediate plans to develop additional TFZs, the County will consider additional areas as the need arises, provided adequate off-beach parking can be developed to support them.

Within Traffic-Free Zones, driving and parking rules applicable elsewhere in Urban and Transitional BMAs apply with the following exceptions:

- a. No driving or parking by the general public is allowed;
- b. Motorized vehicle rentals may be disallowed, and
- c. Methods for marking the CZ are different, as described below.

The north and south boundaries of Traffic-free Zones will be marked with telephone posts similar to those used to mark Natural BMA boundaries. Appropriately worded signs will be affixed to the poles to indicate that public driving is prohibited beyond this point. Additionally, within the TFZs, the standard 4X4 posts used to mark the CZ elsewhere in public driving areas may be replaced by other types of markers. Because there is no public vehicular traffic, these may be spaced much further apart than the standard CZ posts. All CZ regulations, as summarized in Table 31, shall apply in the TFZs. Concessionaires will be assigned to specific marked locations outside the CZ in the TFZ, and they must park east of these designated locations.

Conservation Zone

The intent of the Conservation Zone is to separate turtle nests, sensitive dune habitat (motor vehicles are prohibited from driving in the dunes by State law, Chapter 161, Florida Statutes), and other natural resources from vehicles in those areas where the public is allowed to drive and park on the beach. Vehicles operated by the general public may not park or drive landward of the eastern marked boundary of the CZ. CZ widths for each of the three different types of BMAs are as follows:

- Natural – No marked CZ present;
- Urban – 15 feet; and
- Transitional – 30 feet.

The seaward boundary of the Conservation Zone shall be marked and posted at intervals necessary to ensure that even people unfamiliar with beach regulations will clearly understand that vehicles are not allowed to enter the Conservation Zone at any time. This restriction will be in effect throughout the year and applies to both driving and parking.

The integrity of the CZ will be maintained through year-round enforcement. For the purpose of enforcing the CZ, Beach Patrol Officers will use the tires of a vehicle as a reference point. The tires cannot extend landward of an imaginary line drawn between the centerline of two adjacent CZ posts. The edge of the vehicle may extend beyond the eastern boundary of the CZ, as long as it does not encroach on a marked sea turtle nest.

8

BEACH MANAGEMENT AND CONSERVATION ZONE REGULATIONS

The Protected Species Beach Management Areas (BMAs) have been designed to meet the primary goals of wildlife protection, visitor use, and tourism development. This includes protection of the beach/dune system, sea turtles, piping plovers, and other wildlife, as well as provisions for the year-round use of the beaches by both residents and visitors seeking diverse beach experiences. Tourism development can be enhanced by protecting wildlife such as sea turtles, which can serve as a primary attraction for tourists, and by providing attractive facilities and beach access.

BMA designations will remain in effect year-round. However, management techniques may be changed from time to time as a result of changing beach conditions, nesting patterns, and other factors, as indicated by monitoring data. Any changes to BMA boundaries will require written approval from the USFWS. All rules and restrictions outlined in this HCP will take effect immediately upon renewal of the ITP except where otherwise stipulated in the HCP or ITP.

Marking Public No-Driving Zones

Marking Beach Management Area Boundaries

All designated BMAs must be clearly delineated with markers and signs that can be easily seen and read so that visitors are effectively informed of the boundaries and restrictions of these areas. The marker system will be designed so that enforcement officials can easily determine if a vehicle has illegally entered a non-driving area.

At present, markers separating Natural BMAs (non-driving areas) from Transitional BMAs (driving areas) consist of a series of telephone posts driven into the ground in a shore-perpendicular line extending from the dune to below the normal low tide line. In the future, alternative materials of equal effectiveness may be substituted for the posts. The spacing between posts will be sufficiently narrow to preclude cars and trucks from entering the Natural BMAs. However, some of the posts must necessarily be placed farther apart to allow access by public safety, sea turtle monitoring, sanitation, and other authorized vehicles as authorized by the ITP. Large signs affixed to several of the boundary markers will notify the public that the area beyond the posts is a conservation area and vehicular access is prohibited. These markers will be maintained throughout the year. Volusia County maintenance staff or a contractor will be responsible for replacing markers damaged by storms or vandalism.

Natural BMA boundaries will be established at the following locations as depicted in Figure 5:

- South boundary of HCP Region 2 - 200 feet north of the north right-of-way at Granada Blvd. in Ormond Beach;
- North boundary of HCP Region 6 - The south edge of the right-of-way at Emilia Ave. in Daytona Beach Shores;
- South boundary of HCP Region 6 – The north edge of the right-of-way at Beach Street in Ponce Inlet; and
- North boundary of HCP Region 9 – The south edge of the right-of-way at 27th Ave. in New Smyrna Beach.

The County's legal right-of-way varies among ramps in proportion to the width of the access road. The County is responsible for ramp grading and other activities within these rights-of-way. If the legal right-of-way at a ramp separating a Natural BMA from an adjacent driving area is 50 feet wide, the poles marking the boundary of the Natural BMA will be positioned 25 feet north or south of the centerline of the ramp, as applicable.

Maps showing the locations of driving and non-driving areas, with narratives clearly outlining permitted access, driving and parking restrictions, and sea turtle conservation issues, are currently made available to beach visitors accessing the beach by vehicles. A representative sample of these materials is presented in Appendix E. Throughout the sea turtle nesting season, the brochures are made available at all vehicle access points when the toll booths are in operation (ramp attendants present) and are distributed to hotel and motel proprietors, local Chambers of Commerce, and municipalities along the beach. Additionally, the County has provided local hotels, tourist centers, and media with daily faxes identifying driving conditions and beach hazards (e.g., large waves, strong currents, etc.).

In lieu of the daily faxes, Volusia County has recently placed daily notices of driving conditions on its website (<http://volusia.org/beach/driving.htm>). Facilities previously on the fax distribution list, as well as other interested parties, can now access the site via the internet and provide the information to their patrons. Additionally, the County is presently evaluating the effectiveness of the beach brochures in relation to production costs. Equally or more effective methods for disseminating information pertaining to HCP driving regulations (at a lower cost) may be identified for future use. Any anticipated changes to the type or content of these public awareness materials or related methods of distribution will be submitted to the USFWS for review and approval prior to final development.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE3-201
(1/97)

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

COUNTY OF VOLUSIA, FLORIDA
123 WEST INDIANA AVENUE
DeLAND, FLORIDA 32720

TELEPHONE: 904/736-5950
FACSIMILE: 904/736-5990

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)

REGULATIONS (Attached)

50 CFR §§ 13, 17, & 21

3. NUMBER

TE811813-11

4. RENEWABLE

☒ YES☐ NO

5. MAY COPY

☒ YES☐ NO

6. EFFECTIVE

11/7/2005

7. EXPIRES

12/31/2030

8. NAME AND TITLE OF PRINCIPAL OFFICER (If not a business)

9. TYPE OF PERMIT

THREATENED AND ENDANGERED SPECIES
- INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

THE ATLANTIC COASTLINE OF VOLUSIA COUNTY, FLORIDA. THE SPECIFIC GEOGRAPHIC AREA COVERED BY
THIS PERMIT IS DEFINED IN CONDITION 11.F BELOW.

11. CONDITIONS AND AUTHORIZATIONS

- A. GENERAL CONDITIONS SET OUT IN TITLE 50 CODE OF FEDERAL REGULATIONS AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK 2 ABOVE ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY OR RENEWAL OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND AUTHORIZED AGENTS.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 17 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONTAINS CONDITIONS A - T (24 PAGES TOTAL).

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.R AND 11.S OF THIS PERMIT.

ISSUED BY

Cynthia K. Dwyer

TITLE

DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

DATE

11/7/05

EXHIBIT H

County of Volusia, Florida
 123 West Indiana Avenue
 DeLand, Florida 32720
 Telephone: 904/736-5950

TE811813-11

Block 11:

- E. **Geographic Area and Covered Species.** The Permittee has defined the geographic area covered by its February 2005 Habitat Conservation Plan (HCP) in two ways. The first is the "Plan Area," which is described in the HCP as about 51 miles of coastal beaches, and includes the entire length of the coastline within the boundaries of the County of Volusia. The second is the "County Beaches" which refers to those coastline areas within the Plan Area and under the direct jurisdiction, or within the legal access, of the Permittee. The County Beaches encompass about 37 miles of coastline within the Plan Area and extend from the southern boundary of the North Peninsula State Recreation Area to the northern boundary of Canaveral National Seashore, including the inlet shoreline of Ponce de Leon Inlet at Smyrna Dunes and Lighthouse Point Parks. The landward boundary of both the Plan Area and County Beaches is delimited by any seawall or line of permanent dune vegetation, whichever is most seaward if both are present; the seaward limit is delimited by the mean low water line of the Atlantic Ocean.

Status surveys and annual monitoring indicate that the Plan Area provides winter roost and foraging habitat (piping plover) and nesting habitat (sea turtles) for the following covered species:

<u>Common Name</u>	<u>Scientific Name</u>
Piping plover	<i>Charadrius melodus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Green sea turtle	<i>Chelonia mydas</i>
Leatherback sea turtle	<i>Dermochelys coriacea</i>
Hawksbill sea turtle	<i>Eretmochelys imbricata</i>
Kemp=s ridley sea turtle	<i>Lepidochelys kempii</i>

- F. **Incidental Take Authorized.** The Permittee, and its designated agents, successors, and assigns, are authorized to take, in the form of harassment, harm, or mortality, the covered species incidental to the activities as described in the Permittee's HCP and as conditioned herein. This permit does not authorize take of any covered species resulting from unlawful activities.

This Permit is based upon the Permittee's expected compliance with the provisions and commitments established in the HCP and the Permit=s stated terms and conditions identified herein. Where a conflict occurs between the HCP and this Permit, the Permit shall control.

County of Volusia, Florida
 123 West Indiana Avenue
 DeLand, Florida 32720
 Telephone: 904/736-5950

TE811813-11

Block 11:

Areas of the County Beaches; (2) placement of trash receptacles on County Beaches; (3) placement and maintenance of portable toilets as outlined in the HCP; and (4) beach maintenance activities, including ramp grading.

14. Harassment, injury, and/or death of sea turtle eggs and/or hatchlings in unmarked/unprotected nests in the Plan Area due to physical crushing, presence of ruts, and/or sand compaction from vehicular activities associated with (1) emergency shoreline protection projects authorized by local, State and/or Federal agencies; (2) removal of material, debris, and/or obstacles from the beach that pose a public health or safety risk; and/or (3) scientific monitoring and research, pursuant to the terms and conditions of this Permit.
 15. Harassment, injury, and/or death of sea turtles resulting from physical interaction with lifeguard towers, Conservation Zone boundary markers, traffic signs, Protected Species Beach Management Area markers, and other devices and structures used for traffic management, public safety, conservation measures, or public awareness pursuant to the terms and conditions of this Permit.
 16. Harassment, injury, and/or death of sea turtle eggs deposited November 1 through April 30, when a nest monitoring/marketing program is not in place.
 17. Harassment, injury, and/or death of wintering piping plovers, sea turtles and their eggs resulting from all vehicular activities not specifically cited above, but otherwise authorized by this Permit, when such activities are conducted in conformance with the terms and conditions of this Permit.
 18. Incidental take authorized in Conditions 11.F.1 through 11.F.17, above, includes all direct and indirect impacts to covered species and their habitat resulting from implementation of the Permittee's HCP in accordance with the terms and conditions of this Permit.
- G. **Mitigation/Minimization Measures.** The Permittee shall employ the following measures to ensure that take of the covered species is minimized and mitigated. The Permittee is responsible for meeting the terms and conditions of the ITP and implementing the HCP.
- G. (Continued).

Continued...

County of Volusia, Florida
 123 West Indiana Avenue
 DeLand, Florida 32720
 Telephone: 904/736-5950

TE811813-11

Block 11:

1. **Protected Species Beach Management Areas.** Natural Beach Areas, Transitional Areas, and Urban Areas, as described and defined in Chapter 7 of the HCP, shall be maintained and regulated as follows. The Permittee shall enforce the following performance standards to ensure the conservation goals of the HCP are met.

- i. **Performance Standards in Natural Beach Areas:**

- a. **Public Driving.** The Permittee shall enforce year-round driving prohibitions.
- b. **Emergency and Public Safety Vehicles.** Emergency and public safety vehicle access is not limited.
- c. **Sea Turtle Monitoring.** Vehicle access for properly permitted sea turtle monitoring is not limited.
- d. **HCP Management Activities.** Official vehicle access necessary to monitor and enforce the terms of this Permit and implementation of the conditions of the HCP is not limited.
- e. **Scientific Studies.** The Permittee may authorize vehicle access by local, state, or Federal governments; non-governmental conservation groups; or institutions of higher learning to conduct surveys, research, or scientific data collection related to the conservation of the coastal environment. Such activities must be approved in writing by the HCP Coordinator in consultation with the Protected Species Specialist (PSS).
- f. **Motorized Rental Vehicles.** The Permittee shall enforce year-round driving prohibitions.
- g. **Commercial Fishermen.** The Permittee shall enforce year-round driving prohibitions.
- h. **Concessionaires.** The Permittee shall enforce year-round driving prohibitions.

G. 1. i. (Continued).

Continued...



PERMIT NUMBER: VO-1351

PERMITTEE

City of Daytona Beach
c/o James Nelson, City Engineer
950 Bellevue Avenue
Daytona Beach, Florida 32114

NOTICE TO PROCEED AND PERMIT FOR CONSTRUCTION OR OTHER ACTIVITIES
PURSUANT TO SECTION 161.053, FLORIDA STATUTES

FINDINGS OF FACT: An application for authorization to conduct the activities seaward of the coastal construction control line that are indicated in the project description, was filed by the applicant/permittee named herein on April 25, 2019, and was determined to be complete pursuant to rule on April 25, 2019. The proposed project is for similar work previously authorized by Coastal Construction Control Line Permits VO-1153 (issued on July 2, 2010), and VO-1211 (issued on January 21, 2014).

CONCLUSIONS OF LAW: After considering the merits of the proposal and any written objections from affected persons, the Department finds that upon compliance with the permit conditions, the activities indicated in the project description of this permit are of such a nature that they will result in no significant adverse impacts to the beach/dune areas or to adjacent properties; that the work is not expected to adversely impact nesting sea turtles, their hatchlings, or their habitat; that the work is expendable in nature and/or is appropriately designed in accordance with Section 62B-33.005, Florida Administrative Code. Based on the foregoing considerations, the Department approves the application; authorizes construction and/or activities at the location indicated below in strict accordance with the project description, the approved plans (if any) and the General Permit Conditions which are by this reference incorporated herein, and any additional conditions shown below, pursuant to Section 161.053(4), Florida Statutes.

EXPIRATION DATE: June 20, 2022

LOCATION: Between approximately 250 feet and 350 feet north of the Department of Environmental Protection's reference monument R-84, in Volusia County. Project address: Daytona Beach City Pier, 1200 Main Street, Daytona Beach.

PROJECT DESCRIPTION:

Repair of Existing Pier Foundation

1. Location relative to control line: Approximately 880 feet seaward.
2. Type of repair: Repair of existing damaged pier pilings with concrete encasement; the replacement of existing cross bracing and anchoring components; and replacement of 1 existing pier pilings.

SPECIAL PERMIT CONDITIONS:

1. Prior to commencement of construction activity authorized by this permit, a preconstruction conference shall be held at the site among the contractor, the owner or authorized agent, and a staff representative of the Department to establish an understanding among the parties as to the items specified in the special and general conditions of the permit. The proposed locations of the structures shall be staked out for the conference. **Contact Trey Hatch at 904/655-1765 or trey.hatch@dep.state.fl.us to schedule a preconstruction conference.**
2. All rubble and debris resulting from this construction shall be removed and properly disposed of in a location landward of the coastal construction control line.
3. No construction, operation, transportation, or storage of equipment or materials shall be authorized within marine turtle nesting habitat between May 1 and October 31.
4. Work performed before or after marine turtle nesting season or work performed entirely from the pier shall avoid all marked marine turtle nests. No activities shall occur within 10 feet of the nest markers. Any impacts to nests or turtles that may have inadvertently occurred during the authorized activity shall be reported to the Florida Fish and Wildlife Conservation Commission at MarineTurtle@myfwc.com as soon as practical.
5. If a marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the Permittee shall ensure that the Marine Turtle Permit Holder be notified immediately such that appropriate conservation measures can be taken. For information regarding Marine Turtle Permit Holders in this area, contact FWC at MTP@myfwc.com. Within 24 hours of any such occurrence, the Permittee shall submit a report to the FWC at MarineTurtle@myfwc.com.
6. All activity must be consistent with the Volusia County Habitat Conservation Plan. Please coordinate with Ms. Jennifer Winters with Volusia County, 386-238-4668.
7. Construction shall be consistent with current Sovereignty Submerged Lands Lease for the structure, as issued by the Florida Legislature and approved by the Governor of the State of Florida on May 25, 2001.
8. No temporary lighting of the construction area is authorized within marine turtle nesting habitat at any time during nesting season (May 1st through October 31st).
9. No additional activities or permanent exterior lighting is authorized under this permit.
10. Permittee shall submit compliance reports as specified in Special and General Permit Conditions of this permit. General Permit Condition 1(r) pertain to a written report which must be submitted to the Department of Environmental Protection at specified times. The form for the report: 1(r) Final Certification (DEP Form 73-115B) is available by clicking on the following link <http://www.dep.state.fl.us/beaches/forms.htm#CCCL>. The form may be submitted electronically.

GENERAL PERMIT CONDITIONS:

(1) The following general permit conditions shall apply, unless waived by the Department or modified by the permit:

(a) The permittee shall carry out the construction or activity for which the permit was granted in accordance with the plans and specifications that were approved by the Department as part of the permit. Deviations therefrom, without written approval from the Department, shall be grounds for suspension of the work and revocation of the permit pursuant to section 120.60(7), F.S., and shall result in assessment of civil fines or issuance of an order to alter or remove the unauthorized work, or both. No other construction or activities shall be conducted. No modifications to project size, location, or structural design are authorized without prior written approval from the Department. A copy of the notice to proceed shall be conspicuously displayed at the project site. Approved plans shall be made available for inspection by a Department representative.

(b) The permittee shall conduct the construction or activity authorized under the permit using extreme care to prevent any adverse impacts to the beach and dune system, marine turtles, their nests and habitat, or adjacent property and structures.

(c) The permittee shall allow any duly identified and authorized member of the Department to enter upon the premises associated with the project authorized by the permit for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department until all construction or activities authorized or required in the permit have been completed and all project performance reports, certifications, or other documents are received by the Department and determined to be consistent with the permit and approved plans.

(d) The permittee shall hold and save the State of Florida, the Department, and its officers and employees harmless from any damage, no matter how occasioned and no matter what the amount, to persons or property that might result from the construction or activity authorized under the permit and from any and all claims and judgments resulting from such damage.

(e) The permittee shall allow the Department to use all records, notes, monitoring data, and other information relating to construction or any activity under the permit, which are submitted, for any purpose necessary except where such use is otherwise specifically forbidden by law.

(f) Construction traffic shall not occur and building materials shall not be stored on vegetated areas seaward of the control line unless specifically authorized by the permit. If the Department determines that this requirement is not being met, positive control measures, such as temporary fencing, designated access roads, adjustment of construction sequence, or other requirements, shall be provided by the permittee at the direction of the Department. Temporary construction fencing shall not be sited within marine turtle nesting habitats.

(g) The permittee shall not disturb existing beach and dune topography and vegetation except as expressly authorized in the permit. Before the project is considered complete, any disturbed topography or vegetation shall be restored as prescribed in the permit with suitable fill material or revegetated with appropriate beach and dune vegetation. When required for mitigation, dune vegetation will be considered successfully established if within 180 days of planting, a minimum of 80 percent of the planting units survive, a minimum of 80 percent of the planted area is covered with native species and the vegetation is continuous without gaps along the shoreline.

(h) All fill material placed seaward of the CCCL shall meet the requirements of subsection 62B-33.005(7), F.A.C. All such fill material shall be free of construction debris, rocks, clay, or other foreign matter; and shall be obtained from a source landward of the CCCL.

(i) If surplus sand fill results from any approved excavation seaward of the control line, such material shall be distributed seaward of the control line on the site, as directed by the Department, unless otherwise specifically authorized by the permit. Sand fill placed seaward of the frontal dune, bluff or coastal armoring in marine turtle nesting habitat shall be configured such that it does not interfere with marine turtle nesting.

(j) Any native salt-tolerant vegetation destroyed during construction shall be replaced with plants of the same species or, by authorization of the Department, with other native salt-tolerant vegetation suitable for beach and dune stabilization. Unless otherwise specifically authorized by the Department, all plants installed in beach and coastal areas – whether to replace vegetation displaced, damaged, or destroyed during construction or otherwise – shall be of species indigenous to Florida beaches and dunes, such as sea oats, sea grape, saw palmetto, panic grass, saltmeadow hay cordgrass, seashore saltgrass, and railroad vine, and grown from stock indigenous to the region in which the project is located.

(k) All topographic restoration and revegetation work is subject to approval by the Department, and the status of restoration shall be reported as part of the final certification of the actual work performed.

(l) If not specifically authorized elsewhere in the permit, no operation, transportation, or storage of equipment or materials is authorized seaward of the dune crest or rigid coastal structure during the marine turtle nesting season. The marine turtle nesting season is May 1 through October 31 in all counties except Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties where leatherback turtle nesting occurs during the period of March 1 through October 31.

(m) If not specifically authorized elsewhere in the permit, no temporary lighting of the construction area is authorized at any time during the marine turtle nesting season and no additional permanent exterior lighting is authorized.

(n) All non-opaque walls, balcony railings, deck railings, windows and doors visible from any point on the beach must be tinted to a transmittance value (light transmission from inside to outside) of 45 percent or less through the use of tinted glass or window film.

(o) The permit has been issued to a specified property owner and is not valid for any other person unless formally transferred. An applicant requesting transfer of the permit shall sign the permit transfer agreement form, agreeing to comply with all terms and conditions of the permit, and return it to the Department. The transfer request shall be provided on the form entitled "Permit Transfer Agreement" – DEP Form 73-103 (Revised 1/04), which is hereby adopted and incorporated by reference. No work shall proceed under the permit until the new owner has received a copy of the transfer agreement approved by the Department. A copy of the transfer agreement shall be displayed on the construction site along with the permit. An expired permit shall not be transferred. Copies of the "Permit Transfer Agreement" form are available at the following website: <https://floridadep.gov/water/coastal-construction-control-line/content/coastal-construction-control-line-cccl-forms>.

(p) The permittee shall immediately inform the Department of any change of mailing address of the permittee and any authorized agent until all requirements of the permit are met.

(q) For permits involving habitable major structures, all construction on the permitted structure shall stop when the foundation pilings have been installed. At that time the foundation location form shall be submitted to and accepted by the Department prior to proceeding with further vertical construction above the foundation. The form shall be signed by a professional surveyor, licensed pursuant to chapter 472, F.S., and shall be based upon such surveys performed in accordance with chapter 472, F.S., as are necessary to determine the actual configuration and dimensioned relationship of the installed pilings to the control line. The information shall be provided to the Department using the form entitled "Foundation Location Certification" – DEP Form 73-114B (Revised 9/05), which is hereby adopted and incorporated by reference. Phasing of foundation certifications is acceptable. The Department shall notify the permittee of approval or rejection of the form within seven (7) working days after staff receipt of the form. All survey information upon which the form is based shall be made available to the Department upon request. Permits for repairs or additions to existing structures with nonconforming foundations are exempt from this condition.

(r) For permits involving major structures and exterior lighting on major structures, the permittee shall provide the Department with a report by a registered professional within 30 days following completion of the work. For permits involving armoring or other rigid coastal structures, the permittee shall provide the Department with a report by an engineer licensed in the State of Florida within 30 days following completion of the work. The report shall state that all locations specified by the permit have been verified and that other construction and activities authorized by the permit, including exterior lighting, have been performed in compliance with the plans and project description approved as a part of the permit and all conditions of the permit; or shall describe any deviations from the approved plans, project description, or permit conditions, and any work not performed. Such report shall not relieve the permittee of the provisions of paragraph 62B-33.0155(1)(a), F.A.C. If none of the permitted work is performed, the permittee shall inform the Department in writing no later than 30 days following expiration of the permit. The report shall be provided on the form entitled "Final Certification" DEP Form 73-115B (Revised 9/05), which is hereby adopted and incorporated by reference. Copies of the "Final Certification" form are available at the following website: <https://floridadep.gov/water/coastal-construction-control-line/content/coastal-construction-control-line-cccl-forms>.

(s) Authorization for construction of armoring or other rigid coastal structures is based on an engineering review and assessment of the design and anticipated performance and impact of the structure as a complete unit. Construction of any less than the complete structure as approved by the Department is not authorized and shall result in the assessment of an administrative fine and the issuance of an order to remove the partially constructed structure. Modifications to the project size, location, or structural design shall be authorized by the Department in accordance with rule 62B-33.013, F.A.C.

(2) The permittee shall not commence any excavation, construction, or other physical activity on or encroaching on the sovereignty land of Florida seaward of the mean high water line or, if established, the erosion control line until the permittee has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use.

(3) The permittee shall obtain any applicable licenses or permits required by Federal, state, county, or municipal law.

(4) This permit does not authorize trespass onto other property.

(5) In the event of a conflict between a general permit condition and a special permit condition, the special permit condition shall prevail.

(6) Copies of any forms referenced above can be obtained by contacting the Department of Environmental Protection, 2600 Blair Stone Road, MS 3522, Tallahassee, Florida 32399-2400, at <https://floridadep.gov/water/coastal-construction-control-line/content/coastal-construction-control-line-cccl-forms> or by telephoning (850)245-8336.

Approved plans are incorporated into this permit by reference.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

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The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

EXECUTION AND CLERKING

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Tony D. McNeal, Administrator
Coastal Construction Control Line Program
Division of Water Resource Management

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CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

James Nelson, City of Daytona Beach, NelsonJ@codb.us
Mark Veenstra, City of Daytona Beach, VeenstraMark@codb.us
Trey Hatch, FDEP CCCL Field Inspector, trey.hatch@dep.state.fl.us
Glen Urquhart, City of Daytona Beach Building Department, UrquhartGlen@CODB.US
Denise Rach, FWC Imperiled Species Management Section, Denise.Rach@MyFWC.com
Mary Duncan, FWC Imperiled Species Management Section, mary.duncan@MyFWC.com
Jennifer Winters, Volusia County HCP Coordinator, jwinters@volusia.org

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Robin B. Starkie June 20, 2019
Clerk Date
Robin B. Starkie