
City of Treasure Island

Garry Brumback, City Manager
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BID DOCUMENTS

FOR

BEAUTIFICATION OF 125TH AVE.

January 25, 2019

**Beautification of 125th Ave.
Treasure Island, Florida
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THE CITY OF TREASURE ISLAND, FLORIDA

Invitation to Bid No: ITB 1819-08 – January 26, 2019

BEAUTIFICATION OF 125TH AVE.

Sealed Bids may be hand-delivered or mailed to City of Treasure Island City Hall, 120 - 108th Ave., Treasure Island, FL 33706 to the attention of the Purchasing Coordinator – Michael Munger. All Bids, **with original signature, and 1 electronic copy in PDF** must be received **no later than Friday, February 22, 2019 at 2:00 PM.** All bids must be submitted on the City’s official Bid Form. **All envelopes must be clearly marked “BEAUTIFICATION OF 125TH AVE.”**

Immediately following the deadline for receipt of bids, those bids received will be publicly opened and read aloud at a public meeting. Any bids received after the specified date and time will not be considered. The public meeting will be held at the City of Treasure Island Public Works Conference Room, located at 152 - 108th Avenue, Treasure Island, FL. Persons with disabilities requiring reasonable accommodations to participate in this proceeding/event should call (727) 547-4575, no later than seven (7) days prior to the proceeding.

A **non-mandatory pre-bid meeting** will be held at the Public Works Conference Room, 152 - 108th Avenue, Treasure Island on **Wednesday, February 6, 2019 at 10:00AM.**

Any questions concerning this Invitation to Bid should be addressed to Mike Helfrich, PE at mhelfrich@mytreasureisland.org by **Wednesday, February 13, 2019 at 5:00 PM.** All questions will be answered and posted on the City’s website and Vendor Registry by **Friday, February 15, 2019.**

Complete specifications and any additional information may be obtained from the City of Treasure Island’s website at www.mytreasureisland.org and/or from the Vendor Registry.

All proposals must be accompanied by a certified check, bank money order, or bid bond in the amount of ten percent (10%) of the base bid made payable to the City of Treasure Island. The certified check, bank money order, or bid bond shall guarantee that should the bid be accepted the bidder will, after the acceptance of the proposal by the City Commission, and issuance of the Florida Department of Environmental Protection permit, enter into a contract with the City of Treasure Island for the services proposed to be performed. A performance bond in the amount of 100 percent (100%) of the contract, made payable to the City of Treasure Island, Florida, will also be required to guarantee the faithful performance of the contract. A payment bond will be required for Labor and Materials to ensure the payment of all indebtedness incurred for labor, furnished materials, equipment or supplies used or consumed in connection with, or in or about, the construction of this project. A bid may be withdrawn prior to the date and time of opening, but no bid may be withdrawn after the date and time of opening.

The City of Treasure Island reserves the right to accept or reject any or all bids or to waive any bids informalities and to re-advertise for bids when deemed in the best interest of the City of Treasure Island.

SECTION 00100

INSTRUCTIONS TO BIDDERS

00100.01 DEFINED TERMS

Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions.

00100.02 PUBLIC RECORDS

All Bidding Documents and submissions by Bidders may be considered a public record under Florida's public records laws, Chapter 119, Florida Statutes. Accordingly, the Bidder understands and acknowledges that the Bidder's bidding documents may be inspected or copied by the public in accordance with applicable Florida law.

00100.03 QUALIFICATIONS OF BIDDERS

Bidders must have successfully completed two (2) contracts for similar work in an amount not less than one hundred percent (100%) of the amount of the proposal contract during the past three years. The City, in its sole discretion, has the right to determine project equivalence.

Bidders should have received Contract Documents from the Engineer. The City may make such investigations as it deems necessary to determine the ability of the bidder to perform the work, and the bidder must furnish to the City any additional information and financial data for this purpose as the City may require. The data may include a detailed and up-to-date list of equipment the bidder proposes to use, indicating which portions they already possess, and a detailed description of the method and program of the work they propose to follow.

If such an investigation fails to satisfy the Engineer or City that the bidder is properly qualified to complete the work described in the drawings and specifications, or to meet the financial obligations of such a contract, the bid may be rejected. In the event the bidder fails, refuses, or neglects to submit the requested additional information within ten (10) days of the date of any request for submission, the bidder's bid guarantee will be forfeited to the use of the City, not as a penalty, but as liquidated damages.

A person or affiliate who has been placed on the discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount as provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the discriminatory vendor list.

A person or affiliate who has been placed on the convicted vendor list, following a conviction for a public entity crime, may not submit a bid on a contract to provide goods or services to a public entity,

may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount as provided in Section 287.017, Florida Statutes, for a period of 36 months from the date of being placed on the convicted offender list.

No bid will be considered unless the bidder is properly qualified to submit a proposal for this construction in accordance with all applicable laws of the municipality, county, and the State of Florida.

00100.04 OMISSIONS AND DISCREPANCIES

Should a bidder find discrepancies in, or omissions from the drawings or other Bidding Documents, or should they be in doubt as to their meaning, they should at once notify the Engineer. All notice of omissions or discrepancies or request for clarification must be forwarded to the Engineer in writing not less than six (6) days before the advertised date of the opening of bids.

Such clarification and corrections as are necessary will be issued in the form of an Addendum to the Bidding Documents and will be forwarded to all prospective bidders. Any addendum so prepared and forwarded will be a part of the Bidding Documents. Neither the Engineer nor the City will be responsible for any other explanation or clarification of the Bidding Documents.

00100.05 BID ITEMS AND ESTIMATED QUANTITIES

The City may increase, decrease, or omit the quantity of the work to be done under any item in the best interests of the project and the unit price as submitted in the proposal will be the unit price which the Contractor will receive for any work specified to be done under that item.

All work herein specified or implied in anyway in the drawings or specifications will be done regardless of whether or not the work is specifically defined in any bid item.

The Contractor agrees that the estimated quantities shown in the Bid Schedule are only for the purpose of comparing bids and that he/she is satisfied with, and will at no time dispute, the said estimates as means of comparing the aforesaid bids, that he/she will make no claim for loss of profits or anticipated profits because of any difference between the said estimated quantities and the quantities of various classes of work actually furnished or performed, that the City will not be held responsible if any of the said estimated quantities should vary by any amount from those actually measured during performance of the work.

00100.06 APPROVED MATERIALS AND EQUIPMENT

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers or vendors names, trade names, catalog numbers, etc., it is intended to establish a standard of quality and it will be presumed, unless specifically excepted by the bidder, that the base bid includes the materials or articles so named, and that the Contractor's proposal, if accepted,

will constitute a contractual obligation to furnish the standard named materials or articles and no other. To assist the Engineer in making an adequate evaluation, the bidder must submit with the proposal, at the time bids are received, detailed information and data on the items proposed to furnish as equally acceptable to the named terms. The data furnished must include as applicable and needed for evaluation, the manufacturer's name, model identification, descriptive brochures, specifications, performance data, guaranteed efficiencies, and list of installations in similar service. Such alternate material, article, or piece of equipment must not be purchased or installed by the Contractor without the Engineer's written approval. Any revisions to the Drawings as a result of alternate equipment will be at the sole expense of the Contractor.

00100.07 SAMPLE OF MATERIALS

Before any contract is awarded, the bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the work, together with samples, which samples may be subjected to the tests provided for in these specifications to determine their quality and conformity to the plans and specifications.

00100.08 PROPOSAL FORM

All bids must be submitted on photocopies of the proposal form bound within these specifications. No proposal will be considered which is submitted otherwise than on the prepared proposal form and in the designated manner. The blank spaces in the proposal must be filled in correctly where indicated for each and every item for which a description is given, and the bidder must state the prices for which they propose to do each part of the work contemplated, and the total amount for all parts included in any or all of the combinations of the work. In case of discrepancy, the written words or "Unit Price," where stated, will be considered as being the bid price. The bidder must sign the proposal correctly. If the proposal is made by an individual, in addition to his/her signature, their post office address must be shown; if made by a firm or partnership, the post office address of each member of the firm or partnership; if made by a corporation, the person signing the proposal must be President or Vice-President of the corporation. No proposal will be considered which is not based upon the complete plans and specifications, or which contains any qualifying letter or written memorandum not permitted in these specifications, or which is not properly made out and signed in writing by the bidder. The proposal must be submitted in a sealed envelope bearing the name of the Contractor and describing the project for which the proposal is being submitted. Proposals will be accepted by registered mail, and then only if the proposal is enclosed in another sealed envelope contained within the mailing envelope and is delivered to the City prior to the time established for opening bids.

A Bid by a corporation must be executed in the corporate name by the president or a vice-president or other corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate seal must be affixed and attested by the corporate secretary or an assistant corporate secretary. The corporate address and state of incorporation must be shown below the signature.

A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices must be shown below the signature.

A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices must be shown below the signature.

A Bid by an individual must show the Bidder's name and official address for receiving notices.

A Bid by a joint venture must be executed by an authorized representative of each joint venture in the manner indicated on the Bid Form. The joint venture's address for receiving notices must be shown.

All names must be typed or printed in ink below the signatures.

Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

More than one Bid received for the same work from an individual, firm, partnership, corporation, or joint venture under the same name or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the same work will cause the rejection of all Bids that the Bidder is interested. If there are reasonable grounds for believing collusion exists among Bidders, the Bids of participants will not be considered.

00100.09 WITHDRAWAL OF PROPOSALS

Bidders will be given permission to withdraw any proposal after it has been received by the City, provided the bidder, or an agent duly authorized to act for bidder, personally appears before the City with a written request prior to the time set for the opening of bids. At the time set for the opening of proposals the withdrawn proposal will be returned unopened to the bidder. No bids may be modified or withdrawn after the opening of the proposal.

00100.10 BID SECURITY

Each proposal must be accompanied by the bidder's bid bond, bank money order, or certified check made payable to the City in an amount of ten percent (10%) of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraph 100.27 of the this Section. The bid bond must be issued by a company authorized to conduct business in the State of Florida and having a registered agent in the State of Florida. This sum will serve as bid security and will be forfeited to the City as liquidated damages in the event an award is made and the contract and bonds are not promptly and properly executed as required in the specifications.

All certified checks, except those accompanying the two lowest bids, will be returned by certified mail to the unsuccessful bidders within seven (7) days after the date of the bid opening. (If the signing of the contract is to be deferred for a period exceeding two (2) weeks, and the second low bidder desires to substitute a bid bond for the certified check and the bid bond fully guarantees the bid, bidder will be permitted to do so.) The certified checks accompanying the two low bids will be returned within

three (3) days after the City and the successful bidder have executed the contract. In the event no contract award is made within the time limit specified, each certified check or bid bond will be returned upon the demand of the bidder.

00100.11 OPENING OF PROPOSALS

All proposals will be publicly opened and read, on the date, at the place and commencing at the time stated in the advertisement. Bidders or their authorized agents should be present. The City reserves the right to reject any or all bids or parts thereof. Proposals may be rejected if they show any omissions, alterations of form, additions, or deductions not called for, conditional or uninvited alternate bids, or irregularities of any kind. Proposals in which the prices are unbalanced may be rejected. The City reserves the right to accept the responsive responsible bid, which will serve its best interests. The City reserves the right to reject any or all bids on the project. The City will reject a bid that the City finds, after reasonable inquiry and evaluation, to not be responsible. The City also reserves the right to waive all minor informalities not involving price, time, or changes in the work.

00100.12 METHOD OF AWARD

Bids will be compared on the basis of the total costs of estimated quantities established in the proposal form, constructed at the unit or lump sum prices bid for the various items listed. The contract will be awarded to that responsible bidder whose proposal totals the lowest number of dollars for a complete installation.

The City may conduct such investigations as the owner deems necessary to establish the responsibility, qualifications, and financial ability of the bidders and any proposed subcontractor suppliers and individuals or entities to perform the work in accordance with the contract documents.

The successful bidder will be officially notified in writing by the City of the acceptance of the proposal and award of contract. This notification will be made within the time limit set up in the contract documents.

Whenever two responsible bidders are found to have both submitted the lowest responsive bid, the owner will give preference to the bidder that certifies it has implemented a drug free workplace program in determining which of the two responsible bidders will be awarded the contract.

00100.13 EXECUTION OF CONTRACT

The bidder to whom the contract is awarded must, within ten (10) calendar days following Notice of Award, present himself to the place designated in the official Notice of Acceptance, for signing of the contract. All bonds and insurance must be issued by companies authorized to transact business in the State of Florida.

If the lowest responsible bidder to whom the contract is awarded fails to give bonds or execute the contract within the time specified, the amount of the proposal guarantee will be forfeited to the City, not as a penalty but as liquidated damages.

00100.14 TIME OF COMPLETION

The successful Contractor must commence work under this contract on a date to be specified in a written order from the City or an authorized representative, which order will also establish the completion date in accordance with the total number of consecutive calendar days established as a working period in the proposal. The Contractor shall fully complete the work described in these plans and specifications on, or prior to, the completion date. Time is of the essence.

If the Contractor fails to commence work within seven (7) days of the announcement of the official starting date, this will be just cause for the annulment of the contract.

00100.15 LIQUIDATED DAMAGES

Should the Contractor fail to complete the work on or before the expiration of the date set for completion or as provided in the Contract Documents covering extension of time, then the City may retain as liquidated damages the amount established in the proposal form, which amount is agreed upon as the costs which the City will sustain per diem by the failure of the Contractor to complete the work at the time stipulated and the sum is not to be construed in any sense as a penalty.

00100.16 EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of the work by any cause beyond the Contractor's control and without fault or negligence, including but not restricted to any act or neglect of the City, or of contractor's employees, or by any other contractor employed by the City, or by changes ordered in the work, acts of God or of the public enemy, fires, floods, epidemics, quarantines, strikes, lockouts, riots, civil commotions or freight embargoes or by delay authorized by the City, or by any cause which the City decides justifies the delay, then the time of completion will be extended for such reasonable time as the City decides.

No such extensions of time will be deemed a waiver by the City of its right to terminate the contract for abandonment or delay by the Contractor as provided in the Contract or relieve the Contractor from full responsibility for performance of the obligations under the Contract.

00100.17 CERTIFICATE OF INSURANCE

The successful bidder shall submit certificates or other documentary evidence to the City for approval, covering Workmen's Compensation Insurance, Public Liability, Property Damage Insurance, and Special Hazard Insurance, in the amounts specified on the "Summary of Information to Bidders."

00100.18 DETAILED BREAKDOWN SHEET AND SCHEDULE OF PRICES

The successful bidder shall submit, in a mutually acceptable form, a detailed breakdown sheet and schedule of prices of the proposed construction work. Until the City approves the breakdown, the City will not be obligated to make any payments to the bidder.

00100.19 EXISTING MATERIALS AND EQUIPMENT

All existing materials and equipment not specified for the complete construction of the project, or shown on the plans to be retained or reused, will remain the property of the City and will be placed on the project site as the City may direct.

00100.20 STANDARDS

This project must be completed in accordance with the specifications identified in these bid documents unless noted or otherwise directed by the City or its authorized representative. The decision of the City in interpreting these specifications is final.

00100.21 LICENSES AND PERMITS

The Contractor shall obtain and pay for all other federal, state, county, city permits, licenses, and other authorizations required for the prosecution of the Work, including the cost of all Work performed in compliance with the terms and conditions of such permits, licenses, and authorizations, whether by himself or others. No construction work may commence until all applicable licenses and permits have been obtained and copies delivered to the Engineer.

00100.22 CONFLICT OF INTEREST

The bidder certifies that, to the best of their knowledge or belief, no elected/appointed official or employee of the City, a spouse thereof or other person residing in the same household, is financially interested, directly or indirectly, in providing the goods or services specified in this bid. Financial interest includes but is not limited to ownership of more than five percent of the total assets or capital stock or being an officer, director, manager, partner, proprietor, or agent of the business submitting the bid or of any subcontractor or supplier thereof providing goods or services in excess of ten percent of the total bid amount.

In addition, the bidder, on company letterhead, must divulge at the time of bid submittal, any relative, other than those already specified, of an elected/appointed official or employee of the City who has a financial interest, as defined herein, in providing the goods or services specified in the Bid.

The City, at its sole discretion, will determine whether a conflict exists and whether to accept or reject the bid.

00100.23 SUBCONTRACTORS, SUPPLIERS, AND OTHERS

A Bidder must be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

Subsequent to the submittal of the Bid, City may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

Each Bid must identify the names, and addresses of the Subcontractors. If requested by the City or Engineer, the Successful Bidder, and any other Bidder so requested, must within five days after Bid opening, submit to the City the following:

- A. If requested by City, an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity.
- B. If City or Engineer, after due investigation, finds any proposed Subcontractor or supplier is not licensed, qualified, or certified as required by state law the City may, before the Start to Work Order is given, request apparent Successful Bidder to submit an acceptable substitute, in which case the apparent Successful Bidder will submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and City may consider such price adjustment in evaluating Bids and making the Contract award.

If apparent Successful Bidder declines to make any such substitution, City may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which City or Engineer makes no written objection prior to the giving of the Start to Work Order will be deemed acceptable to City and Engineer subject to subsequent revocation of such acceptance.

00100.24 REQUIRED DISCLOSURE

With its bid submission, Bidder shall disclose all material facts pertaining to any felony conviction or any pending felony charges in the last three (3) years in this state or any other state of the United States against (i) bidder, (ii) any business entity related to or affiliated with bidder, or (iii) any present or former executive employee, officer, director, stockholder, partner or owner of bidder or of any such related or affiliated entity. This disclosure shall not apply to any person or entity which is only a stockholder, which person or entity owns 20 percent or less of the outstanding shares of a bidder whose stock is publicly owned and traded.

At its sole discretion the City may reject any bidder the City finds to lack, or whose present or former executive employees, officers, directors, stockholders, partners or owners are found by the City to lack honesty, integrity, or moral responsibility. The discretion of the City may be exercised based on the disclosure required. By submitting a Bid, Bidder recognizes and accepts that the City may reject the

Bid based upon the exercise of the City’s sole discretion and bidder waives any claim it might have for damages or other relief resulting from the rejection of its Bid based on these grounds.

Additionally, by engaging in business with the City, each Bidder confirms their business entity is not on the Scrutinized Companies that Boycott Israel List as described in Section 287.135, Florida Statutes or engaged in a boycott of Israel or, for goods or services over one million dollars, Bidders confirm they are not on any of the scrutinized company lists identified in Section 287.135, Florida Statutes or engaged in any such activity identified in that section.

a. A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel.

b. A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of one million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes or engaged in business operations in Cuba or Syria.

On a case-by-case basis, the City may permit those companies identified above to bid on, submit a proposal for, or enter into or renew a contract with the City for goods or services providing all statutory conditions outlined in Section 287.135 (4) are met

00100.25 FLORIDA TRENCH SAFETY ACT

Bidders are solely responsible for complying with the Florida Trench Safety Act and Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 as amended. All costs associated with complying with these requirements must be included in the Bid and must be detailed in the Certificate of Compliance with the Florida Trench Safety Act (Section 00330).

00100.26 RESERVED

00100.27 BONDS AND INSURANCE

In order to be acceptable to the City, a surety company issuing the Bid Security, Performance and Payment Bonds called for in the Bid Documents must meet and comply with the standards set forth in the General Conditions and the following:

- A. Surety must be licensed or authorized to do business in the State of Florida and must comply with section 255.05 of the Florida Statutes.
- B. Surety must have been in business and have a record of successful continuous operations for at least five (5) years.
- C. All bonds must be executed by such sureties as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds

and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, and the U.S. Treasury Department. Surety must have an A.M. Best Rating of A or better and A.M. Best Financial Size Category of Class VII or greater.

- D. Surety must issue performance and payment bonds in accordance with section 255.05 of the Florida Statutes.

The City reserves the right to reject any Surety. If the Surety or any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business terminates in any state where any part of the project is located or it ceases to meet the requirements of these Contract Documents, the Contractor must within five (5) days after notice thereof substitute another bond and Surety, both of which must be acceptable to the City. The General Conditions sets forth City’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to City, it must be accompanied by required bonds and insurance documentation.

END OF SECTION

SECTION 00140

SUMMARY OF INFORMATION TO BIDDERS

00140.01 OBTAINING PLANS AND SPECIFICATIONS

Specifications, Proposal Forms, Drawings, and other contract documents may be examined at the City of Treasure Island, 152 108th Avenue, Treasure Island, Florida 33706. A complete set of bidding documents may be obtained at the City of Treasure Island, 152 108th Avenue, Treasure Island, Florida 33706.

00140.02 OWNER

The Owner for this project is the City of Treasure Island, 152 108th Avenue, Treasure Island, Florida 33706.

00140.03 CONTRACT

The contract is entitled **BEAUTIFICATION OF 125TH AVE.**

00140.04 BID SECURITY & PERFORMANCE AND PAYMENT BOND

Each Bidder must deposit a bid bond in the amount of ten percent (10%) of the bid total, made payable to the City of Treasure Island. All bids may be held for a period of 90 days after receipt.

Once awarded, the Contractor shall provide a performance and payment bond for 100% of the contract amount to the City within ten (10) days of the Notice to Proceed date.

00140.05 TIME OF COMPLETION

The time of completion for this contract is 120 consecutive calendar days from date established in the Notice to Proceed.

00140.06 INSURANCE REQUIRED

A. The CONTRACTOR is required, at its own cost and expense, to acquire, maintain, and provide evidence of the minimum insurance policies and limits, and keep specified insurance in force until the CITY accepts that the CONTRACTOR has satisfactorily completed all work required under the Contract; and cause SUBCONTRACTOR(S), if utilized, to acquire and maintain the same.

1. The CONTRACTOR, if selected, will provide the CITY with a Certificate or Certificates of Insurance showing the existence of coverage as required by the Agreement prior to the start of any work under this Agreement. In addition, the

CONTRACTOR will provide to the CITY, if requested in writing, certified copies of all policies of insurance. New certificates and new certified copies of policies shall be provided to the CITY whenever any policy is renewed, revised, or obtained from other insurers. The City of Treasure Island shall be named as the Certificate Holder.

The address where such certificates and certified policies shall be sent or delivered is as follows:

City of Treasure Island
Attention: Public Works Department
120 108th Avenue
Treasure Island, FL 33706

2. All required policies providing liability coverage(s), other than Professional Liability and Workers' Compensation policies, for both CONTRACTOR and SUBCONTRACTOR(S) shall be endorsed to include The City of Treasure Island as an Additional Insured.
3. The Named Insured on the Certificate of Insurance must match the entity's name that responded to the RFQ and is signing the Agreement with the CITY.
4. CONTRACTOR shall notify the CITY within twenty-four (24) hours of receipt of any notice of policy expiration, cancellation, nonrenewal, or adverse material change in the required coverages received by CONTRACTOR from its insurer.

B. Specific Insurance Coverages and Limits

All requirements in this Insurance Section shall be complied with in full by the CONTRACTOR unless excused from compliance in writing by the CITY. The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the CITY.

Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the term of this Contract for all employees engaged in this work under this Contract, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

1. Workers' Compensation: Florida Statutory Requirements
Employer's Liability: \$1,000,000 Each Employee
\$1,000,000 Each Employee Disease
\$1,000,000 Aggregate Disease
2. Commercial General Liability Insurance: The CONTRACTOR shall provide for all operations, including but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal

Injury. Projects with a Completed Operations exposure are required to maintain coverage for a period of two (2) years beyond final acceptance by the CITY.

\$1,000,000 Per Occurrence
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury
\$2,000,000 General Aggregate

3. Business Automobile Liability Insurance: The CONTRACTOR shall provide coverage for all owned, hired, and non-owned vehicles.

\$1,000,000 Combined Single Limit Per Accident

4. Professional Liability (Errors and Omissions) Insurance: The CONTRACTOR shall provide coverage with at least minimum limits shown below. If “claims made” coverage is provided, “tail coverage” extending three (3) years beyond completion and acceptance of the project with proof of “tail coverage” to be submitted with the invoice for final payment. In lieu of “tail coverage”, CONTRACTOR may submit annually to the CITY, for a three (3) year period, a current certificate of insurance providing “claims made” insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

\$1,000,000 Each Occurrence or Claim
\$2,000,000 General Aggregate

For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

The CONTRACTOR recognizes that the registered persons practicing engineering with the CONTRACTOR as provided in Chapter 471 of the Florida Statutes are not relieved from personal liability for their professional acts and each registered person practicing engineering with the CONTRACTOR who performs consulting engineering services for the CITY pursuant to this agreement shall be liable in accordance with section 471.023(3) of the Florida Statutes.

5. Property Insurance: CONTRACTOR will be responsible for all damage to its own property, equipment, and/or materials.

- C. These insurance requirements shall not limit the liability of the CONTRACTOR and/or SUBCONTRACTOR(S).
- D. All policies shall be written on a primary, non-contributory basis.

- E. Insurance Policies, other than Professional Liability, shall include waivers of subrogation in favor of the CITY.
- F. Companies issuing the insurance policy, or policies, shall have no recourse against the CITY for payment of premiums or assessments for any deductibles which are all at the sole responsibility and risk of the CONTRACTOR.
- G. All insurance policies must be placed with insurers duly authorized to do business in the State of Florida and have a current AM Best rating of A- VII or better.
- H. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- I. Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicates less coverage that is required, does not constitute a waiver of the CONTRACTOR'S obligation to fulfill the insurance requirements specified in this Agreement.
- J. Precaution shall be exercised at all times by the CONTRACTOR for the protection of all persons, including employees, and property. The CONTRACTOR shall be expected to comply with all applicable laws, regulations, or ordinances related to safety and health, and shall make special efforts where appropriate to detect hazardous conditions, and shall take prompt action where loss control/safety measures should reasonably be expected.

The CITY may order work to be stopped if conditions exist that present immediate danger to persons or property. The CONTRACTOR acknowledges that such stoppage will not shift responsibility for any damages from the CONTRACTOR to the CITY.

- K. No Waiver
Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR or its SUBCONTRACTORS will relieve the CONTRACTOR or SUBCONTRACTOR from responsibility to prove insurance as required.
- L. Indemnification Requirements
The CONTRACTOR will be required to agree to a provision requiring that it indemnify, defend, and hold harmless the CITY, any federal, county or municipal funding agency, and all of their officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by CONTRACTOR, its agents, or employees during the performance of the Contract.

00140.07 SCOPE OF WORK

The work to be performed under this contract will consist of the furnishing of all labor, materials, and equipment necessary to satisfactorily complete the **BEAUTIFICATION OF 125TH AVE** including written logs and testing in accordance with these plans and specifications. All workmanship and materials must be fully guaranteed for a period of one year after date of acceptance by the Owner. All testing must be paid for by the Contractor. All Professional Surveying must be paid by the Contractor.

00140.08 BID SUBMITTAL FORMS

Submission of the following forms constitutes a complete proposal package:

- Bid Proposal (w/ Addenda acknowledged)
- Bid Proposal Form (w/ Addenda acknowledged)
- Bid Bond
- Florida Trench Safety Act Acknowledgement
- Public Entity Crimes Statement
- Certification of Insurance
- Drug Free Workplace Form
- Non-Discriminatory Vendor Statement

END OF SECTION

SECTION 00310

BID PROPOSAL

To: City of Treasure Island

The following proposal is submitted in accordance with your advertisement inviting proposals to be received until **2:00 p.m. on Friday, February 22, 2019** for the construction of the **BEAUTIFICATION OF 125TH AVE.**

Having carefully examined the contract documents together with all addenda or bulletins, all as prepared by Michael Baker International, 4211 West Boy Scout Blvd Suite 500, Tampa, Florida, 33607 and being familiar with the various conditions of the work, the undersigned herein agrees to furnish all materials required and to perform all labor necessary to satisfactorily construct the **BEAUTIFICATION OF 125TH AVE** in accordance with the plans and specifications for the unit prices stated herein.

Accompanying this proposal is Certified or Cashier's Check or Bid Bond in the amount of ten percent (10%) of the bid total drawn upon the _____ BANK and made payable to the City of Treasure Island to serve as bid security. The undersigned Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

It is understood that this proposal will be effective until 90 days after the bid opening and that the sum of \$200.00 per day may be retained by the City in the event the contract is not complete within **120 consecutive calendar days** after the date established in the Start to Work Order.

The undersigned Bidder hereby certifies that this proposal is genuine and not sham or collusive, or made in the interest or in behalf of any person, firm, or corporation not herein named and that the undersigned has not directly or indirectly induced or solicited any other bidder to submit a sham bid, or any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for himself an advantage over any other bidder.

The undersigned Bidder agrees to accept the unit prices as full compensation for work performed.

In submitting this Bid, Bidder makes all representations required by *Instructions to Bidder* and further warrants and represents:

- A. The Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda, if any:

Addendum#1 _____	Dated: _____
Addendum#2 _____	Dated: _____
Addendum#3 _____	Dated: _____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with, has considered, and has satisfied itself as to federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has obtained and carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the General Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the General Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.
- K. Bidder will submit written evidence of its authority to do business in the State of Florida not later than the date of its execution of the Agreement.

By affixing a signature to this Bid, Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “Coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- E. All required sales and use taxes are included in the stated Bid prices for the Work unless provision is made herein for the Bidder to separately itemize the estimated amount of sales tax.
- F. If awarded a Contract, the Florida Trench Safety Act, (sections 553.60 through 553.64, of the Florida Statutes) and applicable trench safety standards will be complied with.
- G. Bidder is not currently and has not been on the convicted vendor list within the last 36 months.
- H. Bidder is not currently and has not been on the discriminatory vendor list within the last 36 months.
- I. This Bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same item(s) and is in all respects fair, without outside control, collusion, fraud, or other illegal actor.
- J. Bidder is and will comply with all local, state, federal directives, orders and laws as applicable to this Bid and subsequent contract(s) including but not limited to Equal Employment (EEO), Minority Business Enterprise (MBE), and OSHA as applicable to this Contract.
- K. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work, within the Contract Time.

This Bid is submitted on ___ day of ___, 20 ___, by: *(select one)*

If Bidder is an individual:

Name *(Typed or printed)* _____

By *(signature)* _____

Doing Business As: _____

If Bidder is a partnership:

Partnership Name _____ (SEAL)

By *(signature)* _____

(Signature of general partner - attach evidence of authority to sign)

Name *(Typed or printed)*: _____

If Bidder is a corporation:

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type *(General Business, Professional Service, Limited Liability)*: _____

By _____

(Signature - attach evidence of authority to sign)

Name *(typed or printed)*: _____

Title: _____ (CORPORATE SEAL)

Attest: _____

(Signature of Corporate Secretary)

Date of Qualification to do business is: _____

If Bidder is a Corporation, attach a certified copy of corporate resolutions of the Board of Directors of the Corporation authorizing an officer of the Corporation to execute the Agreement contained within this document on behalf of the Corporation.

If Bidder is a Joint Venture

Joint Ventures Name: _____ (SEAL)

By: _____

(Signature of joint venture partner - attach evidence of authority to sign)

Name *(typed or printed)*: _____

Title: _____

Name *(typed or printed)*: _____

Title: _____

Name *(typed or printed)*: _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Particulars

Bidder's Business Address: _____

Phone No.: () _____ FAX No.: _____

Email: _____

Name(s) of Contractor: _____

Job Site Field Representative(s): _____

BID SUBMITTED on _____, 2019

Florida Contractor's License No.: _____

Contractor's License Class (where applicable): _____

END OF SECTION

**CITY OF TREASURE ISLAND
BID PROPOSAL FORM (COMPETITIVE BIDDING)**

**SECTION 00320
BID PROPOSAL FORM**

DATE: _____
(Date of Proposal)

FROM: _____
(Name of Bidder's Company)

(Mailing Address)

(City, State, Zip)

TO: **City of Treasure Island**
ATTN: **Public Works Department**
 120 108th Avenue, Treasure Island, FL 33706

The undersigned Bidder, having carefully examined the premises and conditions affecting the Work, the Instructions to Bidders, the Form of Agreement and Conditions of the Contract, and other Contract Documents for:

BEAUTIFICATION OF 125TH AVE - ITB – 1819-08, dated **JANUARY 25, 2019**

as prepared by **Michael Baker International** does hereby propose to furnish all labor, materials, equipment and services required for the proper execution and completion of the work described and called for in said Documents for the lump sum(s) as indicated herein below:

**CITY OF TREASURE ISLAND
 BID PROPOSAL FORM (COMPETITIVE BIDDING)**

CONTRACTOR'S SCHEDULE OF VALUES & BID PROPOSAL						
Item No.	Spec. No.	Item Description	Unit	Unit Price	Quantity	Amount
1	101-1	Mobilization, General Conditions and Bonds (1)	LS		1	
2	102-1	Maintenance of Traffic	LS		1	
3	104-1	Floating Turbidity Barrier	LF		25	
4	104-2	Inlet Protection System	EA		2	
5	104-4	Riprap	TON		3.4	
6	105-1	Construction Staking & Survey	LS		1	
7	109-1	Shell Material Removal	SY		537	
8	109-2	Concrete Pavement Removal	SY		116	
9	111-1	Miscellaneous Demolition	LS		1	
10	111-2	Topsoil Stripping	SY		90	
11	111-3	Surface Preparation	SY		135	
12	350-1	Reinforced Cement Concrete Pavement, 8"	SY		111	
13	425-1	Inlets, DT Bot, Type C, <10'	EA		2	
14	430-1	12" RCP	LF		64	
15	430-2	15" RCP	LF		73	
16	430-3	Flared End Section, Concrete, 15"	EA		1	
17	520-1	Concrete Curb, Type D	LF		399	
18	570-1	Performance Turf	SY		197	
19	911-1	Optional Base, Base Group 1, Shell Material (4" Depth)	SY		660	
20	911-2	Landscaping Shell, 2" Depth	SY		114	
21	NA	Owner's Contingency	LS	\$20,000.00	1	\$20,000.00
22	PLANS	Landscaping	LS		1	
		TOTAL				

**CITY OF TREASURE ISLAND
BID PROPOSAL FORM (COMPETITIVE BIDDING)**

TOTAL BASE BIDS: (Include the \$ 20,000 Owners contingency)

_____ Dollars \$ _____

(State amount in words)

This proposal covers all expenses, including applicable license fees and all taxes levied in connection with the Work.

UNIT PRICES

Refer to Contract Documents for a complete description of items requiring unit pricing. The undersigned bidder agrees that, if awarded the Contract for the Work, this unit pricing will be the basis for determining the cost of any proposed changes to the Work and for determining the amount of final payment.

ALTERNATES

Refer to Contract Documents for a complete description of any alternate(s) that may be required. Indicate by checkmark whether the amount of the alternate is to be added to or deducted from the amount of the Base Bid for each of the following:

NONE

ADDENDA

Receipt of the following Addenda are hereby acknowledged as follows:

ADDENDUM NO. _____, dated _____.

ADDENDUM NO. _____, dated _____.

ADDENDUM NO. _____, dated _____.

ADDENDUM NO. _____, dated _____.

LIST OF SUBCONTRACTORS

The undersigned Bidder hereby indicates their intent to either self-perform the work OR subcontract with each of the major subcontractors listed below.

TRADE	SELF- PERFORMED	SUBCONTRACTOR NAME/ADDRESS	LICENSE No.	S/W/MBE STATUS S W M N/A
Demolition/Site Clearing	<input type="checkbox"/>	_____ _____ _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Concrete Work	<input type="checkbox"/>	_____ _____ _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Drainage Improvement	<input type="checkbox"/>	_____ _____ _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Landscaping	<input type="checkbox"/>	_____ _____ _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

**CITY OF TREASURE ISLAND
BID PROPOSAL FORM (COMPETITIVE BIDDING)**

COMPLETION TIME AND LIQUIDATED DAMAGES

Provided Owner issues a "Notice to Proceed" not later than **April 9, 2019**, the undersigned Bidder agrees to substantially complete the Work in accordance with the contract documents not later than **August 9, 2019**, and to complete any portions of the Work designated for earlier completion within the times established in the contract documents.

Bidder further agrees that the Work will be fully completed and ready for final acceptance in accordance with the contract documents within **one hundred and twenty (120)** calendar days, Sundays and Holidays included, such time to commence on the date of substantial completion or receipt of the punch list, whichever date occurs last.

Bidder acknowledges that if Bidder fails to satisfy all requirements for substantial completion of the Work or portions designated for earlier completion as described in the contract documents within the required time period, Owner will be entitled to assess, as liquidated damages, but not as a penalty, **two hundred Dollars (\$200.00)** for each calendar day thereafter until substantial completion of the work or portions designated for earlier completion is achieved. Should the awarded Bidder fail to satisfy all requirements for final acceptance of the Work as described in the contract documents within the required time period, Owner will be entitled to assess, as liquidated damages, but not as a penalty, **two hundred dollars (\$200)** for each calendar day thereafter until the final acceptance requirements are met.

MISCELLANEOUS PROVISIONS

The undersigned Bidder hereby acknowledges the provisions of Florida Statute 287.133 pertaining to public entity crimes, which states as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. [287.017](#) for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

Attached herewith is the Contractor's Qualification Statement as required by the Instructions to Bidders.

This proposal will remain in force and effect for a period of **ninety (90)** calendar days from the time of opening of this Proposal. The Bidder will not revoke, cancel, or withdraw this Proposal within the said sixty (60) calendar days.

In witness whereof, the Bidder, a _____,
(Sole Proprietor, Corporation, Limited Liability Partnership, etc.)

licensed and incorporated in the State of _____, has hereunto set his or her signature and affixed his

or her seal this _____ day of _____, 20____ .

FOR: _____
(Legal Name of Business)

ATTEST: _____
Bidder's Business Name

Corporate Secretary By: _____
Officer (or Principal)

Title: _____

AFFIX CORPORATE SEAL,
if a corporation

Business Address City State Zip

Business Telephone Number

END OF SECTION

SECTION 00330

FLORIDA TRENCH SAFETY ACT ACKNOWLEDGEMENT

PROJECT: BEAUTIFICATION OF 125TH AVE - ITB – 1819-08

BIDDER’S NAME: _____

The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

Bidder acknowledges and issues this sworn statement that included in the various items of the proposal in the Total Bid Price are costs for complying with Chapter 553 of the Florida Statutes, Florida Trench Safety Act. The bidder further identifies the costs to be summarized below:

Trench Safety Measure (Description)	Units of Measure (LF, SY)	Unit (Quantity)	Unit Cost	Extended Cost
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
*TOTAL:				_____

THIS IS NOT A PAY ITEM: The purpose of this form is to gather information on the costs associated with trench safety measures and to insure that the Bidder has considered these costs and included them in the Total Estimated Bid Company will not receive additional payment if actual quantities differ from those estimated or if the Company uses a safety measure different than those listed.

The undersigned, in submitting this Bid, represents that they have reviewed and considered all available geotechnical information and made such other investigations and tests as they may deem necessary to adequately design the trench safety system they will utilize on this project.

The undersigned assures that the entity will comply with the applicable Trench Safety Standards and agrees to indemnify and hold harmless the City and Project Engineer, and any of their agents or employees from any claims arising from the failure to comply with said standard.

FAILURE TO COMPLETE THE ABOVE MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE.

COMPANY NAME: _____

DATE: _____

BY: _____

TITLE: _____

STATE OF FLORIDA
COUNTY OF _____

Personally appeared before me, the undersigned authority _____, who, after first being sworn by me, affixed his /her signature in the space provided above on this _____ day of _____ 20____.

NOTARY Public

My Commission expires: _____

END OF SECTION

SECTION 00410

BID BOND

Any singular reference to Bidder, Surety, City, or other party will be considered plural where applicable.

BIDDER (*Name, Address, and Telephone Number*):

SURETY (*Name, Address of Principal Place of Business, and Telephone Number*):

OWNER (*Name, Address and Telephone Number*):

City of Treasure Island ("City")
152 108th Avenue
Treasure Island, FL 33706 (727) 547-4575

BID

Bid Due Date:
Description (*Project Name — Include Location*):

BEAUTIFICATION OF 125TH AVE - ITB – 1819-08
TREASURE ISLAND, FLORIDA

BOND

Bond Number:
Date:

Penal sum Ten Percent of Attached Bid \$ 10%
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

Bidder's Name and Corporate Seal (Seal) _____ (Seal)
Surety's Name and Corporate Seal

By: _____ By: _____
Signature Signature (Attach Power of Attorney)

Print Name Print Name

Title Title

Attest: _____ Attest: _____
Signature Signature

Title Title

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder will occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions will not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety will cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of the applicable statute will govern and the remainder of this Bond that is not in conflict with the applicable statute will continue in full force and effect.

The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

END OF SECTION

SECTION 00520

CONTRACTOR'S AFFIDAVIT

STATE OF FLORIDA
PINELLAS COUNTY

Before me, the undersigned authority, personally appeared _____, who, being duly sworn, deposes and says of his or her personal knowledge that:

1. He or She is the _____ of _____, which does business in the State of Florida, hereinafter referred to as the Contractor.

2. Contractor, pursuant to contract with the **CITY OF TREASURE ISLAND**, hereinafter referred to as "City," has furnished or caused to be furnished labor, materials, and services for the construction of certain improvements to real property located in Pinellas County, Florida as more particularly set forth in said contract.

3. Said improvements have been fully completed and the Contract and General Conditions for Construction Services ("Construction Contract") entirely performed to the final stage of pay out as prescribed in the Construction Contract between Contractor and City, and that all lienors as defined by Chapter 713, Florida Statutes, have been paid all sums due them up to the date of this Affidavit except the following ones who are due the respective amounts set opposite their respective names:

Name

Amount

4. There is now due Contractor a Final Payment for the payout stage mentioned above under the Construction Contract in the amount of \$_____, leaving the amount of \$_____ to be paid upon completion of all punch list items; that Contractor has in no way assigned, pledged, or hypothecated the Construction Contract or any amount due or to become due thereunder; that payment to Contractor of said sum will constitute a full release by Contractor of any and all claims arising out of the Construction Contract.

5. Contractor has not entered into any agreement by which any security interest under the Uniform Commercial Code has attached to the above described property.

6. Affiant is an officer of the Contractor having personal knowledge of the foregoing facts and duly authorized to execute this Affidavit.

7. This Affidavit is made for the purpose of inducing City to pay and disburse the Final Payment for the final stage of pay out of the Construction Contract hereinabove mentioned.

CONTRACTOR

BY: _____

FOR: _____

Sworn to and acknowledged before me this _____ day of _____, 20____, by _____ of _____, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced a Florida driver's license as identification.

_____, Notary Public, Commission No. _____

_____, Name of Notary type, printed or stamped

SECTION 00530

CONTRACTOR'S RELEASE

KNOW ALL MEN BY THESE PRESENTS that _____, a Contractor in the County of _____ and State of _____, do hereby acknowledge that _____(Contractor) this day has had and received of and from the _____, the sum of One Dollar and other valuable consideration in full satisfaction and payment of all sums of money owing, payable and belonging to _____ (Contractor) by any means whatsoever, for on account of a certain agreement between the said _____ and _____ (Contractor) dated _____.

NOW THEREFORE, the said _____(Contractor)(for myself, my heirs, executors and administrators)(for itself, its successor and assigns) do by these presents remise, release, quitclaim and forever discharge the said _____, its successors and assigns, of and from all claims and demands arising from or in connection with the said agreement dated _____, and of and from all, and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, sums and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demand, whatsoever in law or equity, or otherwise which against the said _____, its successors or assigns, the Contractor, its heirs, successors assigns ever had, now have, or which (I, my heirs, executors, or administrators)(it, its successors and assigns) hereafter can, will or may have, for, upon or by reason of any matter cause or thing whatsoever, from the beginning of the world to the date of these presents.

IN WITNESS WHEREOF, _____(Contractor) has caused these presents to be duly executed the _____ day of _____, 20_____.

Signed, Sealed and Delivered in the presence of:

_____(SEAL)
(Individual Contractor)

ATTEST; _____(SEAL)
(Partnership Contractor)

(Secretary) By _____(SEAL)
(Partner)

(Corporation)

AFFIX CORPORATE SEAL,
If a corporation

By _____
(President or Vice President)

**SECTION 00610
PAYMENT BOND**

CONTRACTOR (name, address, and telephone number):

SURETY (name, address of principal place of business, and telephone number):

OWNER (name, address, and telephone number):

City of Treasure Island ("City")

152 108th Avenue

Treasure Island, FL 33706

(727) 547-4575

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location): **BEAUTIFICATION OF 125TH AVE - ITB – 1819-08**

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)

(seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____

By: _____

Signature

Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____

Attest: _____

Signature

Signature

Title

Title

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Florida.

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Authority, or other party will be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor will have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety will promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation must not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety will not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner will not be liable for the payment of any costs or expenses of any Claimant under this Bond, and will have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor will be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or will permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

SECTION 610

PERFORMANCE BOND

CONTRACTOR (name, address, and telephone number):

SURETY (name, address of principal place of business, and telephone number):

OWNER (name, address, and telephone number):
City of Treasure Island ("City")
152 108th Avenue
Treasure Island, FL 33706
(727) 547-4575

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location): **BEAUTIFICATION OF 125TH AVE - ITB – 1819-08**

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Florida.

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Authority, or other party will be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice must indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner must attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 must be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor will be allowed a reasonable time to perform the Construction Contract, but such an agreement will not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 will not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety must promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the

Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety will be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner will be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner will be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety will not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and will be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.

12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

SECTION 00700

**CONTRACT AND GENERAL CONDITIONS FOR
CONSTRUCTION SERVICES**



ITB 1819-08 – BEAUTIFICATION OF 125TH AVE

This Agreement is made this _____ day of _____ 2019 by and between the City of Treasure Island, a municipal corporation (the “CITY”) whose address is 152 108th Avenue, Treasure Island, FL 33706, and _____, a corporation authorized to do business in the State of Florida (the “CONTRACTOR”), whose address is _____, who hereby agree as follows:

ARTICLE 1 - DEFINITIONS

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

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

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

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

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

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

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

CITY - The City of Treasure Island, or the City of Treasure Island's authorized representatives.

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

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

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

Contract/Agreement - The agreement between the CITY and the CONTRACTOR as defined by the Contract Documents. This Contract represents the entire agreement between the parties hereto and supersedes any prior negotiations, representations, agreements, or understandings, either written or oral.

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

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

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

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

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

Day - As referenced in this Contract “Day” includes all calendar days including weekends, holidays, and days of inclement weather. The word “Day” means a calendar day of 24 hours measured from midnight to the next midnight.

Defective - The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment.

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

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

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

Furnish, Install, Perform, Provide - The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Project Site (or some other specified location) ready for use or installation and in usable or operable condition. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use. If the Contract Documents establish an obligation of CONTRACTOR with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then CONTRACTOR shall furnish and install said services, materials, or equipment complete and ready for intended use.

Liens - Charges, security interest or encumbrances upon Contract related funds, real property, or personal property.

Lump Sum - The Contractor under the Lump Sum Contract is responsible for completing the project within the agreed fixed cost set forth in the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Submittal - Shop drawings, material data, samples and product data required by the Engineer of Record for approval.

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

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

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

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

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

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

Unit Price Work - Work to be paid on the bases of unit prices.

ARTICLE 2 - PRELIMINARY MATTERS

1. Delivery of Documents

When the CONTRACTOR delivers the signed Contract to the CITY, the CONTRACTOR will also deliver to the CITY such bonds and insurance policies, certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents.

2. Copies of Documents

The CITY will furnish to the CONTRACTOR three copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents including one fully executed counterpart of the Contract, and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

3. Commencement of Contract Times; Notice to Proceed

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

4. Starting the Project

The CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work may be done at the site prior to the date on which the Contract Time commences to run.

5. Before Starting Construction

a. Preliminary Schedules

Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), the CONTRACTOR shall submit to Engineer for timely review:

- i. a preliminary Construction Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any milestones specified in the Contract and identifying the times/dates of required submittals and time requirements for Engineer's review of the submittals and the performance of related construction activities; and
- ii. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Amount and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- iii. As provided for in Article 8, the Schedule of Values will be reviewed by the Engineer and approved by the CITY, and will be used as the basis for reviewing the CONTRACTOR's Applications for Payment. The Schedule of Values will include a cost breakdown indexed per the Sections of the Specifications, which shall clearly set forth labor as distinct from materials and from equipment.

6. Preconstruction Conference

Before any Work at the Project Site is started, a conference attended by the CITY, CONTRACTOR, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 5, procedures for handling Shop Drawings, Samples, and other submittals,

processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

At this conference the CITY and CONTRACTOR each will designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

7. Finalizing Schedules

At least ten days before submission of the first Application for Payment a conference attended by the CONTRACTOR, CITY, ENGINEER and others as appropriate will be held to finalize the schedules submitted in accordance with the Contract. The finalized progress schedule will be acceptable to the CITY as providing an orderly progression of the Work to completion within the Contract Time, but acceptance will neither impose on the CITY responsibility for the progress or scheduling of the Work nor relieve the CONTRACTOR from full responsibility therefor. The finalized schedule of values will be acceptable to the CITY as to form and substance.

ARTICLE 3 - CONTRACT DOCUMENTS

1. Intent of Contract Documents

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

It is the intent of the Contract to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract. CONTRACTOR is responsible for the construction and coordination of the parts of the Project, and all systems provided shall be completely compatible and fully functional without additional cost to the CITY.

Unless otherwise stated in the Contract, if there is a discrepancy between the electronic or digital versions of the Contract (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version governs.

Engineer will issue clarifications and interpretations of the Contract as provided in this Contract.

Each and every provision of law and clause required by law to be inserted in this Contract is deemed to be inserted in this Contract, and will be read and enforced as though they were included in this Contract, and if through mistake or otherwise, any such provision is not included, or if not correctly inserted, then upon the application of either party, the Contract Documents will be physically amended to make such insertion.

2. Reuse of Documents

Neither the CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the CITY will have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CITY and Engineer and specific written verification or adaptation by Engineer; or have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without CITY's express written consent, or violate any copyrights pertaining to such Contract Documents.

The prohibitions of this Paragraph will survive final payment, or termination of the Contract. Nothing in this Contract will preclude the CONTRACTOR from retaining copies of the Contract Documents for record purposes.

3. References and Manuals

Reference in the Contract Documents to standard specification manuals, reference standards, or codes of any technical society, organization, or association, to the laws or regulations, whether such reference be specified or by implication, means the standard specification, manual, reference standards, codes, law, or regulation in effect at the time of the opening of bids or on the effective date of the Contract, except as may be otherwise specifically stated in the Contract Documents.

No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, will be effective to change the duties or responsibilities of CITY, CONTRACTOR, or Engineer, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to CITY, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by the Engineer.

ARTICLE 4 - SCOPE OF WORK

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

ARTICLE 5 - SUBSTANTIAL COMPLETION DATE AND DELAYS

The CONTRACTOR shall commence work within 15 days from the date of Notice to Proceed. The CONTRACTOR shall achieve Substantial Completion of Work not later than **100** consecutive calendar days after the date specified by the Notice to Proceed, subject to adjustments of the Contract Time as provided in the Contract Documents. The CONTRACTOR shall achieve Final Completion of the Work not later than **20** days after reaching Substantial Completion.

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

The CONTRACTOR shall carry on the Work and adhere to the Construction Schedule during all disputes or disagreements with CITY. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as may be permitted herein, or as CITY and CONTRACTOR may otherwise agree to in writing.

If CONTRACTOR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of CITY, CONTRACTOR, and those for which they are responsible, then CONTRACTOR may be entitled to an equitable adjustment in Contract Times. CONTRACTOR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR's ability to complete the Work within the Contract Times. Such an adjustment will be the CONTRACTOR's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include, but are not limited to, the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions;
3. Acts or failures to act of utility; and
4. Acts of war or terrorism.

No delay will entitle the CONTRACTOR to an increase of the Contract Amount except where the CITY or Engineer acted in bad faith to prevent the progress of Work. The CONTRACTOR acknowledges that in agreeing to the Contract Amount, it has assessed the potential impact of the limitations of this section on its ability to recover additional compensation in connection with a Work delay or interference and the CONTRACTOR agrees that the limitations will apply, regardless of the accuracy of the CONTRACTOR's assessment or actual costs incurred by the CONTRACTOR in connection with any such delays or interference.

ARTICLE 6 - CONTRACT AMOUNT

The CITY shall pay the CONTRACTOR the sum of \$ _____, subject to additions and deductions as provided in the Contract Documents for all Work described in Article 4.

ARTICLE 7 - LIQUIDATED DAMAGES/SPECIAL DAMAGES

1. Liquidated Damages

The CONTRACTOR and CITY mutually agree that said work will be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the CONTRACTOR and CITY, that the time for the completion of the Work described herein is a

reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing. CONTRACTOR and CITY recognize that time is of the essence.

If the CONTRACTOR neglects, fails or refuses to complete the work within the time specified, or in the time any proper extension is granted in accordance with this Contract, then the CONTRACTOR agrees, as a part of consideration for the award of this Contract, to pay the CITY the amount of \$200 for each calendar day beyond the Substantial Completion date, not as a penalty, but as liquidated damages for such breach of contract. Furthermore, the CONTRACTOR agrees to pay the CITY the amount of \$200 for each calendar day the Work remains incomplete after the date established for Final Completion.

This amount is fixed and agreed upon by and between the CONTRACTOR and CITY because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the CITY would in such event sustain, and said amount is agreed to be the amount of damages which the CITY would sustain. However, these liquidated damages will not be construed to limit the CITY's damages for any claim for CONTRACTOR's negligence, defective performance or their other breach of this contract. Also, failure to meet requirements for substantial or final completion will subject the CONTRACTOR to re-inspection fees as set forth in Article 9, (c)(18), Testing and Inspections.

Both Liquidated Damages and Re-inspection Fees will be implemented using a Deductive Change Order or Construction Change Directive.

2. Special Damages

In addition to the amount provided for liquidated damages, CONTRACTOR shall reimburse CITY: (1) for any fines or penalties imposed on CITY as a direct result of the CONTRACTOR's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by CITY for engineering, construction observation, inspection, and administrative services needed after the time for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

After CONTRACTOR achieves Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CONTRACTOR shall reimburse CITY for the actual costs reasonably incurred by CITY for engineering, construction observation, inspection, and administrative services needed after the time specified for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 8 - PAYMENTS

1. Progress Payments

The Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Engineer. Any progress payments on account of Unit Price Work will be based on the number of units completed.

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

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

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

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

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

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

Subtract the aggregate of previous payments made by the CITY.

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

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

Please note that some portion of the Contract Amount may be paid from the proceeds of a grant, loan, or revenue bonds (hereinafter "funding") obtained by the CITY for this Work and the funding documents may impose certain conditions, limitations, procedures, and restrictions. The CONTRACTOR shall coordinate with the CITY and the Engineer in order to comply with the conditions, limitations, procedures, and restrictions that related to the delivery of materials, the Work, applications for payment, and other matters concerning the administration of the Contract.

2. Final Inspection and Payment

Final Inspection. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Payment

Final payment, comprising the entire unpaid balance of the Contract Amount, will be made by the CITY to the CONTRACTOR when the Contract has been fully performed and

accepted by the CITY. Furthermore, payment will be made within 30 days of the CITY receiving a final Certificate of Payment from the Engineer. CONTRACTOR's acceptance of final payment from the CITY will constitute a full waiver and release by CONTRACTOR of all claims against the CITY arising out of or related to the Project.

3. CONTRACTOR Applications for Payment

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

Applications for Payment not include:

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

The Application for Payment will also be accompanied by a bill of sale, invoice or other documentation warranting the CITY has received the materials and equipment free and clear of all Liens (in the form of a waiver and release as contemplated in Chapter 713 of the Florida Statutes), and evidence that the materials and equipment are covered by appropriate property insurance, warehouse bond, or other arrangements to protect the CITY's interest therein, all of which must be satisfactory to the CITY.

The CONTRACTOR shall furnish evidence that payment received on the basis of materials and equipment not incorporated and suitably stored on Project Site has in fact been paid to the respective supplier(s) in the form of a waiver and release as contemplated by Chapter 713 of the Florida Statutes within 30 days of payment by the CITY. Failure to provide such evidence of payment may result in the withdrawal of previous approval(s) and removal of the cost of related materials and equipment from the next submitted Application for Payment.

4. Certification of Payment Requests

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

5. Criteria for Withholding a Certificate for Payment

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

- Defective Work not corrected;
- Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
- Damages owed to the CITY or others;
- Evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or estimated Liquidated Damages;
- Persistent failure to carry out the Work in accordance with the Contract Documents;
- CONTRACTOR failed to provide and maintain required bond or insurance;
- CONTRACTOR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Project Site;
- CITY has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
- An event that would constitute a default by CONTRACTOR and therefore justify a termination for cause has occurred; or
- Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific bond satisfactory to CITY to secure the satisfaction and discharge of such Liens.

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

6. CONTRACTOR's Warranty of Title

CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to CITY free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than the time of payment by the CITY.

No material or supplies for Work may be purchased by the CONTRACTOR or Subcontractor subject to any title mortgage or under any conditional sale contract or any other agreement by which an interest is retained by the Seller. CONTRACTOR warrants that CONTRACTOR has good title to all materials and supplies used by CONTRACTOR in the Work, free from all liens, claims, or encumbrances.

CONTRACTOR shall defend, indemnify, and save CITY and Engineer harmless from all claims (including but not limited to expert fees, and attorneys' fees and costs) growing out of the lawful demand the Subcontractors, Suppliers, laborers, workman, mechanics, material men and furnishers and machinery and parts thereof, equipment, power tools, and all supplies incurred in the furtherance of the performance of this Contract. CONTRACTOR shall, at CITY's request, furnish satisfactory evidence that all applications of the nature here and above designated have been paid, discharged, or waived. If CONTRACTOR fails to do so, then CITY may, after having served written notice on

said CONTRACTOR, either pay unpaid bills in which CITY has written notice direct, or withhold from CONTRACTOR's unpaid compensation a sum of money deemed reasonable sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the Contract, but in no event will the provisions of this sentence be construed to impose any obligations upon the CITY to either CONTRACTOR or CONTRACTOR Surety. In paying any unpaid bills of the CONTRACTOR, CITY will be deemed the agent of the CONTRACTOR and any payment so made by the CITY will be considered a payment made under the Contract by CITY to CONTRACTOR and CITY will not be liable to CONTRACTOR for any such payment made in good faith.

7. Substantial Completion of a Designated Portion

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

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

8. Substantial Completion

When the CONTRACTOR considers that the Work or a portion thereof, which the CITY agrees to accept separately, is Substantially Complete, the CONTRACTOR shall prepare and submit to the Engineer a comprehensive list of items to be completed and corrected. The CONTRACTOR shall proceed promptly to complete and correct items on the list. Failure to include an item on the list does not relieve the CONTRACTOR of the responsibility to complete all Work in accordance with the Contract Documents.

Upon receipt of the CONTRACTOR's list, the Engineer will make an inspection, and with the approval of the CITY, determine whether the Work, or designated portion thereof, is Substantially Complete. If the Engineer's inspection discloses any item, whether or not included on the CONTRACTOR's list, which is not in accordance with the requirements of the Contract Documents, the CONTRACTOR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer.

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

- Security;

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

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

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

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

9. Final Acceptance and Payment

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

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

Furthermore, neither final payment nor any remaining retainage, will become due until the CONTRACTOR executes and presents to the CITY a “Certificate of Claims Paid” and “Release of all Claims” form in such a form as may be acceptable to the CITY. Acceptance of final payment by the CONTRACTOR will comprise a release of all claims under the Contract, and receipt of which acknowledges full and complete payment for all Work done, materials and equipment furnished, and damages or claims arising under this Contract.

Application for Final Payment:

- (a) After CONTRACTOR has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Article 10,(c)(10)), and other documents, CONTRACTOR may make application for final payment.
- (b) The final Application for Payment must be accompanied (except as previously delivered) by:

- i. All documentation called for in the Contract Documents;
- ii. Consent of the surety, if any, to final payment;
- iii. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to CITY free and clear of any liens or other title defects, or will so pass upon final payment;
- iv. A list of all disputes that CONTRACTOR believes are unsettled; and
- v. Complete and legally effective releases or waivers (satisfactory to CITY) of all lien rights arising out of the Work, and of liens filed in connection with the Work.

(c) CONTRACTOR must furnish receipts or releases in full and an affidavit of CONTRACTOR that: (a) the releases and receipts include all labor, services, material, and equipment for which a lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY might in any way be responsible, or which might in any way result in liens or other burdens on CITY's property, have been paid or otherwise satisfied. If any Subcontractors or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to CITY to indemnify CITY against any lien, the CITY at its option may issue joint checks payable to CONTRACTOR and specified Subcontractors and Suppliers.

10. Corrective Period

If within one year from the date of final Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work that is found to be defective, or if the repair of any damages to the Project Site, adjacent areas that CONTRACTOR has arranged to use through construction easements or otherwise, and other adjacent areas used by CONTRACTOR as permitted by laws and regulations, is found to be defective, then CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY's written instructions:

- (a) Correct the defective repairs to the Project Site or such other adjacent areas;
- (b) Correct the defective Work;
- (c) If the defective Work has been rejected by the CITY, remove it from the Project and replace it with Work that is not defective; and
- (d) Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

If the CONTRACTOR does not promptly comply with the terms of the CITY's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the defective Work corrected or repaired or may have the rejected Work removed or replaced. The CONTRACTOR shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution

costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the corrective period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

The CONTRACTOR's obligations under this paragraph are in addition to all other obligations and warranties. The provision of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 9 - TERMINATION OR SUSPENSION OF THE CONTRACT

1. CITY May Suspend Work

At any time and without cause the CITY may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to the CONTRACTOR and Engineer. Such notice will state Work is suspended and will fix the date on which Work will be resumed. The CONTRACTOR shall resume the Work on the date so fixed. The CONTRACTOR shall be entitled to an adjustment in the Contract Amount for an extension of the Contract Time, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

2. Termination by the CONTRACTOR

The CONTRACTOR may terminate the Contract if the Work is stopped for a period of 90 days or longer only for the following reasons:

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

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

3. Termination by CITY For Cause

The occurrence of any one or more of the following will constitute a default by CONTRACTOR and justify the CITY's termination for cause:

- CONTRACTOR's refusal or failure to supply properly skilled workers or materials;
- CONTRACTOR's disregard of the laws, ordinances, or regulations of public authorities having jurisdiction over the Work;
- CONTRACTOR substantially breaching provisions of the Contract Documents;
- CONTRACTOR's repeated disregard of the authority of the CITY or Engineer;

- CONTRACTOR becomes insolvent such that CONTRACTOR is unable to meet its debts as they mature, unable to pay its debts generally, or institutes or has instituted against it under any law relating to bankruptcy, insolvency, or reorganization or relief of debtor, a proceeding which seeks the adjustment protection or composition of CONTRACTOR or its debts or an Order providing for appointment of a receiver, trustee, or other similar official for Subcontractor part of its property;
- CONTRACTOR fails to comply with the public records requirements of this Contract; or
- If the CONTRACTOR abandons the Work or sublets this Contract or any portion of this Contract without the previous written consent of the CITY, or if the Contract or any claim is otherwise assigned by the CONTRACTOR.

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

- Enforce its rights under any applicable performance bond;
- Take possession of the Work.
- Incorporate in the Work all materials, equipment, tools, and machinery stored at the Project Site or for which the CITY has paid CONTRACTOR but which are stored elsewhere;
- Accept assignment of Subcontracts; and
- Finish the Work by whatever means are available to the CITY.

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

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

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

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

under any payment bond or performance bond. Any retention or payment of money due CONTRACTOR by CITY will not release CONTRACTOR from liability.

Additionally, in the event that the CITY budgeted funds are not available for a new fiscal period, the CITY shall notify the CONTRACTOR of such occurrence, and the Contract will terminate on the last day of the current fiscal period without penalty or expense to the CITY.

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

4. Termination by the CITY for Convenience

The CITY may, without cause, order the CONTRACTOR in writing to delay or terminate the Work in whole or in part for such period of time the CITY may determine.

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

ARTICLE 10 - EXECUTION OF THE PROJECT

A. OBLIGATIONS OF THE ENGINEER

1. Engineer as CITY's Representative

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

The Engineer specifically assumes no duty or responsibility which may be construed as being for the benefit of and thereby enforceable by other parties providing labor, materials or services in connection with the Work such as, though not limited to, the CONTRACTOR, Subcontractor, Sub-subcontractors, their agents, employees, or any of their bonding companies, it being understood that the Engineer's obligations are to the CITY, and in performing such obligations the Engineer may consequently alter the burdens and expense of such other parties. The CONTRACTOR is not entitled to additional costs associated with the Engineer's performance of his/her duties unless otherwise provide in the Contract. The CITY and CONTRACTOR must communicate through the Engineer, and communications by and with the Engineer and Engineer's consultants must be through the Engineer. Communications by and with Subcontractors and Suppliers must be through the CONTRACTOR. Communication by and with other CONTRACTORs working on the site which are not parties to this Contract must be through the CITY.

2. Monitoring Progress, Quality and Compliance with Contract Requirements

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

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

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

3. Review and Approval of CONTRACTOR's Submittals

The Engineer will review and approve the CONTRACTOR's Submittals, such as Shop Drawings and product Samples, for the limited purpose of checking for compliance with the Contract Documents. The Engineer's review does not relieve the CONTRACTOR of their obligations under the Contract to comply with the plans and specifications.

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

Engineer has the authority to reject work.

4. Interpret Plans

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

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

The Engineer may, as the Engineer deems desirable, issue additional drawings or information indicating in greater detail the construction or design of the various parts of the Work; such drawings or information may be affected by field order or other notice to the CONTRACTOR, and provided such drawings or information may be affected by field

order or other notice to the CONTRACTOR, and provided such drawings or information are reasonable consistent with the previously existing Contract Documents, the Work will be executed in accordance with such additional drawings or information without additional cost or extension of the Contract Time. If the CONTRACTOR claims additional cost or time on account of such additional drawings or information, the CONTRACTOR must give the notice provided in Article 13.

5. Approving Non-Substantial Deviations

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

6. Certifying Applications for Payment

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

7. Preparing Change Orders

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

8. Substantial Completion and Acceptance Reviews

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

B. OBLIGATIONS OF THE CITY

1. Project Manager

The CITY will designate a Project Manager, through which the CITY will communicate with the Engineer and CONTRACTOR.

2. Information Provided by CITY

The CITY shall furnish surveys describing physical characteristics of the site, and utility locations, except those utilities that are not owned by the CITY.

Information or services under the CITY's control will be promptly supplied to the CONTRACTOR in order to promote orderly progress of the Work. Such information and services will be provided to the CONTRACTOR free, unless otherwise provided in the Contract Documents.

The CITY will furnish the CONTRACTOR, free of charge, a maximum of ten sets of Construction Documents.

3. Permits

Unless otherwise provided in the Contract Documents, the CONTRACTOR shall secure and pay for any and all Permits necessary to construct the facilities described by the Contract Documents.

4. CITY's Right to Stop Work

If the CONTRACTOR fails to correct Work that is not in accordance with requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the CITY may order the CONTRACTOR to stop work or any portion thereof until the cause of such order has been eliminated. Such an order must be in writing. CONTRACTOR is not entitled to a change in Contract Amount or Contract Time related to a Stop Work Order.

5. CITY's Right to Carry Out Work

If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents, after giving seven (7) days written notice, the CITY may without prejudice to other remedies, correct such deficiencies. In such a case, a Change Order will be issued deducting from the Contract Amount the cost of correcting such deficiencies, including additional design and administrative costs as may be necessary by default, neglect, or failure.

6. Interpretation of Contract Documents and Performance

In all matters concerning performance under this Contract and requirements of the Contract Documents, the CITY's interpretation will prevail.

7. Approving Substantial Deviations

The CITY's written approval is required for all changes in the Work involving:

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

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

8. Replacement of Engineer

The CITY may at its discretion appoint an engineer to replace the Engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9. Limitations on CITY's Responsibilities

The CITY will not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with laws and regulations applicable to the performance of the Work. The CITY will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. OBLIGATIONS OF THE CONTRACTOR

1. Superintendent

The CONTRACTOR shall employ a competent Superintendent and necessary assistants who will be in attendance at the Project Site during performance of the Work. The Superintendent shall represent the CONTRACTOR, and communications given to the Superintendent will be as binding as if given to the CONTRACTOR.

2. Review of Contract Documents

The CONTRACTOR shall carefully review Contract Documents and information provided by the CITY, and will at once report to the Engineer any errors, omissions, or inconsistencies discovered.

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

3. Review of Field conditions

The CONTRACTOR shall take field measurements and verify field conditions and carefully compare such with the Contract Documents before commencing the Work. Errors, omissions, or inconsistencies discovered must be reported to the Engineer at once.

4. Supervision and Construction Procedures

The CONTRACTOR shall perform the Work in accordance with the Contract Documents and Submittals approved by the Engineer.

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

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

The CONTRACTOR will not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer, or the CITY's

Project Manager, in administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the CONTRACTOR.

5. Inspection of Work

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

6. Labor and Materials

The CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the Project Site.

Except as otherwise required for the safety or protection of persons or the Work or property at the Project Site or sites adjacent to the Project Site, and except as otherwise stated in the Contract Documents, all Work at the Project Site must be performed during regular working hours, Monday through Friday. The CONTRACTOR will not perform Work on a Saturday or Sunday, or any legal holiday. The CONTRACTOR may perform Work outside regular working hours or on Saturdays, Sundays or legal holidays only with the CITY's written consent.

- (a) Regular working hours will be 8:00 AM to 5:00 PM.
- (b) CITY's legal holidays are New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day after Thanksgiving, Christmas Eve, and Christmas Day.

The CONTRACTOR is responsible for the cost of any overtime pay or other expense incurred by the CITY for Engineer's or CITY's Project Services, and construction observation services, occasioned by the performance of Work on Saturday, Sunday or any legal holiday, or as overtime on any regular work day. If CONTRACTOR is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then CITY may impose a reasonable set-off against payments due under Article 8. Overtime costs for personnel employed by the Engineer or CITY's consultant will be calculated in accordance with the terms of their respective contracts with the CITY.

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

All materials and equipment incorporated into the Work must be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications must expressly run to the benefit of the CITY. If required by the CITY or Engineer, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. The use of asbestos or asbestos-based fiber materials is prohibited in this Project.

All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

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

7. Warranty

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

The CONTRACTOR shall obtain the following guarantee/warranty from the manufacturer of all major pieces of equipment furnished and installed on this Project. Such guarantee/warranty must be for the benefit of the CITY and be furnished in writing by the manufacturer. The CONTRACTOR's and manufacturer's obligations under this provision are in addition to other express or implied warranties under the Contract Documents and under the law and in no way diminish any other right that the CITY may have against CONTRACTOR or manufacturer for faulty material, equipment, or work. The warranty period will not be interpreted as a limitation on the time in which the CITY can enforce such other duties, obligations, rights, or remedies.

The manufacturer warrants and guarantees for a period of one year from the date of Final Completion, or such longer period that may be specified in the Contract Documents, that all materials and equipment furnished and installed will be free from flaws, defects in material and workmanship and shall be in conformance with the Contract Documents.

8. Indemnification, Insurance and Bonds.

The CONTRACTOR is responsible for providing the CITY with Indemnification, Insurance, and Bonds as required under Article 14 of this Contract.

9. Construction Schedule

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

10. Project Records

The CONTRACTOR shall maintain the following project records in a safe place at the project site:

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

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

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

Additionally, the Superintendent's Log must be delivered to the Engineer for submittal to the CITY upon completion of the Work. Additionally, the Superintendent's Log must at a minimum document the dates and times of critical inspections; instructions received from the Engineer; and weather conditions including dates, times and amount of rainfall received.

Upon completion of the WORK, the CONTRACTOR must deliver these record documents to Engineer.

11. Approval of Shop Drawings and Other Submittals

The CONTRACTOR shall review, approve and submit to the Engineer, Shop Drawings, Product Data, Samples, and other Submittals required by the Contract Documents for approval by the Engineer prior to their implementation. The CONTRACTOR may not perform any portion of the Work requiring submittal and review of these or similar data until approved by the Engineer. Such Work must be accomplished in accordance with approved Submittals.

The CONTRACTOR may not submit any shop drawing or other submittal that is merely a tracing or other copy of any of the Contract Documents. Each submittal item must be prepared by the CONTRACTOR or for the CONTRACTOR by a Subcontractor or Supplier of the CONTRACTOR. The Engineer has the authority to reject any submittal items that violate this provision, and no extension of Contract Time will be given on

account of such rejection. Engineer's review and action on any such Submittals will not serve as a basis for or give rise to any claim in favor of the CONTRACTOR or any third party against the CITY or Engineer.

By submitting the materials described above to the Engineer for approval, the CONTRACTOR represents that they have determined and verified:

- All field measurements;
- Field construction criteria related to the Submittals and has checked and verified their compliance with requirements of the Contract Document;
- Suitability of all materials and equipment;
- All information relative to CONTRACTOR's responsibility for means, methods, techniques, sequences, and procedures of construction and safety precautions; and
- The CONTRACTOR will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or other Submittals. The CONTRACTOR will not be relieved of responsibility for deviations from the requirements of the Contract Documents unless the Engineer makes specific written acceptance of said deviations on the Engineer's letterhead.

If the CONTRACTOR requests a change of a previously approved submittal item, the CONTRACTOR will be responsible for Engineer's charges to CITY for its review time, and CITY may impose a set-off against payments due to CONTRACTOR to secure reimbursement for such charges, unless the need for such change is beyond the control of the CONTRACTOR.

12. Use of the Project Site

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

13. Limitation on Use of Project Site and Other Areas

CONTRACTOR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Project Site, adjacent areas that CONTRACTOR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by laws and regulations, and will not unreasonably encumber the Project Site and such other adjacent areas with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for (a) damage to the Project Site; (b) damage to any such other adjacent areas used for CONTRACTOR's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible.

If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CONTRACTOR or those for which the CONTRACTOR is responsible, the CONTRACTOR shall (a) take immediate corrective or remedial action as required by paragraph 25 below, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by laws and regulations, indemnify and hold harmless CITY and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such CITY or occupant against CITY, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CONTRACTOR's performance of the Work, or because of other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible.

14. Cleanup of Project Site

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

15. Observations and Inspections

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

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

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

16. Correcting Rejected Work

The CONTRACTOR shall promptly correct Work rejected by the Engineer for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The CONTRACTOR shall bear the costs of correcting such Work, including costs for additional testing and inspections, compensation for any additional design or necessary administrative costs, fines levied against the CITY by governmental authorities because the Work is defective, and the costs of repair or replacement of Work of others resulting from defective Work. Prior to final payment, if CITY and CONTRACTOR are unable to agree as to the measure of such claims, costs, losses and damages resulting from defective Work, then the CITY may impose a reasonable set-off against payments due under Article 8.

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

If the CONTRACTOR fails to correct nonconforming Work, within a reasonable time, the CITY may complete the work in accordance with the provisions in Article 10(B)(5) of this Contract.

In exercising the rights and remedies under this paragraph 10(C)(16), the CITY shall proceed expeditiously. In connection with such corrective or remedial action, the CITY may exclude the CONTRACTOR from all or part of the Project Site, take possession of all or part of the Work and suspend the CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at the Project Site or for which CITY has paid CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the CITY, the CITY's representatives, agents and employees, the CITY's other contractors, and Engineer and Engineer's consultants access to the Project Site to enable the CITY to exercise the rights and remedies under this paragraph.

All claims, costs, losses, and damages incurred or sustained by the CITY in exercising the rights and remedies under this paragraph 10(C)(16) will be charged against CONTRACTOR has set-offs against payments due under Article 8. 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.

The CONTRACTOR will not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by CITY of Authority's rights and remedies under this paragraph 10(C)(16).

17. Acceptance of Non-Conforming Work

The CITY may at its option accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. In such cases the Contract Amount will be reduced as appropriate and equitable. If the parties are unable to agree as to the decrease in Contract Amount, reflecting the diminished value of Work accepted, then the CITY may impose a reasonable set-off against payments due under Article 8. Such adjustment will be effected whether or not final payment has been made. If acceptance of defective Work occurs after Final Payment, CONTRACTOR shall pay an appropriate amount to the CITY.

18. Tests & Inspections

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

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

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

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

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

19. Equal Opportunity Employer

The CONTRACTOR is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The CONTRACTOR will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws.

20. Taxes

The CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the Work.

The CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge

of the CITY or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed by the CITY in the Contract Documents.

To the fullest extent permitted by laws and regulations, the CONTRACTOR shall indemnify and hold harmless CITY and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. This obligation will survive acceptance of the Work under this Contract and termination of the Contract.

21. Laws and Regulations

The CONTRACTOR shall give all notices required by and will comply with all laws and regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable laws and regulations, neither the CITY nor the Engineer shall be responsible for monitoring the CONTRACTOR's compliance with any laws or regulations. The CONTRACTOR agrees to comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not limited to, the following:

- Title VI of the 1964 Civil Rights Act.
- Title VII of the 1964 Civil Rights Act, as amended by the Equal Employment Opportunity that prohibits discrimination in employment.
- Age Discrimination Act of 1973.
- Contract Work Hours and Safety Standards Act.
- Section 504 of the Rehabilitation Act prohibiting discrimination in the employment of the handicapped.
- Fair Labor Standards Act.
- Chapter 112, Florida Statutes, prohibiting conflicts of interest in the procurement of contracts with a governmental agency.
- Chapter 119, the Public Records Act.
- Trench Excavation System & Shoring standards adopted by the Department of Labor and Employment Security and related trenching regulations.
- Construction Work Hours and Safety Act (Construction Safety Act).

The CONTRACTOR, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county, and CITY, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Contract or are adopted at any time following the execution of their Contract.

If the CONTRACTOR performs any Work or takes any other action knowing or having reason to know that it is contrary to laws or regulations, the CONTRACTOR will bear all resulting costs and losses, and will indemnify and hold harmless the CITY and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

22. Applicable Licensing

The CONTRACTOR, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully providing the services set forth herein.

23. Safety of Employees and Property

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

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

The CONTRACTOR will not load or permit any part of the construction or Project Site to be loaded so as to endanger its safety. The CONTRACTOR shall comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss. The CONTRACTOR shall notify CITY, owners of adjacent property, utilities, other contractors performing work at or adjacent to the Project Site, when the prosecution of work may affect them, and will cooperate with them in the protection, removal, relocation, and replacement of their property or Work in progress.

When use or storage of explosives or equipment or unusual methods is necessary for execution of the Work, the CONTRACTOR shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The CONTRACTOR is 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 the Project Site in accordance with laws or regulations.

The CONTRACTOR shall promptly remedy the damage and loss (other than damage or loss insured under requirements of the Contract Documents) to property referred in this Section caused in whole or in part by the CONTRACTOR, Subcontractor, Sub-Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for

whose acts they may be liable and for which the CONTRACTOR is responsible, except damage or loss attributable to acts or omissions of the CITY or Engineer or anyone directly or indirectly employed by any of them, or by anyone for whose acts wither of them may be liable and not attributable to the fault or negligence of the CONTRACTOR.

The CONTRACTOR shall designate a qualified and experienced safety representative who is a responsible member of the CONTRACTOR's organization at the Project Site whose duties and responsibilities will be the prevention of accidents and the maintaining and supervising of safety precautions and programs. This person will be the CONTRACTOR's Superintendent unless otherwise designated by the CONTRACTOR in writing to the CITY and Engineer.

CONTRACTOR's duties and responsibilities for safety and protection will continue until such time as all the Work is completed and Engineer has issued a notice to CITY and CONTRACTOR in accordance with Article 8(4) that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONTRACTOR's duties and responsibilities for safety and protection shall resume whenever CONTRACTOR or any Subcontractor or Supplier returns to the Project Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

26. Emergencies

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

ARTICLE 11 - SUBCONTRACTORS/SUPPLIERS

1. Reporting of Proposed Subcontractors

As soon as practical after the issuance of a Notice to Proceed, or as otherwise provided in the Contract Documents, the CONTRACTOR will furnish in writing to the Engineer the names of persons or entities, including Subcontractors, material suppliers, equipment, Suppliers, and fabricators proposed for principal portions of the Work . After conferring with the CITY, the Engineer will promptly inform the CONTRACTOR in writing whether or not there are reasonable objections to any of the proposed persons or entities unto which the CONTRACTOR proposes to enter into an agreement. Reasonable objections include a Subcontractor or Supplier who is not licensed, qualified or certified as required by State Law.

- A. No acceptance by the CITY of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, will constitute a waiver of the right of the CITY to the completion of the Work in accordance with the Contract Documents.
- B. The CONTRACTOR is fully responsible to CITY and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities

performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.

- C. The CONTRACTOR is solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- D. The CONTRACTOR shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or CITY, except through CONTRACTOR or in case of an emergency, or as otherwise expressly allowed herein.
- E. The CITY may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CONTRACTOR on account of Work performed for CONTRACTOR by the particular Subcontractor or Supplier.
- F. Nothing in the Contract Documents:
 - i. will create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between CITY or Engineer and any such Subcontractor, Supplier, or other individual or entity; or
 - ii. will create any obligation on the part of CITY or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by laws and regulations.

2. Rejection of Subcontractors

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

3. Removal of Subcontractors

The CONTRACTOR will not change a Subcontractor, person or entity previously selected unless the CITY makes reasonable objection to such change.

4. Subcontractors Bound by Contract Documents

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

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

In all Contracts between the CONTRACTOR and Subcontractor(s), Suppliers, or fabricators, the CITY will be named as third party beneficiary. The CONTRACTOR will provide CITY with a copy of each such sub-Contract prior to beginning the Work, and will further automatically provide CITY with copies of all subcontract warranties and invoices for materials and services for the Work. Failure to timely provide these documents will be considered a material breach of the Contract.

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

- Assignment is effective only after termination of the Contract by the CITY for cause pursuant to Article 9(3) of this Contract.
- Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5. Subcontractor Payment

Unless otherwise provided by law, within 10 days after the CONTRACTOR's receipt of payment, the CONTRACTOR will remit payment due to the Subcontractor for labor, services, and material furnished.

If Subcontractor receives payment from the CONTRACTOR for labor, service, or material furnished by Subcontractors and Suppliers hired by the Subcontractor, Subcontractor shall remit payment due to those subcontractors and Suppliers within 7 days of subcontractor's receipt of payment.

ARTICLE 11 - CONSTRUCTION BY CITY OR SEPARATE CONTRACTORS

1. CITY's Right to Perform Construction

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

2. CITY to Provide Coordination

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

ARTICLE 12 - AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

1. Contract Held Valid

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

2. Construction Change Directive

A Construction Change Directive prepared and signed by the Engineer will direct all changes in the Work. A Construction Change Directive signed by the CONTRACTOR indicates agreement of the CONTRACTOR with the actions specified in the Directive, including the inclusion or absence of an adjustment in Contract Amount or Contract Time or the method for determining them. Construction Change Directives will be issued using AIA Form G714.

3. Construction Change Order

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

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

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

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

4. Changes in Contract Amount

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

5. Cost of Work

A. The term "Cost of Work" or "Direct Cost", for the purpose of Change Orders, means the costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Change Order Work. Except as may be agreed to in writing by the CITY, such costs will be in amounts no higher than those prevailing in the area of the project and may include the following categories:

- Labor of CONTRACTOR employees (payroll, taxes, fringe benefits, worker's compensation, health and retirement benefits, sick leave).

- Owned equipment (at lowest applicable equipment manual rate).
- Rented equipment (at actual rental rate).
- Materials.
- Supplies.
- Subcontractor's costs.
- Bonds and insurance.

The CONTRACTOR shall require all Subcontractors and Suppliers to comply with all requirements of, and provide itemizations of all claims in accordance with this Article.

For all changes, the CONTRACTOR shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the Engineer. When a credit is due, the amount of the credit to be allowed by the CONTRACTOR to the CITY for any such change which results in a net decrease in direct cost will be the amount of the actual net decrease in direct cost as determined by the Engineer plus the actual reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit will be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail will be an itemization of all man hours required by discipline/trade with the unit cost per man hour and total labor price, labor burden equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit allowance.

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

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

B. The term "Cost of Work" or "Direct Cost" will not include any of the following:

- Payroll costs and other compensation of the CONTRACTOR's officers, executives, principals (of partnership or sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the CONTRACTOR whether at the Project Site or in its

principal or branch office for general administration of the Change Order Work and not specifically included in the agreed upon schedule of job classifications, all of which are to be considered administrative costs covered by the CONTRACTOR's allowance for overhead and profit.

- Extraordinary fringe benefits not specifically identified, above.
- Expenses of CONTRACTOR's principal and branch offices other than the CONTRACTOR's office at the job site.
- Any part of the CONTRACTOR's capital expenses, including interest on the CONTRACTOR's capital used for the Change Order Work and charges against the CONTRACTOR for delinquent payments.
- Costs due to the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction for defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included above in Subsection A.

6. Changes in Contract Time

Only construction Change Order will grant changes in Contract Time. Claims for disputes concerning Contract Time will be determined in accordance with Article 13 of this Contract.

7. Changes in Contract Time Due to Weather Conditions

The CONTRACTOR shall consider climatic conditions in preparing the Construction Schedule and must anticipate periods where work may not be practical due to adverse weather conditions.

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

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

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

9. Effective Date of Change Orders

Change Orders will become effective immediately upon execution by the CONTRACTOR, Engineer, and CITY.

10. Notification to Surety

If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Amount or Contract Times), the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 13 - CLAIMS AND DISPUTES

1. Time Limits on Claims

Contractor Claims must be made by written notice within 14 calendar days after the occurrence of the event giving rise to such Claim or within 14 calendar days after the CONTRACTOR would have reasonably first recognized the condition giving rise to the Claim, whichever is later. Claims for additional time and additional compensation must be made in accordance with the conditions of this Article.

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

2. Continuing Performance on the Contract

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

3. Claims for Concealed or Unknown Conditions

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

The Engineer will promptly investigate and report to the CITY if field conditions were found to be materially different than those which have been reasonably found given the criteria indicated above. If field conditions are found to be materially different and an adjustment in time is essential to the CONTRACTOR's ability to complete the Work, then the CITY shall prepare a Change Order providing an equitable adjustment in Contract Time.

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

The CONTRACTOR is not entitled to any adjustment in the Contract Amount or Contract Times with respect to a subsurface or physical condition if:

- (a) the CONTRACTOR knew of the existence of such condition at the time the CONTRACTOR made a commitment to CITY with respect to Contract Amount and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
- (b) the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Project Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such commitment; or
- (c) CONTRACTOR failed to give the written notice as required above.

If CITY and CONTRACTOR agree regarding CONTRACTOR's entitlement to and the amount or extent of any adjustment in the Contract Amount or Contract Times, or both, then any such adjustment must be set forth in a Change Order.

4. Claims for Additional Time

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

The sole and exclusive manner of increasing the Contract Time due to some occurrence giving rise to the representation of an RFD form is by Change Order. Timely presentation of an RFD form is the prerequisite for obtaining a Change Order. The Change Order must address any and all Claims based on the occurrence requiring a claim for additional time. The CONTRACTOR agrees that its exclusive remedy for delays in the performance of the Contract caused by events beyond its control, including delays claimed to be caused by the CITY or the Engineer or attributable to the CITY or the Engineer, and including Claims based on breach of Contract or negligence, will be an extension of the Contract Time. The CONTRACTOR waives any and all Claims based on the occurrence that are not addressed by the Change Order.

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

5. Claims for Additional Compensation

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

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

The CONTRACTOR agrees that the CITY is not liable for any Claim the CONTRACTOR fails to submit as a Request for Change Order or as a timely presented RFD form as provided in this Contract.

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

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

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

6. Resolution of Disputes by the CITY

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

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

7. Injury or Damage to Person or Property

In any party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or for others whose acts such party is legally liable; written notice of such injury or damage, whether or not insured, will be given to the other party within a reasonable amount of time not exceeding 21 days after first observance. The notice must provide sufficient detail to

enable the other party to investigate the matter. If a Claim for additional cost or time related to the Claim is asserted, it must be filed as a Claim pursuant to the conditions of the Article.

ARTICLE 14 - INDEMNIFICATION, INSURANCE AND BONDS

1. Indemnification

To the fullest extent permitted by laws and regulations, and in addition to any other obligations of CONTRACTOR under the Contract or otherwise, CONTRACTOR shall indemnify and hold harmless CITY and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

In any and all claims against CITY or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of CONTRACTORS, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

The indemnification obligations of the CONTRACTOR will not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants, and subcontractors arising out of:

- (a) The preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

In conformance with the requirements of Section 725.06, Florida Statutes, the specific considerations for CONTRACTOR's promises are:

- (a) Ten dollars (\$10.00) and other valuable consideration, in hand paid by CITY, Engineer, and Engineer's employees to CONTRACTOR, receipt whereof is hereby acknowledged and the adequacy of which CONTRACTOR accepts as completely fulfilling the obligations of CITY, Engineer, and Engineer's employees under the requirements of Section 725.06, Florida Statutes, and;

The entry of CITY and CONTRACTOR into the construction contract because, but for CONTRACTOR's promises as contained in the General Conditions, CITY would not have entered into the construction contract with CONTRACTOR.

2. Waiver of Subrogation

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

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

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

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

3. Insurance

The CONSULTANT shall maintain such insurance as specified in in Section 00140 Summary of Information to Bidders, Subsection 00140.06 - Insurance Required, of ITB 1819-08 to protect the CITY from any or all claims for property damage, personal injury, and bodily injury including death, which may arise from operations under this CONTRACT. Certificates of such insurance must be provided to the CITY prior to the CITY issuing the Purchase Order to the CONSULTANT and will also be subject to its approval for adequacy of protection. The CITY must be named as an additional insured under all policies.9. Performance, Payment, and Other Bonds

The CONTRACTOR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Amount, as security for the faithful performance and payment of all of the CONTRACTOR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in the Contract, whichever is later, except as provided otherwise by laws or regulations, the Supplementary Conditions, or other specific provisions of the Contract. The CONTRACTOR must also furnish such other bonds as are required in this Contract.

All bonds must be in the form prescribed by the Contract except as provided otherwise by laws or regulations, and will be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be

accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

The CONTRACTOR shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

If the surety on a bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then the CONTRACTOR shall promptly notify the CITY and Engineer and must, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

If CONTRACTOR has failed to obtain a required bond, CONTRACTOR may exclude the CONTRACTOR from the Project Site and exercise CONTRACTOR's termination rights under Article 9.

Upon request, the CITY shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

ARTICLE 15 - COMMENCEMENT OF STATUTORY LIMITATION PERIOD

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

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

2. Concerning Latent Defects and Fraud

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

3. Sovereign Immunity

The CITY expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Contract to the contrary, which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of the CITY for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract, will not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Contract will inure to the benefit of any third party for the purpose of allowing any claim against the CITY which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

1. Governing Law

This Contract is governed by the laws of the State of Florida.

2. Interest on Judgments

In the event of any disputes between the parties to this Contract occurs, including without limitation to their assignee and or assigns arising out of or relating in any way to this Contract which results in litigation and a subsequent adjustment award or decree against either party, it is agreed that an entitlement post judgment interests to either party and/or their attorneys shall be fixed by the proper Court at a rate of 5% per annum, simple interest. Under no circumstances will either party be entitled to pre-judgment interest. The parties' expressly acknowledge and to the extent allowed by law, hereby opt out of any provision of Federal or State Statutes not in agreement with this.

3. Successors and Assigns

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

4. Written Notice

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

Both the addresses given in the Bid Form upon which this Contract is founded and the CONTRACTOR's office at or near the site of work are designated as places to either of which notices, letters and other communication to the CONTRACTOR will be certified mailed or delivered. The delivering at the above named place or depositing of a postage paid communication or directed to the first name, place, in any post office box, regularly maintained by the post office department of any notice, letter, or other communication to

the CONTRACTOR will be deemed sufficient service on the CONTRACTOR; and the date of this service will be the date of such delivery or mailing.

5. Limitation of Liability

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

The Engineer will be liable to CONTRACTOR only to the extent of its interest in the Project; and no officer, director, partner, agent, or employee of the Engineer (or any partner of a partner or any agent or employee of a partner) will ever be personally or individually liable to CONTRACTOR with respect to this Contract or the Work. Each Subcontract must include the foregoing limitation. Nothing contained in this Contract will be construed as a waiver of the CITY's rights to sovereign immunity or any other defense under Section 768.28, Florida Statutes.

6. Validity, Severability, and Reformation

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

7. Public Records

The CONTRACTOR agrees to comply with the Florida Public Records Act, as applicable, including, but not limited to Section 119.0701 of the Florida Statutes. Documents which are considered public records herein under Florida law include, but are not limited to: records related to the entry, management and implementation of the contract itself; emails/correspondence between the CITY and the CONTRACTOR related to the contract; emails or correspondence from all other entities related to the contract (i.e., subcontractors, suppliers, vendors, etc.); billing and related documents; plans or other documents that may be necessary, reports, etc.; subcontracts; and all vendor invoices. The CONTRACTOR agrees, to the extent required by law, to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in performing the services of the Contract;
- B. Provide the public with access to the public records under the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided for by law;
- C. Ensure that the public records that are exempt or confidential, and exempt from public record disclosure requirements, are not disclosed, except as authorized by law; and

- D. Meet all requirements where retained public records and transfer, at no cost, to the CITY, all public records in possession of the CONTRACTOR, upon termination or completion of the Contract and destroy any duplicate public records that are exempt or confidential, or exempt from public record disclosure requirements.

Furthermore, the CONTRACTOR agrees that all records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY. The CONTRACTOR shall promptly provide the CITY with a copy of any request to inspect or copy public records that CONTRACTOR receives and a copy of the CONTRACTOR's response to each request. The CONTRACTOR understands and agrees that failure to provide access to the public records will be a material breach of the Contract and grounds for termination.

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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**City Clerk, City of Treasure Island
120 – 108th Avenue
Treasure Island, Florida 33706
Phone: (727)-547-4575
Fax: (727)-547-4582**

rnickerson@mytreasureisland.org

THE CONTRACTOR ACKNOWLEDGES THAT THE CITY OF TREASURE ISLAND CANNOT AND WILL NOT PROVIDE LEGAL OR BUSINESS ADVICE TO THE CONTRACTOR WITH RESPECT TO ITS OBLIGATIONS PURSUANT TO THIS SECTION RELATED TO PUBLIC RECORDS. THE CONTRACTOR ACKNOWLEDGES THAT IT WILL NOT RELY ON THE CITY OF TREASURE ISLAND OR ITS CITY ATTORNEY TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE AND THAT CONTRACTOR HAS BEEN ADVISED TO SEEK PROFESSIONAL ADVICE WITH REGARD TO PUBLIC

RECORDS MATTERS ADDRESSED BY THIS AGREEMENT.

8. Cumulative Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

9. Limitation of Damages

With respect to any and all Claims, disputes subject to final resolution, and other matters at issue, neither CITY nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, will be liable to CONTRACTOR for any claims, costs, losses, or damages sustained by CONTRACTOR on or in connection with any other project or anticipated Project.

10. No Waiver

A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

11. Survival of Obligations

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

12. Headings

Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

13. Inspection.

The CONTRACTOR and any Subcontractors understand and will comply with Section 20.055(5) of the Florida Statutes and agree to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to that section.

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

CONTRACTOR:

CITY: The City of Treasure Island

By: _____

City Manager

Title: _____

WITNESS:

ATTEST:

Ruth Nickerson, City Clerk

Reviewed for Legal Form and Content by:

Jennifer Cowan, City Attorney

SECTION 00710

NON-DISCRIMINATORY VENDOR STATEMENT

SWORN STATEMENT UNDER SECTION 287.134(3)(a) OF THE FLORIDA STATUTES REGARDING DISCRIMINATION

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICAL AUTHORIZED TO ADMINISTER OATHS.

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, include the Social Security Number of the individual signing this sworn statement: _____).

2. I understand that “discrimination” as defined in Section 287.134(1)(b) of the Florida Statutes means a determination of liability by a state circuit court or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity; if an appeal is made, the determination of liability does not occur until the completion of any appeals to a higher tribunal.
3. I understand that an “affiliate” as defined in Section 287.134(1)(a) of the Florida Statutes means:
- a. A predecessor or successor of an entity that discriminated; or
 - b. An entity under the control of any natural person who is active in the management of the entity that discriminated. 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 entity of shares constituting a controlling interest in another entity, or a pooling equipment or income among entities when not for fair market value under an arm’s length agreement will be a prima facie case that one entity controls another entity.
4. I understand that “entity” as defined in Section 287.134(1)(e) of the Florida Statutes means any natural person or any 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 let by a public entity, or which otherwise transacts or applies to transact business with a public entity.

5. Based on information and belief, the statements that I have marked below is true in relation to the entity submitting the sworn statement. (Please check all that apply)

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been placed on the discriminatory vendor list for any period during the last 36 months prior to submitting this bid.

_____ The entity submitting this sworn statement is **not** under the same, or substantially the same control as an entity whose name appears on the discriminatory vendor list.

_____ The entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or any affiliate of the entity **have** been placed on the discriminatory vendor list for any period during the last 36 months prior to submitting this bid **but** that entity or affiliate has been removed from the list.

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 CALANDAR 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.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20____.

Personally known _____

OR Produced Identification _____ Notary Public – State of Florida

(Type of identification) My Commission Expires _____

(Printed, typed or stamped
commissioned name of notary public)

SECTION 00715

PUBLIC ENTITY CRIMES STATEMENT

SWORN STATEMENT UNDER SECTION 287.133(3)(a) OF THE FLORIDA STATUTES ON PUBLIC ENTITY CRIMES.

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

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, include the Social Security Number of the individual signing this sworn statement: _____).

2. I understand that a "public entity crime" as defined in Section 287.133(1)(g) of the 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 with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Section 287.133(1)(b) of the 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, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133.(1)(a) of the 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(1)(e) of the 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 in 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.
6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting the sworn statement. (Please indicate which statement(s) applies.)

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have 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 the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity have 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, shareholder, 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 and 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 CALANDAR 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 OF THE FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20____.

Personally known _____

OR Produced Identification _____

Notary Public – State of Florida

(Type of identification)

My Commission Expires _____

(Printed, typed or stamped
commissioned name of notary public)

DRUG-FREE WORK PLACE CERTIFICATE

IDENTICAL TIE BIDS: Pursuant to Section 287.087, Florida Statutes, preference will be given to businesses with Drug-Free Work Place Programs. Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a Drug-Free Work Place Program will be given preference in the award process. Established procedures for processing tie bids will be followed in the event that none of the tied bidders have a Drug-Free Work Place Program. In order to have a Drug-Free Work Place Program, a business must:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the work place 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 work place, the company's policy of maintaining a Drug-Free Work Place, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, 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 of Chapter 893 of the Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the work place no later than five (5) days after such conviction or plea.
- 5) Impose a 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 or who has pled.
- 6) Make a good faith effort to continue to maintain a drug-free work place through implementation of this section.

AS THE PERSON AUTHORIZED TO SIGN THE STATEMENT, I CERTIFY THAT THIS FIRM COMPLIES FULLY WITH THE ABOVE REQUIREMENTS.

Signature

Printed Name