

THE CITY OF DAYTONA BEACH
MINOR EARTHWORK, GRADING, AND GRASSING CONSTRUCTION SERVICES
INVITATION TO BID No. 0118-2280



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

ISSUE DATE: JULY 17, 2018

Table of Contents

INVITATION TO BID

INSTRUCTIONS TO BIDDERS

1. BID DOCUMENTS
2. COMPLETING THE BID
3. SIGNING THE BID
4. REQUESTS FOR INTERPRETATIONS
5. ADDENDA TO BID DOCUMENTS
6. BID SECURITY
7. BID ENVELOPE
8. SUBMISSION OF BID
9. AMENDMENT AND WITHDRAWAL OF BID
10. DISQUALIFICATION OF BIDDERS
11. BID OPENING
12. UNIT PRICING AND QUANTITIES
13. THE BID IS AN OFFER
14. FEDERAL TAXES
15. BID PRICE INCLUSIVE OF COSTS
16. PUBLIC RECORDS
17. BID OPENING RESULTS
18. BIDDER CAPABILITY/REFERENCES
19. REVIEW; BASIS OF AWARD
20. LOCAL PREFERENCE
21. MINORITY & WOMEN OWNED BUSINESS ENTERPRISES
22. IDENTICAL TIE BIDS
23. RIGHT TO ACCEPT OR REJECT BIDS
24. CRA MAY AWARD CONTRACT
25. CRA MAY AWARD PURCHASE ORDERS ISSUED PURSUANT TO CONTRACT
26. PUBLIC ENTITY CRIMES
27. SUBMISSION OF BONDS AND INSURANCE
28. COMPLIANCE WITH LAWS
29. MAINTENANCE OF LICENSES
30. CITY'S FORM CONSTRUCTION CONTRACT
31. BIDDER RESPONSIBILITY FOR PREPARATION COSTS

SPECIAL INSTRUCTION SHEET

- SI 1. AWARD
- SI 2. PAYMENT AND PERFORMANCE BONDS
- SI 3. STATE TAX AND OWNER DIRECT PURCHASE
- SI 4. NON-EXCLUSIVE CONTRACT

BID PROPOSAL FORM

BID SCHEDULE

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT

- | | |
|------------------|-----------------------------|
| ARTICLE I. | SCOPE OF WORK |
| ARTICLE II..... | CONTRACT DOCUMENTS |
| ARTICLE III..... | COMMENCEMENT AND COMPLETION |
| ARTICLE IV. | CONTRACT PRICE |
| ARTICLE V. | INDEMNIFICATION |

ARTICLE VI.	BONDS
ARTICLE VII.	INSURANCE
ARTICLE VIII.	NOTICES
ARTICLE IX.	GENERAL PROVISIONS
GENERAL CONDITIONS	
1.1	DEFINED TERMS.
ARTICLE 2 –ORGANIZATION AND INTENT OF CONTRACT	
2.1	INTERPRETING THE CONTRACT.
2.2	REFERENCED STANDARDS.
ARTICLE 3 - PRELIMINARY MATTERS	
3.4	SUBMITTALS AND NOTICE TO PROCEED REQUIRED
3.5	PRE-CONSTRUCTION SUBMITTALS.
3.6	NOTICE TO PROCEED.
3.7	LIMITATIONS ON CUSTODY AND USE OF PLANS
3.8	AVAILABILITY OF LANDS.
ARTICLE 4 – OWNER’S RESPONSIBILITIES	
4.1	CONTRACT ADMINISTRATOR.
4.2	CITY MANAGER
4.3	AUTHORITY RESERVED IN CITY COMMISSION.
4.4	GENERAL OBLIGATION TO AVOID DELAYS
4.5	OWNER-PROVIDED INSPECTORS.
ARTICLE 5 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS	
5.2	SUBSURFACE AND PHYSICAL CONDITIONS.
5.3	PROTECTION OF REFERENCE POINTS
5.4	HAZARDOUS MATERIALS
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	
6.1	GENERAL RESPONSIBILITIES
6.2	DILIGENT PROSECUTION
6.3	SUPERVISION AND SUPERINTENDENCE
6.4	LABOR, MATERIALS AND EQUIPMENT
6.5	CONCERNING SUB-CONTRACTORS, SUPPLIERS, AND OTHERS
6.6	PATENT FEES AND ROYALTIES
6.7	PERMITS, FEES
6.8	CONSTRUCTION OPERATIONS
6.9	LEGAL REQUIREMENTS
6.10	TAXES
6.11	MAINTENANCE OF RECORDS AND DOCUMENTS
6.12	SAFETY AND PROTECTION
6.13	INDEMNIFICATION
6.14	SURVIVAL OF OBLIGATIONS
6.15	LOSSES FROM NATURAL CAUSES
6.16.	NOTICE OF CLAIM
6.17	FINANCIAL RECORDS.
ARTICLE 7 - OTHER WORK	
7.1	COORDINATING OTHER WORK.
7.2	PROPER AND SAFE ACCESS BY OTHER CONTRACTORS.
7.3	CONTRACTORS INSPECTION AND REPORTS.
7.4	PROGRESS SCHEDULES.
7.5	IMPROPER TIMING OR DELAYS.

ARTICLE 8 – WARRANTIES

8.2 SPECIAL WARRANTIES

8.3. LIMITATION AS TO CERTAIN EQUIPMENT

8.4 RELATION TO SPECIFIC CORRECTION PROVISIONS AND OTHER REMEDIES.

8.5 THIRD PARTY WARRANTIES.

ARTICLE 9 – E/A’S STATUS DURING CONSTRUCTION

9.1 APPLICABILITY.

9.2 THE OWNER’S SOLE BENEFIT.

9.3. CONTRACTOR REMAINS RESPONSIBLE.

9.4 APPLICABILITY TO E/A’S AGENTS.

9.5 VISITS TO PROJECT SITE

9.6 RESIDENT PROJECT REPRESENTATIVE.

9.7 CLARIFICATIONS AND INTERPRETATIONS

9.8 RECOMMENDATIONS AS TO DEFECTIVE WORK.

ARTICLE 10 – ACCEPTED EQUALS AND SUBSTITUTIONS

10.1 ACCEPTED EQUALS

10.2 CONTRACTOR MAY PROPOSE SUBSTITUTIONS.

10.3 OWNER’S EVALUATION.

10.4 CONTRACTOR TO REMAIN RESPONSIBLE.

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

11.1 DELAY.

11.2 EVENTS NOT CONSTITUTING A DELAY.

11.3 NOTICE OF DELAY REQUIRED.

11.4 CONTENTS/SUPPORTING DOCUMENTS.

11.5 FAILURE TO COMPLY WITH NOTICE REQUIREMENTS.

11.6 REVIEW AND ADJUSTMENT OF SCHEDULES.

11.7 LIMITATION ON ADJUSTMENTS DUE TO DELAYS GENERALLY.

11.8 ADDITIONAL LIMITATIONS ON ADJUSTMENTS TO CONTRACT TIME DUE TO DELAYS.

11.10 LIQUIDATED DAMAGES DUE TO CONTRACTOR’S DELAYS.

11.11 NO DAMAGES ARE DUE TO CONTRACTOR FOR PREVENTION OF EARLY COMPLETION.

11.12 ACCELERATION TO AVOID DELAYS.

ARTICLE 12 – CHANGES

12.1 MATERIALLY DIFFERENT SITE CONDITIONS.

12.2 MATERIALLY DIFFERENT STRUCTURAL CONDITIONS (REMODELING OR RENOVATION CONTRACTS)

12.3 CONSTRUCTIVE CHANGES AND DISPUTED ADJUSTMENTS.

ARTICLE 13 - CHANGE INSTRUMENTS

13.1 INTRODUCTION.

13.2 CHANGE ORDER OR FORMAL AMENDMENT REQUIRED FOR CONTRACT TIME AND CONTRACT PRICE ADJUSTMENTS.

13.3 CHANGE ORDERS ADJUSTING CONTRACT PRICE.

13.4 PAYMENT FOR WORK COVERED BY CHANGE ORDER.

13.5 ABSENCE OF PROPOSED ADJUSTMENTS.

13.6 ACTION UPON RECEIPT OF CHANGE INSTRUMENT.

13.7 WAIVER OF CLAIM.

13.8 OWNER’S RIGHT TO USE THIRD PARTIES FOR ADDITIONAL WORK.

13.10 OWNER'S RIGHT TO ACCELERATE SCHEDULE.
ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTIONS, REMOVAL AND ACCEPTANCE OF DEFECTIVE WORK

- 14.1 ACCESS TO WORK.**
- 14.2 TESTS AND INSPECTIONS.**
- 14.3 UNCOVERING WORK.**
- 14.4 THE OWNER MAY STOP THE WORK.**
- 14.5 CORRECTION OR REMOVAL OF DEFECTIVE WORK.**
- 14.6 CORRECTION REQUIRED.**
- 14.7 COORDINATION WITH OWNER.**
- 14.8 ACCEPTANCE OF DEFECTIVE WORK**
- 14.9 THE OWNER MAY CORRECT DEFECTIVE WORK.**
- 14.10 TESTING AND INSPECTIONS OUTSIDE OF WORKING HOURS.**
- 14.11 CONTRACTOR REMAINS RESPONSIBLE FOR THE WORK**

ARTICLE 15 – PROGRESS PAYMENTS, PARTIAL UTILIZATION AND FINAL COMPLETION

- 15.1 GENERAL METHOD OF PAYMENT.**
- 15.2 APPLICATION FOR PAYMENT.**
- 15.3 REVIEW OF APPLICATION FOR PAYMENT.**
- 15.4 PROGRESS PAYMENTS.**
- 15.5 AMOUNTS WITHHELD FROM PROGRESS PAYMENTS.**
- 15.6 DELAYED PAYMENTS.**
- 15.7 SUBSTANTIAL COMPLETION.**
- 15.8 PARTIAL UTILIZATION.**
- 15.9 FINAL INSPECTION AND FINAL COMPLETION.**
- 15.10 FINAL APPLICATION FOR PAYMENT.**
- 15.11 IF FINAL APPLICATION IS REJECTED.**
- 15.12 FINAL PAYMENT; WAIVER OF CLAIMS.**
- 15.13 PARTIAL FINAL PAYMENT IN EXTENUATING CIRCUMSTANCES.**

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

- 16.1 THE OWNER MAY SUSPEND WORK WITHOUT CAUSE.**
- 16.2 THE OWNER MAY TERMINATE WITHOUT CAUSE.**
- 16.3 THE OWNER MAY TERMINATE WITH CAUSE.**
- 16.4 CONTRACTOR MAY STOP WORK OR TERMINATE.**
- 16.5 DISCRETIONARY NOTICE TO CURE.**
- 16.6 BANKRUPTCY.**
- 16.7 DUTY TO MITIGATE.**
- 16.8 RESPONSIBILITY DURING DEMOBILIZATION.**
- 16.9 CONTRACTOR TO REMOVE EQUIPMENT.**
- 16.10 CONTRACTOR TO CLEAN UP PROJECT SITE.**

ARTICLE 17 - DISPUTE RESOLUTION

- 17.1 REQUIRED PROCEDURES.**

SCOPE OF WORK

INVITATION TO BID

The City of Daytona Beach, Florida, will receive bids for the “Minor Earthwork, Grading and Grassing Construction Services”, Invitation to Bid No. 0118-2280, at the City of Daytona Beach Purchasing Division, City Hall Room 146, 301 S. Ridgewood Ave., Daytona Beach, Florida 32114, until **2:00 p.m., on AUGUST 16, 2018**, at which time bids will be opened publicly and read aloud. Bids received after said time will be returned unopened.

Sealed bids must be addressed to:

Joanne Flick, Purchasing Agent
The City of Daytona Beach Purchasing Division
301 S. Ridgewood Ave., Room 146
Daytona Beach, Fl., 32114

with “Sealed Bid for Minor Earthwork, Grading and Grassing Construction Services, ITB No. 0118-2280” plainly written on the outside of the envelope.

The work generally consists of supplementary routine Earthwork, Grading and Sodding Services for designated City properties and rights of way to assist the City with meeting its goal to provide more timely and cost-effective customer service, to be provided on an as-needed basis as determined by the City.

Bid Documents may be obtained as pdf files on-line at www.codb.us/purchasing. There is no charge for downloading bid documents. Contract Documents, including Technical Provisions and Drawings (if any) are on file at the Daytona Beach Purchasing Division, 301 S. Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114 and copies may be obtained for \$75 each, NON-REFUNDABLE. Checks must be made payable to the City of Daytona Beach, Florida. All inquiries and checks pertaining to this project which are mailed should be directed to Post Office Box 2451, Daytona Beach, Florida 32115-2451.

A NON-MANDATORY PRE-PROPOSAL CONFERENCE will be held at the Daytona Beach Public Works Complex, Large Conference Room, 950 Bellevue Ave., Daytona Beach, FL 32114, on August 2, 2018 at 9:00 a.m. Interested contractors are *urged* to attend.

Each bid must be accompanied by Bid Security in an amount not less than ten percent (10%) of the total estimated bid. Bidders, at their option, may furnish such security in the form of a money order, cashier's check, certified check, U.S. Currency, U.S. Government bonds or notes at par value or Bid Bond written by a surety company, approved by the City Manager and authorized to do business in the State of Florida.

Performance and Payment Bonds are not required at the time of Contract, but may be required for specific projects undertaken pursuant to the Contract.

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

Bids may be held by the City of Daytona Beach for a period not to exceed sixty (60) days from the date of opening of bids for the purpose of reviewing the bid and investigating the qualifications of bidders prior to awarding the contract. Contractors submitting bids to the City must comply with the Purchasing Code, Chapter 30, Code of the City of Daytona Beach, Florida, "Minority and Women Owned Business Enterprises.

THE CITY OF DAYTONA BEACH
VOLUSIA COUNTY, FLORIDA
By: Joanne Flick, CPPB, CPPO

Purchasing Agent
Issue Date: JULY 17, 2018

INSTRUCTIONS TO BIDDERS

THESE INSTRUCTIONS ARE STANDARD FOR ALL BID SOLICITATIONS FOR CONSTRUCTION SERVICES ISSUED BY THE CITY OF DAYTONA BEACH. THE CITY MAY DELETE, SUPERSEDE, OR MODIFY ANY OF THESE STANDARD INSTRUCTIONS FOR A PARTICULAR SOLICITATION BY USE OF SPECIAL INSTRUCTION SHEETS.

1. BID DOCUMENTS. The Bid Documents consist of the Invitation to Bid; these Instructions; Special Instructions, if any; the Bid Proposal Form to be completed, signed, and submitted by the Bidder; and all additional forms provided by the City as part of this solicitation that are required to be completed and submitted by the Bidder as part of the Bid, regardless of whether these forms are described herein as exhibits or attachments to the Bid Proposal Form. Together, the Bid Proposal Form and the additional forms required to be submitted by the Bidder as part of the Bid, constitute the "Bid Package."

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

2. COMPLETING THE BID. In submitting the Bid, the Bidder must complete and include all Bid Package documents. In order for the Bid to be considered complete:

A. The Bidder must submit the information required, only on the forms provided by the City as part of the Bid Package, except where the Bid Documents specifically permit or require otherwise.

B. The City requests that the Bidder submit only the Bid Package. If the Bidder submits a Bid that includes any documents other than the Bid Package, these extraneous documents will be discarded. Only if the City awards a contract to Bidder will the Bidder be asked to sign the form contract included in this solicitation.

C. The Bid Proposal Form and the other documents included in the Bid Package, all contain blank spaces that the Bidder must complete. The Bidder must fill in these blank spaces in ink or by typewriter, and must initial with ink, all corrections and erasures to the information provided by the Bidder in these blank spaces.

D. Unless this solicitation contains Special Instructions allowing for partial or lot-by-lot bids, the Bidder must quote all unit prices and extended unit prices (if any) set forth in the Bid Package. If this solicitation allows for partial or lot-by-lot bids, the Bidder must comply with the Special Instructions in completing filling out the unit prices and extended unit prices set forth in the Bid Package.

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

F. If this solicitation requires unit prices and there is a conflict between the unit prices and the extended totals, the unit price will take precedence. Likewise, discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

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

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

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

3. SIGNING THE BID. The Bid Proposal Form, and all other Bid Package documents requiring the Bidder's signature, must contain an original signature of an individual who is authorized to bind the Bidder. The signature must be located in the space(s) marked for the Bidder's signature. Electronic signatures will not be accepted. In addition:

A. If the Bidder is a general partnership, its name and address must be stated, as well as the name and address of each member of the firm or partnership.

B. If the Bidder is a joint venture, the Bidder must provide on separate signed sheet(s) of paper along with the Bid Proposal documents provided by the City, the full legal names of all persons/firms comprising the joint venture.

C. The person signing the Bid Proposal Form on behalf of the Bidder must be the same person who signs all of the other Bid Package documents.

4. REQUESTS FOR INTERPRETATIONS. If the Bidder is in doubt as to the meaning of any of the Bid Documents or any other Contract Documents included in this solicitation, the Bidder may submit a written request to the City for an interpretation, care of the Purchasing Agent at the address set forth below for delivery of the completed bid. Such requests must be received prior to bid opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation of the Bid Documents issued by the City in the form of a written addendum will be deemed to be a part of the Bid Documents.

No oral clarification or interpretation will be binding.

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

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

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

6. BID SECURITY. The Bidder must submit properly signed bid security in the form of a cashier's check, certified check or bid bond in the amount of 10% of the Bid. The City has the right to retain the bid security as liquidated damages should the Successful Bidder fail to comply

with the terms of the bid. The City will return the bid security to unsuccessful Bidders after the contract award.

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

7. BID ENVELOPE. The Bid, including the Bid Form, all required Bid Documents, and the required bid security, must be returned in an opaque, sealed envelope. The envelope must display the name and address of the Bidder, the bid number and name of the bid/contract as set forth on the Invitation to Bid, and the date and time scheduled for bid opening. The envelope must be addressed to:

Purchasing Agent
City of Daytona Beach
Room 146
301 S. Ridgewood Avenue
Daytona Beach, FL 32114

8. SUBMISSION OF BID. The Bidder must submit the Bid by mail or hand delivery at or prior to the time fixed for bid opening in the Invitation for Bids. A bid submitted after the time fixed for bid opening will not be accepted. The Bid must be delivered to the Purchasing Agent at the address above. A bid submitted to any other location will not be considered. Telephonic, electronic, and faxed bids will not be considered.

9. AMENDMENT AND WITHDRAWAL OF BID. The Bidder may amend or withdraw the Bid at any time prior to bid opening, but only with prior written notice to the Purchasing Agent, submitted in the same manner as the Bid. The notice must be signed by a properly authorized agent of the Bidder.

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

Amendments may be made only through the submission of a complete Bid Package, along with a written statement, signed by the same person who signed the Bid Package documents, that the submission is intended to fully replace the Bidder's earlier submission. The City is not required to honor an amendment that fails to comply with this Paragraph 9.

10. DISQUALIFICATION OF BIDDERS.

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

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

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

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

The Bidder is solely responsibility to ensure that the Bid is time and date stamped by the Purchasing Agent prior to bid opening. Late bids will be rejected and returned unopened.

The Bidder may be present at bid opening but is not required to be present.

12. UNIT PRICING AND QUANTITIES. If this solicitation requests submission of unit prices: (i) the successful bidder will hold all unit prices bid, firm for the duration of the Contract, including any extension thereof, unless specifically authorized by the Contract Documents; and (ii) quantities stated are an estimate only and no guarantee is given or implied as to quantities that will actually be required during the contract period.

13. THE BID IS AN OFFER. In submitting the Bid, the Bidder certifies that the Bidder is making a firm offer that will remain open for 60 days following bid opening unless properly and timely withdrawn by the Bidder prior to Bid Opening in conformance with these Instructions unless the City, in the City's sole discretion, rejects the Bid after Bid Opening. Extensions of time beyond the 60 day-period will only be by agreement of the City, the Successful Bidder, and the surety for the Successful Bidder.

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

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

16. PUBLIC RECORDS. Sealed bid received by the City pursuant to the Invitation to Bid will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all bids will be open for a personal inspection by any person pursuant to Public Records Law.

If the Bidder believes that the Bid or any portion thereof is permanently exempt from disclosure under the public records laws, the Bidder must state the grounds for this position in CAPITAL LETTERS on the cover sheet accompanying the sealed bid. The Bidder will be contacted prior to the opening of the Bid and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Bidder may in writing request the return of the sealed bid.

17. BID OPENING RESULTS. The Bidder may secure information pertaining to bid opening results by visiting the Purchasing Division Office Monday through Friday between 8:00 am and 3:00 pm, or by emailing a request to purchasing@codb.us. Copies of bid tabulation sheets will be furnished upon request and receipt of a self-addressed stamped envelope.

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

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

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

20. LOCAL PREFERENCE. The Purchasing Code provides for a preference to local vendors whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.

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

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

21. MINORITY & WOMEN OWNED BUSINESS ENTERPRISES. In submitting applications for payment, the Successful Bidder must show on the form titled, "Minority and Women Owned Business Enterprise Usage", how much of the pay application was paid to MBE/WBE subcontractors. If no amounts have been paid to MBE/WBE contractors, the form must simply show zero.

The Successful Bidder must comply with provisions of the Purchasing Code relating to Minority and Women- Owned Businesses.

A list of Minority Business Enterprise Contractors is available on-line at www.codb.us/purchasing.

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

23. RIGHT TO ACCEPT OR REJECT BIDS. The City will reject bids which contain modifications, or which are incomplete, unbalanced, conditional, obscure, or which contain additions not requested, or irregularities of any kind, or which do not comply in every respect with these Instructions to Bidders and the Contract Documents, unless the City in its sole discretion determines that the non-compliance is minor.

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

24. CRA MAY AWARD CONTRACT. If the funds to be used to pay for the work or materials solicited are from redevelopment trust funds, contract award may be made by the City of Daytona Beach Community Redevelopment Agency (CRA) instead of the City. In this instance, the CRA, instead of the City, may be party to any written contract required to be executed by the Successful Bidder; all required insurance, performance and payment bonds, will be written in favor of the CRA in addition to or in lieu of the City; and any references to the City in the Invitation to Bid, these Instructions, or the Bid Documents will be deemed to refer to the CRA as logic dictates.

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

26. PUBLIC ENTITY CRIMES. Any party submitting a bid in response to this invitation must execute the enclosed Form PUR 7068, "SWORN STATEMENT UNDER SECTION 287.133(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES," and enclose it with the bid/proposal. All blank spaces in the Form must be completed.

27. SUBMISSION OF INSURANCE AND (IF REQUIRED) BONDS. The Successful Bidder must submit any required insurance and (if such bonds are required by the Special Instructions) payment and performance bonds, on or before submission of the signed contract or prior to issuance of a notice to proceed.

28. COMPLIANCE WITH LAWS. The Bidder will be responsible for complying with all applicable federal, state, and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work.

The Successful Bidder must always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees, including the Occupational Safety and Health Administration's (OSHA) Excavation-Safety Standard, 29 C.F.R. § 1926.650 Sub Part P, and Chapter 90-96 Florida Statutes.

The Successful Bidder will protect and indemnify City and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by the Successful Bidder, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees.

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

29. MAINTENANCE OF LICENSES. The Bidder will maintain all required licenses in full force and effect during the contract term.

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

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

END OF INSTRUCTION TO BIDDERS SECTION

SPECIAL INSTRUCTION SHEET

SI 1. AWARD. The City will award up to 2 contracts for these services. The primary contract will be awarded to the lowest responsive and responsible bidder. The secondary contract will be awarded to the second lowest responsive and responsible bidder.

SI 2. PAYMENT AND PERFORMANCE BONDS. The successful bidder will not be required to provide payment and performance bonds as a condition of contract approval. However, the successful bidder will be required to provide such bonds for any specific work authorization, the cost of which equals or exceeds \$100,000. In each instance, these bonds will equal 100% of the cost of the work referenced in the work authorization.

The surety company executing the bonds must be authorized to do business in the State of Florida, and must be listed by the United States Treasury Department as being approved for writing bonds for federal projects on its current list in an amount not less than the required bond amount. The form of the bond must be approved by the City and must be accompanied by sufficient evidence of the authority of the issuing agent. The bonds must otherwise comply with the requirements of F.S. § 255.05.

In lieu of the required bonds, the successful bidder may provide an alternative form of security as specified in F.S. § 255.05(7) upon the City's approval.

Any bonds used to comply with this Section must be in the form provided by the City; and prior to commencing construction pursuant to a specific work authorization the successful bidder must have the bonds fully executed and recorded and provide the City certified copies must of the recorded documents.

SI 3. STATE TAX AND OWNER DIRECT PURCHASE. If an award is made pursuant to this solicitation, the City reserves the right to procure material directly from the contractor's subcontractors and suppliers in order to avoid sales tax on materials purchased for the work to be performed. A copy of the City's Owner Direct Purchase policy is included in the Bid Documents.

SI 4. NON-EXCLUSIVE CONTRACT. Award of this Contract will impose no obligation on the part of the City to use the successful bidder for all work of this type that may be required during the Contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if the City deems such action to be in the City's best interests. In the case of multiple term contracts, this provision will apply separately to each item.

END OF SPECIAL INSTRUCTIONS SECTION

SUBMITTAL CHECKLIST

The following are items that are required to be considered responsive. Make sure that each blank on the form is filled out. Use NA (not applicable) rather than leaving blank.

included	Item(s) Required
	Bid Proposal Form
	Bid Schedule
	Non-Collusion Affidavit
	Florida Public Entity Crime Form
	OSHA SAFETY STANDARD CERTIFICATION
	Local Contractor Affidavit <i>only if filing for local preference</i>
	CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS
	Drug Free Workplace / Tied Bids
	Label the outer most package with the following: Bid Number Date of the Opening Contractor Name and Address

BID PROPOSAL FORM

ITB No.: 0118-2280

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

Dear Mayor and Commissioners:

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

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

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

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

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

1. If one or more Project Sites have been specified in the ITB, that BIDDER is has had the opportunity to examine the Project Site(s) and is fully informed in regard to all conditions pertaining to the Site(s).
2. That BIDDER is fully informed regarding local conditions where work will be required under the Contract.
3. That BIDDER has thoroughly examined all Contract Documents, including Plans and Specifications as applicable, relative to the work to be performed, and that BIDDER is sufficiently knowledgeable of the work to be performed.
4. That, pursuant to and in compliance with the Bid Package, including the form Contract and all other Contract Documents, the BIDDER hereby agrees to furnish all labor, materials, and equipment to do the work in strict accordance with the Contract Documents and for the Unit and/or Lump Sum prices herein for the prices stated in the attached Bid Schedule.

5. Subject to the terms and conditions stated in the Contract Documents, that BIDDER will perform the work in accordance with the completion date(s) specified in the Contract Documents; and will pay liquidated damages in the amounts specified in the Contract Documents for BIDDER's failure to comply with the completion date(s).

6. That Bidder agrees to indemnify and hold harmless the City any other interests as set forth in the Contract Documents.

7. That insofar as the attached Bid Schedule includes extended unit prices, the use of extended unit quantities will not be construed to be a guarantee that the City will purchase such quantities if a contract is awarded; and that, subject to the terms and conditions of the Contract, the Bidder will be entitled to payment based upon the units constructed, installed, or otherwise placed in service.

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

No. _____ Dated: _____ No. _____ Dated: _____

No. _____ Dated: _____ No. _____ Dated: _____

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

9. That, in case of Bidder's failure to execute the form Contract, provide the required insurance and any required Payment and Performance Bonds within 15 days after the later of receipt of notice of award or presentation of a final contract for execution, the Bid Security accompanying this Bid, and the money payable thereon, will be paid into the funds of the City of Daytona Beach, and to that end:

Attached hereto is a certified check on _____
(*state name of bank*)

or approved Bid Bond for the sum of \$ _____
(*state sum numerically*)

according to the conditions under the Instructions to Bidders and provisions therein.

10. That Bidder has completed the required information required in this Bid Proposal Form and other documents comprising the Bid Package truthfully.

BID PROPOSAL FORM, cont.

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

An individual person/sole proprietor

A Florida corporation/ limited liability company

A foreign corporation/limited liability company authorized to do business in Florida*

_____ (specify state of incorporation /
formation)

A Florida limited partnership

A foreign limited partnership authorized to do business in Florida*

_____ (specify state of incorporation /
formation)

A general partnership (provide partner names on separate, signed sheet of
paper)

A joint venture**

Other _____ (specify, including type of
entity)

** (If Bidder is a foreign corporation or foreign limited liability company, attach proof of registry from State of Florida)*

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

12. In the event that any notice needs to be sent during the course of any contract that may result from this solicitation please specify the name, address, phone, fax, and email of the person to contact.

Name: _____ Phone: _____

Address: _____ Fax: _____

Email: _____

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

By: _____
(Signature)

Printed Name: _____

Title: _____

Date signed: _____

**Minor Earthwork, Grading and Grassing Construction Services
 BID SCHEDULE**

Pay Item Description	Unit and Limits of Amount Placed/Used per Work Authorization	Estimated Contract Quantity	Unit Cost \$	Extended Price \$
Earthwork and Grading. Furnish, place and shape soil to a safely traversable surface template to protect facilities & for placement of sod. See Specifications.	Less than 50 Cubic Yards	300 C.Y.		\$
	50 to 150 Cubic Yards	150 C.Y.		\$
	More than 150 Cubic Yards	150 C.Y.		\$
Sodding. Furnish and install sod from types listed or designated appropriate for the site location. See Specifications.	Less than 1,000 Square Feet	5,000 Sq. Ft.		\$
	1,000 to 3,000 Square Feet	3,000 Sq. Ft.		\$
	More than 3,000 Square Feet	4,000 Sq. Ft.		\$
Temporary Watering. Furnish and apply water to designated grading and sodding areas. See Specifications.	Less than 1,500 Gallons	5,000 Gal.		\$
	1,500 to 3,000 Gallons	5,000 Gal.		\$
	More than 3,000 Gallons	6,000 Gal.		\$
Fertilization. Fertilize designated sodding areas. See Specifications.	Less than 300 Pounds	1,500 LBS.		\$
	300 to 600 Pounds	1,200 LBS.		\$
	More than 600 Pounds	1,000 LBS.		\$
GRAND TOTAL (Extended Price \$)				

Bidder: _____

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF _____)
COUNTY OF _____)

_____, being first duly sworn deposes and says that:

- (1) He is _____ of _____, the Bidder that has submitted the attached Bid;
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Daytona Beach, FL (Local Public Agency) or any person interested in the proposed Contract;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: _____
(Signature)
Name Typed: _____
Title: _____
Bidder: _____

Subscribed and sworn to before me

This _____ day of _____, 20____

(Signature of Notary Public)
My commission expires: _____

DRUG-FREE WORKPLACE CERTIFICATION

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

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

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

(Signature)

CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS

The Bidder []has []has not developed and []has []has not on file at each establishment, Affirmative Action Programs pursuant to Executive Order 11246.

The Bidder []has []has not participated in a previous contract or subcontract subject to Executive Order 11246.

The Bidder []has []has not filed with the Joint Reporting Committee, the Director or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

Date _____, 20 ____

Bidder: _____

By: _____

(Signature)

Name: _____

Title: _____

Address: _____

**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES CERTIFICATION
FORM**

The Bidder hereby certifies that in accordance with the Purchasing Code, Chapter 30, Code of the City of Daytona Beach, a good faith effort has been made to contact the following minority and women owned business enterprises:

SIGNATURE: _____
NAME: TYPED _____

The Bidder further certifies that of the minority and women owned business enterprises contacted, he was unable through a good faith effort to obtain any minority or women owned business enterprise to work on this project.

SIGNATURE: _____
NAME TYPED: _____

**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE OFFICER
CERTIFICATION FORM**

I, _____,
Name of Executive Officer
certify that _____
Name of MBE Officer

has been named Minority and Women Owned Business Enterprise Officer for

Company

Corporation

Date: _____

By: _____

Name Typed: _____

Title: _____

Address: _____

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

THIS FORM MUST BE SIGNED AND SWORN TO 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, insert the Social Security Number of the individual signing this sworn statement above:

2. I understand that a "public entity crime" as defined in Paragraph 287.133(l)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(l)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(l)(a), Florida Statutes means:
- (a) A predecessor or successor of a person convicted of a public entity crime,
or

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

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

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

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

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

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

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

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

[Signature]

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

Personally known _____

OR Produced Identification _____
(Type of identification)

Notary Public - State of _____

By: _____

My commission expires _____

(Printed typed or stamped
commissioned name of
Notary Public)

OSHA SAFETY STANDARD CERTIFICATION

The Bidder will comply with the Occupational Safety and Health Administration's (OSHA) Excavation Safety Standard, 29 C.F.R.s 1926.650 Sub Part P. and Chapter 90-96 Florida Statutes. See General Condition Article 6.12.2.

Name of Bidder: _____

Signature

Name Typed: _____

Date: _____

The Bidder further certifies that the cost (which is included in his unit cost) of compliance with OSHA Safety Standard is as follows:

	<u>No. of Units</u>	<u>Unit of Measure</u>	<u>Unit Cost</u>	<u>Total</u>
1. Trench Excavation		L.F.	\$	\$
2. Sheeting/Shoring		S.F.	\$	\$

Bidder: _____

Signature: _____

Date: _____

Name Typed: _____

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE USAGE

This report provided by _____
(Firm)

by _____
(Name of Representative)

PROJECT OR CONTRACT NO. 0118-2280

Payment Request # _____ Date _____

Total amount this draw Paid to:

MINORITY FIRMS:		WOMEN OWNED FIRMS:	
Firm Name	\$ Amount	Firm Name	\$ Amount
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	
_____		_____	

Total \$ Minority Business Enterprise Usage this draw

\$ _____

Total \$ Women Owned Business Usage this draw

\$ _____

This report required to be submitted with each request for payment.

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

The following information from the Purchasing Code is provided for reference for all bidders:

DIVISION 5. - MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

Sec. 30-180. - Definitions.

The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bid means all purchase prices sought by procurement methods as described in this chapter.

Construction means the process of building, altering, repairing, improving, or demolishing any public structure, building, roadway, or other public improvements of any kind to any public real property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.

Contract means all types of city agreements, regardless of what they may be called, for the purchase or disposal of supplies or services or performance of construction with the following exceptions: salaries/employee benefits, taxes, judgments, travels, dues, pensions, utilities, subscriptions, auto allowances, debt service requirements and postage. It includes contracts for a fixed price, costs, cost plus a fixed fee, or incentive contracts, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.

Good faith efforts includes demonstrations and actions which show that the stated goal was pursued far beyond neutrality; indeed, was pursued intensely. Acting in a manner such that a prudent and reasonable person would conclude that the stated goal would be achieved.

Minority means Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

Minority business enterprise (MBE) means a business which is 51 percent or more owned by minority group members; or for a publicly owned business the voting stock of which is 51 percent owned by minority group members. The minority group membership must exercise actual day-to-day management and control of the business. The minority business enterprise will be construed to include only workers employed and paid directly by the minority business enterprise receiving such contract award and equipment owned or rented by the minority business enterprise, with or without operators.

Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes professional services, but does not include employment

agreements or collective bargaining agreements.

Supplies means all property, including but not limited to equipment, materials, printing, insurance, and leases, but excluding land or a permanent interest in land.

Women business enterprise (WBE) means a business firm which is 51 percent or more owned by women group members; or for a publicly owned business the voting stock of which is substantially 51 percent owned by women group members. The women group membership must exercise actual day-to-day management and control of the business. The women business enterprise will be construed to include only workers employed and paid directly by the women business enterprise receiving such contract award and equipment owned or rented by the women business enterprise, with or without operators.

Sec. 30-181. - Compliance officer; compliance procedures.

- (a) The city manager will designate a compliance officer whose duty it will be to monitor the participation of contractors with the city in contracts for supplies, services, and construction. The compliance officer will:
 - (1) Prepare a listing of the minority and women business enterprises.
 - (2) Assist in implementing compliance guidelines, monitoring and reporting procedures to increase the participation of minorities and women in business contracts with the city and in the work forces of contractors and subcontractors doing business with the city.
 - (3) Assist in determining good faith efforts or lack of responsiveness in the performance of contracts.
 - (4) Report evidence of lack of responsiveness.
 - (5) Perform other duties relating to this article as may be directed by the city manager.
- (b) Nothing in this article will be construed as requiring the city manager to hire a new or additional employee to fill the position of compliance officer as called for in this section.

Sec. 30-182. - Establishment of goals.

- (a) *Business.* Annually, the city commission will review the level of MBE/WBE participation in business contracts (i.e., contractors, subcontractors) with the city. The commission may adjust the goals for business contract participation to reflect experience and the relevant availability of MBE/WBE businesses. In reviewing the level of minority and women participation in business with the city, calculation of the rate will not include amounts for contracts for which no MBE/WBE bid or for which no MBE/WBE meets the specifications.
- (b) *Employment.* Annually, the city commission will review the level of participation in employment of minorities and women combined in the work forces of its contractors and subcontractors. The commission may adjust the goals for minority and women employment participation to reflect experience and availability of minorities and women with requisite skills.

Sec. 30-183. - Contract awards.

- (a) Contractors doing business with the City will comply with the goals established in section 30-148 and will prepare information which reports the MBEs, WBEs utilized, the amount of such awards, and minority and women work force participation and, if such levels and percentages are not achieved, will provide evidence of good faith efforts made to achieve the goals stated in subsection 30-148(a).

- (b) If a good faith effort cannot be established, the compliance officer will report such nonresponsiveness. The city commission may review the finding of nonresponsiveness, agree, modify, and/or impose appropriate penalties or institute actions upon the contractor, including but not limited to debarment from the award of present or future contracts to do business with the city for one year and forfeiture of retainage withheld pursuant to the contract.
- (c) Any business owner who will knowingly engage in any type of subterfuge or deceit to receive a contract award under the terms of this article or who will attempt to transfer the benefits of this article to persons or firms other than those intended to benefit from the terms of this article will be permanently barred from receiving any future contractual awards from the city. In addition, the city may declare a forfeiture of retainage withheld pursuant to contract.
- (d) Nothing in this section will be construed to require the award of a contract to an MBE, WBE, or other purveyor of supplies, services or construction which fails to meet contract specifications or for which the bid is unreasonably priced or for which the bid is not in the best interest of the city nor is the lowest and best bid.

Sec. 30-184. - Failure to maintain employment levels and percentages.

If it is determined by the compliance officer that a contractor with the city has, at any time during the term of the contract, failed to maintain the minority and female employment levels and minority and women-owned business enterprise percentages established pursuant to section 30-148 and also failed to show good faith effort to maintain such levels and percentages, the compliance officer will document the noncompliance and report it to the city commission. The city commission may then impose appropriate penalties upon the contractor, including but not limited to debarment from submitting further bids to the city for a period of one year and forfeiture of retainage withheld pursuant to the contract.

Sec. 30-185. - Conformity with applicable laws.

This article will be construed according to and in conformity with acts of Congress and of the state legislature concerning the bidding and awarding of contracts and with the Charter and this Code. Where sections of this article come into conflict with either federal law, state law, the Charter or this Code, such conflict will be resolved in favor of applicable federal law, state law and the Charter and Code, in that order.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

I. Notice

The Bidder's attention is called to the Equal Opportunity Clause and the Equal Opportunity Specifications set forth herein.

II. Goals

The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Minority participation for each trade - 23%
Female participation in each trade - 6.9%

These goals are applicable to all the contractor's construction work performed in the covered area.

III. Compliance

1. The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Equal Opportunity Clause, Specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goal established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor will make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project for the sole purpose of meeting the contractor's goals will be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2. The contractor will provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any sub-contract in excess of \$10,000.00 for construction work under the contract resulting from this solicitation.

3. As used in this notice, and in the contract resulting from, this solicitation, the "covered area" is the Standard Metro Statistical Area.

**TERM CONSTRUCTION SERVICES CONTRACT
0118-2280**

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

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

ARTICLE I. SCOPE OF WORK. CONTRACTOR will provide Earthwork, Grading, and Grassing services (hereinafter, the "Work") from time to time at the direction of the CITY during the Term of this Contract, pursuant to the issuance of work authorizations as referenced below.

ARTICLE II. TERM; RENEWAL. The initial Term of this Contract is 2 years, commencing on the Effective Date. The CITY has the option to renew this Contract for up to 3 Terms of 1-year each. The CITY will exercise each such option by providing CONTRACTOR written notice at least 30 days before the end of the current Term.

ARTICLE III. WORK AUTHORIZATIONS. This Contract, in and of itself, does not require CONTRACTOR to perform any Work or provide payment for Work performed by CONTRACTOR. No Work will be performed under this Contract, and no payment obligation will arise for performance of such Work, except when specifically authorized by a work authorization issued by the CITY in accordance with this Contract and the CITY's procurement policies.

For purposes herein, a work authorization is an agreed-upon document describing the specific Project to be performed, the estimated Project Sum, Project Time, and any additional terms and conditions that the CITY may provide consistent with the terms and conditions of this Contract. A work authorization may be in the form of a mutually executed contract document, or may consist of a CITY-issued purchase order that accepts and incorporates by reference CONTRACTOR's dated, signed written quotation.

Each work authorization is subject to all of the terms and conditions of this Contract and in case of a conflict between the terms of this Contract and a work authorization, this Contract will govern.

ARTICLE IV. COMPENSATION. Subject to the terms herein, the not to exceed Project Sum will be set forth in each work authorization, and will be based on the Unit Price Schedule. In each instance the Project Sum represents CONTRACTOR's sole compensation from the CITY for performance of the Work described in the work authorization; and payment of the Project Sum will be made and is subject to retainage and other withholdings as described in the General Conditions.

ARTICLE V. PAYMENT AND PERFORMANCE BONDS. As specified in the Special Instructions, CONTRACTOR will provide payment and performance bonds, or other acceptable form of security, for any work authorization issued under this Contract where the Project Sum is estimated to equal or exceed \$100,000.

ARTICLE VI. INDEMNIFICATION.

A. CONTRACTOR hereby indemnifies and holds harmless the CITY from and against, all liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, arising out of or resulting from the Work provided that the liabilities, damages, losses, and costs

are caused in whole or in part by any negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

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

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

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

ARTICLE VII. INSURANCE

A. Required Insurance.

CONTRACTOR will purchase and maintain, at its own expense, the following types and amounts of insurance, primary and non-contributory with the CITY's own insurance, in form and companies satisfactory to the CITY:

1. **Workers' Compensation Insurance** – As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR employed at the project site or in any way connected with the Work.

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

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

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. . CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form

CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

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

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

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

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

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

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

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

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

The liabilities of CONTRACTOR under this Contract will survive and not be terminated, reduced, or otherwise limited by any expiration, limitation, exclusion, or termination of insurance coverage.

Neither approval nor failure to disapprove insurance furnished by the contractor will relieve the CONTRACTOR or its sub-contractors from responsibility to provide insurance as required by the contract.

F. Risk Manager. All references herein to the "Risk Manager" will mean the Risk Manager for the CITY or the Risk Manager's designee.

ARTICLE VIII. NOTICES

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

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

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

If to CITY:
Attn: David Waller, Deputy Public Works Director
The City of Daytona Beach
950 Bellevue Ave.
Daytona Beach, FL 32114
Fax: 386-671-8620

If to the CONTRACTOR:
Attn: _____

Fax: _____

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

ARTICLE IX. CONTRACT DOCUMENTS. This Contract incorporates the CITY's Invitation to Bid ("ITB") # 0118-2280; CONTRACTOR's Bid and supporting documents (the "Bid Documents"); the General Conditions; the Supplemental General Conditions, if any; Technical Provisions; any additional Specifications; any other documents attached hereto or specifically incorporated by reference in any of the documents listed above; and each work authorization (hereinafter collectively, the "Contract" or "Contract Documents").

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

ARTICLE X. DISPUTE RESOLUTION

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

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

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

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

ARTICLE XI. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

THE CITY OF DAYTONA BEACH

>CONTRACTOR

By: _____
Derrick L. Henry, Mayor

By: _____
Printed Name: _____
Title: _____

Attest: _____
Letitia LaMagna, City Clerk

Date: _____

Date: _____

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMS

1.1 Defined Terms.

1.1.1 **“Bid Documents”** means the Invitation to Bid, the Instructions to Bidders, and all documents of the Bid Proposal as identified in the Table of Contents or otherwise incorporated into the Contract.

1.1.2 **“Bid”** means the offer of the Bidder submitted on the bid form and associated documents as identified in the Table of Contents or otherwise incorporated into the Contract.

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

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

1.1.5 **“Change Order”** means a written directive issued by the OWNER authorizing a modification in the price, time for performance, or other provision of the work authorization..

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

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

1.1.8 **“City Manager”** means the City Manager for the CITY.

1.1.9 **“Commencement Date”** means the date established in the work authorization for commencement of the Project; of if no such date is provided in the work authorization, the date of the work authorization.

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

1.1.11 **“CONTRACTOR”** means the person or firm identified as such in the Contract.

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

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

1.1.14 **“Defective Work” or “Nonconforming Work”** means Work that:

- .1 Does not conform to the Contract Documents;
- .2 Does not meet the requirements of any inspection, test or approval as referred to in the Contract Documents or required by law;
- .3 Contains defects;

.4 Represents a substitute for that required by the Technical Provisions, unless properly approved and authorized as provided in the Contract Documents; or

.5 Has been damaged or destroyed prior to Final Completion.

1.1.15 “Effective Date” means the date on which this Contract is approved by City Commission.

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

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

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

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

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

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

1.1.22 “Hazardous Materials” has the meaning as provided by law.

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

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

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

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

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

1.1.28“Project” means the subject of the Work as outlined in a work authorization, and its intended result.

1.1.29“Project Price” means the total compensation due to CONTRACTOR for Work to be performed under a specific work authorization, subject only to those adjustments provided in the Contract Documents.

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

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

1.1.32“The Prompt Payment Act” means the Local Government Prompt Payment Act, F.S. § 218.70 *et seq.* (2009), as hereafter amended.

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

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

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

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

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

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

1.1.39“Specifications” means the Technical Provisions and Plans.

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

1.1.41 “Sub-contractor” means a person or firm that under a direct contract with CONTRACTOR to perform a portion of the Work, and also unless logic dictates otherwise, Sub-sub-contractors and persons or firms doing work through such Sub-sub-contractors.

1.1.42“Sub-sub-contractor” means a person or firm who has a direct or indirect contract at any tier with a Sub-contractor to perform a portion of the Work.

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

1.1.44“Supplier” means a person or firm having a contract with CONTRACTOR or with any Sub-contractor of any tier to furnish materials to be incorporated in the Work.

1.1.45“Technical Provisions” means the part of the Contract Document labeled as such and identified in the Table of Contents or otherwise incorporated into the Contract, that contains or references required technical specifications and standards. The term includes all such technical specifications and standards of other governmental jurisdictions, or professional association where referenced in these Contract Documents, including any exceptions thereto, regardless of whether these are attached or identified in the Table of Contents or otherwise enumerated in the Contract.

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

1.1.46“Unilateral Change Instrument” means a Change Instrument issued by the OWNER and not executed by CONTRACTOR.

1.1.47“Unit Price Schedule” means the Bid Schedule.

1.1.48“Work authorization” means a written agreement between the Parties for the performance of a specific Project pursuant to the Contract.

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

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

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

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

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

1.3 Use of Terms.

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

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

ARTICLE 2 –ORGANIZATION AND INTENT OF CONTRACT

2.1 Interpreting the Contract.

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

- .1 Formal Amendments to the Contract and valid approved Change Instruments, including Addenda to the Bid documents;

- .2 The Term Construction Contract form executed by the Parties;
- .3 Supplemental Conditions, if any;
- .4 Technical Provisions;
- .5 Plans (figured dimensions will govern over scaled dimensions);
- .6 The General Conditions;
- .7 The Bid Schedule; and
- .8 All other Bid Documents.

Provided, however, that in all instances a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.

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

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

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

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

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

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

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

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

2.2 Referenced Standards.

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

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

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

ARTICLE 3 - PRELIMINARY MATTERS

3.1 Pre-Contract Submittals. The OWNER reserves the right to require certain Submittals before executing the Contract. Submittals required before execution of the Contract include, but are not limited to, insurance certificates acceptable to the OWNER as provided in the Contract, and any other submittals required by the Bid Documents.

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

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

3.4 Submittals and Notice to Proceed Required. No Work will be done in association with a specific work authorization, at the Project Site or otherwise, until CONTRACTOR has submitted the Pre-Construction Submittals referenced below and OWNER has issued a Notice to Proceed described below.

3.5 Pre-Construction Submittals.

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

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

.2 Reserved.

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

.4 **Reserved.**

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

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

.7 If applicable, an excavation safety system plan.

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

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

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

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

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

The Technical Provisions may amplify, waive, or otherwise amend requirements for the above-referenced submittals.

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

3.5.3 The OWNER's acceptance of the above-referenced submittals will be deemed to be general only relating solely to their sufficiency and compliance with the intent of the Contract. Such acceptance does not constitute the OWNER's adoption, affirmation, or direction of CONTRACTOR's means

and methods, and does not constitute a Change Instrument. OWNER's acceptance of the Progress Schedule will not impose on the OWNER, responsibility or liability for the sequencing, scheduling, or progress of the Work, and will not relieve CONTRACTOR from CONTRACTOR's responsibility for complying with the terms and conditions of this Contract. CONTRACTOR will at all times remain responsible for the factual accuracy of all such submittals.

3.6 Reserved.

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

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

ARTICLE 4 – OWNER'S RESPONSIBILITIES

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

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

- .1 Provide direction to CONTRACTOR to ensure satisfactory and complete performance;
- .2 Issue Field Directives;
- .3 Monitor and inspect CONTRACTOR performance to ensure acceptable timeliness and quality;
- .4 Maintain necessary documentation and records regarding CONTRACTOR performance and other pertinent matters;
- .5 Furnish timely written notice of CONTRACTOR performance failures to the City Manager and to the City Attorney, as appropriate;
- .6 Determine acceptance or rejection of CONTRACTOR's performance;
- .7 Approve or reject applications for payment, other than application for final payment;
- .8 Furnish necessary reports to the City Manager;
- .9 Recommend Change Instruments or stop work orders to the City Manager; and

10, Recommend termination of Contract or work authorizations for default or convenience to the City Manager.

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

- .1 Alter or modify Contracts or work authorizations;
- .2 Terminate or cancel Contracts or work authorizations;
- .3 Approve, as opposed to recommend, Change Orders or Contract Amendments;
- .4 Interpret ambiguities in the Contract or work authorization; or
- .5 Approve final applications for payment; or
- .6 Waive the OWNER's Contract rights.

4.2 City Manager. The City Manager has all of the authority of the Contract Administrator. The City Manager has authority to approve final applications for payment except where approval also requires approval of a change order that is not within the City Manager's authority, below. In addition, the City Manager is authorized to issue Change Orders affecting Project Price, Project Time, and Project Scope as provided in the Purchasing Code.

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

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

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

ARTICLE 5 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS

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

5.2 Subsurface and Physical Conditions.

5.2.1 CONTRACTOR affirms that CONTRACTOR carefully examine any Plans and Site-Related Reports, if any, that the OWNER may provide in association with a work authorization. CONTRACTOR

acknowledges that the Site-Related Reports are **not** a guarantee of specific site conditions which may vary between boring locations, and that all Project Sites are unwarranted.

5.2.2 CONTRACTOR affirms that prior to executing this Contract, CONTRACTOR has had the opportunity to become familiar with the Project Site(s), if these are specified in the Contract Documents; and with the local conditions under which the various Projects will be constructed and operated. CONTRACTOR will not be entitled to any additional time or compensation as a result of any conditions at the Project Site which would have been disclosed to CONTRACTOR by a site visit.

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

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

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

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

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

salvage work causes an increase in CONTRACTOR's cost of, or time required for, performance of the Work, the Project Price and the Project Time will be equitably adjusted as necessary subject to compliance with the provisions herein for Changes and Delays.

5.3 Protection of Reference Points. Unless otherwise specified, the OWNER will furnish a base line and a suitable number of bench marks adjacent to the work. From the information provided by the OWNER, CONTRACTOR will develop and make all detailed surveys, stakes, lines, and elevations, as CONTRACTOR deems necessary. CONTRACTOR will carefully protect and preserve benchmarks, reference points, and stakes. If these benchmarks, reference points, or stakes are disturbed or destroyed due to CONTRACTOR's failure to comply with the above-referenced requirement, CONTRACTOR will bear the cost of expenses of relocating and replacing them, including the costs of a Registered Professional Land Surveyor if the OWNER determines the same to be necessary.

5.4 Hazardous Materials.

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

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

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

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

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

5.4.2 CONTRACTOR will maintain at the Project Site, available to the OWNER, appropriate information pertaining to all Hazardous Materials brought to the Project Site by CONTRACTOR or any Sub-contractor, and as may be required by the Supplemental Conditions, if any. CONTRACTOR will ensure that all such materials are properly labeled or identified, and will properly store, handle and use them at all times. In accordance with federal Hazard Communication Standard (29 CFR § 1910.1200) and all other applicable Legal Requirements, manufacturers and distributors are required to label each Hazardous Material or chemical container, and to provide Material Safety Data sheets to the purchaser. CONTRACTOR will comply with these laws and will provide the OWNER with copies of all relevant documents, including Material Safety Data sheets prior to performance or services or contemporaneous with delivery of goods. CONTRACTOR will provide and designate appropriate and secure areas for their

storage and will notify the OWNER of their presence and location at Project Site. CONTRACTOR will not store Hazardous Materials at the Project Site in excess of those reasonably needed for CONTRACTOR's prosecution of the Work, and will properly remove or dispose of all Hazardous Materials, including combustible waste, as soon as possible after completion of the operations in which they are utilized.

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

5.4.4 CONTRACTOR will be solely responsible for use, storage and remediation of any Hazardous Materials brought to Project Site by CONTRACTOR, Sub-contractors, Sub-sub-contractors, Suppliers, and anyone else for whom CONTRACTOR is responsible. CONTRACTOR will indemnify, defend and hold harmless the OWNER and the OWNER's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Materials introduced to Project Site by CONTRACTOR, Sub-contractors, Sub-sub-contractors, Suppliers, or anyone for whose acts they may be liable.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 General Responsibilities.

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

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

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

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

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

6.1.6 Assignment, Scheduling and Coordination. CONTRACTOR is solely responsible for and has control over assigning, scheduling and coordinating all portions of the work under the Contract performed by CONTRACTOR's own forces and by its Sub-contractors, Sub-sub-contractors, and

Suppliers, in accordance with the approved Progress Schedule, unless the Contract Documents give other specific instructions concerning these matters.

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

6.1.8 Ongoing Duty to Report Problems with Contract Documents. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any Legal Requirements or of any such standard, specification, manual, or code or instructions of any manufacturer or Supplier, CONTRACTOR will within three days of such discovery report it to the OWNER in writing, and CONTRACTOR will not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods specifically authorized in Section 3.3, above. CONTRACTOR will be liable to the OWNER for failure to report any such conflict, error, ambiguity, or discrepancy of which CONTRACTOR knew or reasonably should have known. CONTRACTOR will be liable to the OWNER for CONTRACTOR's failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents within said three-day period.

6.1.9 Inspection of Work. CONTRACTOR will make frequent inspections during the progress of the Work to confirm that work previously performed by CONTRACTOR is in compliance with the Contract Documents and applicable Legal Requirements and Referenced Standards and that portion of Work previously performed by CONTRACTOR or by others are in proper condition to receive subsequent Work.

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

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

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

6.3 Supervision and Superintendence.

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

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

directing, and managing construction of the work in addition to or in substitution of a Superintendent, the requirements of these Construction Documents with respect to the Superintendent will likewise apply to any such Project Manager.

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

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

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

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

6.4 Labor, Materials and Equipment.

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

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

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

6.4.4 All materials and equipment will be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable manufacturer and Supplier, except as

otherwise provided in the Contract Documents. The Contract Administrator or E/A may require CONTRACTOR to furnish one or more of the following:

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

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

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

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

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

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

6.5 Concerning Sub-Contractors, Suppliers, and Others.

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

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

6.5.3 CONTRACTOR will enter into written agreements with all Sub-contractors and Suppliers which specifically bind the Sub-contractors and Suppliers to the applicable terms and conditions of the Contract Documents for the OWNER's benefit. The OWNER reserves the right to specify that certain

requirements will be adhered to by all Sub-contractors and Sub-sub-contractors as indicated in other portions of the Contract Documents, in which instance these requirements will be made a part of the written agreement between CONTRACTOR and each Sub-contractor. CONTRACTOR's standard subcontract form is subject to the OWNER's review and approval. Within five working days of the OWNER's request for Sub-contractor contract documents, CONTRACTOR will provide them to the OWNER.

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

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

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

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

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

6.6 Patent Fees and Royalties.

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

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

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

the OWNER from all costs and expenses of such defense as well as satisfaction of all judgments entered against the OWNER.

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

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

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

6.8 Construction Operations.

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

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

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

6.8.4 Except as otherwise provided in the Contract Documents or a work authorization, all Work will be performed solely during Working Hours, unless (i) more restrictive hours are required by CITY ordinances or other Legal Requirements governing CONTRACTOR's performance of the Work, or (ii) the Contract Administrator approves expanded Working Hours in writing, such as in the event of emergencies, in which instance the Contract Administrator's approval may be terminated at any time and for any reason without recourse to CONTRACTOR. The OWNER has the right to impose further restrictions on working hours reasonably related to the use of occupied facilities. No delays resulting from compliance with applicable Legal Requirements may form the basis for any claim by CONTRACTOR for delay damages or additional compensation or for any extensions of the Contract Time; any delays arising from restrictions related to the use of occupied facilities are non-compensable and any claims for extensions of the Contract Time relating to them will be filed in accord with Article 11 or the same will be conclusively deemed to have been waived. CONTRACTOR will not permit Work outside of Working Hours without the written consent

of the OWNER; such consent, if given, may be conditioned upon payment by CONTRACTOR of the OWNER's additional costs and fees incurred in monitoring such off-hours Work. CONTRACTOR will notify the OWNER as soon as possible if Work will be performed outside such times in the interest of the safety and protection of persons or property at the Project Site or adjacent thereto, or in the event of an emergency. In no event will CONTRACTOR permit Work to be performed at the Project Site without the presence of CONTRACTOR's Superintendent and person responsible for the protection of persons and property at the Project Site and compliance with all Legal Requirements, if different from the Superintendent.

6.8.5 Temporary Utilities. Unless otherwise specified in the Contract Documents, CONTRACTOR, at its own expense, will:

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

.2 Provide all temporary on-Site water service required to perform the Work, to assure safety at the Site, and as otherwise specified in the Contract Documents. All temporary service will be removed by CONTRACTOR unless otherwise specified in the Contract Documents.

.3 Furnish all temporary electric service required to perform the Work, to assure safety at the Site, and as otherwise specified in the Contract Documents.

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

6.8.6 Site Maintenance. During the progress of the Work and on a daily basis, CONTRACTOR will keep the Project Site free from accumulation of waste materials, rubbish, and other debris resulting from the Work. If CONTRACTOR fails to do so in a manner reasonably satisfactory to the OWNER within 48 hours after notice or as otherwise required by the Contract Documents, the OWNER may clean the Project Site and back charge CONTRACTOR for all costs associated with the cleaning. At Substantial Completion, CONTRACTOR will leave the Project Site clean, including but not limited to the cleaning of manholes, inlets, and gravity underground piping systems, and ready for the OWNER's occupancy, and will at this point also remove all temporary buildings, waste, trash, debris, and surplus materials. At Final Completion, CONTRACTOR will remove all tools, appliances, construction equipment, and machinery, in addition to the above-referenced materials, and leave the Project Site clean and ready for OWNER's occupancy. This requirement will not apply to property used for permanent disposal of rubbish or waste materials in accordance with permission for such disposal granted to CONTRACTOR by the OWNER. CONTRACTOR will, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If CONTRACTOR fails to clean up at the completion of the Work, the OWNER may do so and the cost thereof will be charged against CONTRACTOR.

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

6.9 Legal Requirements.

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

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

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

6.10 Taxes.

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

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

6.11 Maintenance of Records and Documents.

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

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

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

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

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

.3 Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until

completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

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

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

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

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

6.12 Safety and Protection.

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

- .1 the public;
- .2 all persons on the Project Site or who may be affected by the Work;
- .3 all the Work and materials and equipment to be incorporated therein, whether in storage on or off Project Site; and
- .4 other personal property, fixtures and other items at the Project Site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

6.12.2 CONTRACTOR will comply with the Occupational Safety and Health Administration's (OSHA) Excavation Safety Standard, 29 U.S.C § 651 et seq., 29 C.F.R. 1926.650 Sub Part P., and Chapter 90-96 Florida Statutes. In addition CONTRACTOR will comply with all other applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss, and will erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR will notify owners of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them, and will cooperate with them in the protection, removal,

relocation and replacement of their property. All damage, injury or loss to any property referred to in Subparagraphs 6.12.1.3 and 6.12.1.4, above, caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Sub-contractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, will be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the OWNER, or E/A, or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CONTRACTOR or any Sub-contractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and protection of the Work will continue until such time as all of the Project is completed and the OWNER has issued a Certificate of Final Completion as provided in the Contract Documents (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, CONTRACTOR will comply with the following specific provisions:

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

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

6.12.5 CONTRACTOR will comply with the following requirements in emergencies:

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

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

.3 If there is an accident involving injury to any individual or damage to any property on or near the Work, CONTRACTOR will provide to the Contract Administrator verbal notification within one hour and written notification within 24 hours of the event and will be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports, police accident reports and other documentation that describes the event. CONTRACTOR will provide the OWNER copies of such documentation within 48 hours of the event.

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

6.13 Indemnification.

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

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

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

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

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

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

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

6.17 Financial Records.

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

- .1 accounting records;
- .2 written policies and procedures;

- .3 subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.);
- .4 original estimates and estimating work sheets;
- .5 correspondence;
- .6 Change Order files (including documentation covering negotiated settlements);
- .7 back charge logs and supporting documentation;
- .8 general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
- .9 lump sum agreements between CONTRACTOR and any Subcontractor or Supplier;
- .10 records necessary to evaluate: Contract compliance, Change Order pricing, and any Claim submitted by CONTRACTOR or any of its payees; and
- .11 any other CONTRACTOR record that may substantiate any charge related to this Contract.

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

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

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

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

ARTICLE 7 - OTHER WORK

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

involved because of such action by the OWNER, CONTRACTOR may make a Claim as provided in Article 11.

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

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

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

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

ARTICLE 8 – WARRANTIES

8.1 General Warranty.

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

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

8.1.2 Duty to Correct. CONTRACTOR will correct any and all defects that defects in material or workmanship which may appear during the General Warranty Period, even if discovered after the

General Warranty Period, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the OWNER, within a reasonable period of time, and to the OWNER's satisfaction.

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

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

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

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

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

ARTICLE 9 – E/A'S STATUS DURING CONSTRUCTION

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

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

9.3. CONTRACTOR Remains Responsible. The E/A will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. The E/A is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performing the Work. The E/A is not responsible for CONTRACTOR's failure to perform or

furnish the Work in accordance with the Contract Documents. Failure or omission of the E/A to discover, or object to or condemn any defective Work or material will not release CONTRACTOR from the obligation to properly and fully perform the Contract.

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

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

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

9.5 Visits to Project Site. If the OWNER and E/A agree, the E/A will make visits to the Project Site at intervals appropriate to the various stages of construction as E/A deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, the E/A will endeavor for the benefit of the OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The E/A will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The E/A's efforts will be directed toward providing for the OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, E/A will keep the OWNER informed of the progress of the Work and will endeavor to guard the OWNER against Defective Work. The E/A's visits and on-site observations are subject to all the limitations on the E/A's authority and responsibility set forth in this Article 9.

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

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

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

ARTICLE 10 – ACCEPTED EQUALS AND SUBSTITUTIONS

10.1 Accepted Equals. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item, the specification or description is intended to require the item named, unless the Contract Documents, in specifying the name, specifically authorize the

use of functionally equivalent item through the use of terms such as “as equal,” “or equal,” or “equivalent.” For purposes herein, an item is only “functionally equivalent” if it is available at the same or lower cost, and if it is sufficiently similar to the item specified, including as to durability, warranty, acquisition time, and availability, so that no change in related Work will be required, and no change in the useful life, maintenance, repair cost, or quality of the completed work is anticipated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.4.2 Inclusive dates of the delay;

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

11.4.4 Status of Work affected before commencement of the delay;

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

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

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

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

11.6 Review and Adjustment of Schedules. Upon receipt of a notice from CONTRACTOR of the occurrence of a delay complying with the requirements of this Article, the OWNER will review the current

approved Progress Schedule applicable to the work authorization(s) referenced to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Progress Schedule, including the application of any unused "float" time available in the Schedule. The OWNER may require CONTRACTOR to submit a more detailed Progress Schedule than previously required in order to permit the OWNER to evaluate the delay. Based on such review, CONTRACTOR will, if required by the OWNER, submit for the OWNER's approval a revised Progress Schedule, which minimizes the adverse effects of the delay.

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

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

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

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

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

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

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

ARTICLE 12 – CHANGES

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

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

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

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

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

12.3 Constructive Changes and Disputed Adjustments.

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

must be supported by the documentation specified in Subsection 11.4 and a claim for an increase in the Project Price must be documented and calculated as specified in Subsection 13.3.2. Failure of CONTRACTOR to object as and when specified in this Subsection is deemed an acceptance of interpretation, clarification, instruction, direction or order as issued and a waiver of any claim by CONTRACTOR to any adjustment to the Project Price or the Project Time.

12.3.2 Disputed Adjustments. All disputed adjustments under this Contract will be determined in accordance with Article 17 if, as conditions precedent thereto, CONTRACTOR has timely provided all notices and objections required under the terms of the Contract.

ARTICLE 13 - CHANGE INSTRUMENTS

13.1 Introduction.

13.1.1 The OWNER may issue a Change Instrument to require changes in the Project without invalidating the Contract or work authorization.

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

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

13.2 Change Order or Formal Amendment Required for Contract Time and Contract Price Adjustments. Adjustments to Project Time or Project Price will be granted only through a properly-issued Change Order or through a formal amendment to the Contract.

13.3 Change Orders Adjusting Contract Price.

All Change Orders adjusting Contract Price will be invalid unless approved as provided by the Purchasing Code, Chapter 30.

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

.1 Unit Prices as stated in the Contract Documents.

.2 A fixed not-to-exceed or lump sum agreed to by the OWNER and CONTRACTOR and stated in the Change Order, properly itemized and supported by sufficient substantiating data to permit evaluation which will be limited to estimated costs of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of 10% if the Work is performed by CONTRACTOR, or 5% if the Work is performed by a Sub-contractor or Sub-sub-contractor. The Sub-contractors' or Sub-sub-contractors' overhead and profit in turn will not exceed 10%. The total percentage of overhead and profit payable by the OWNER (to both CONTRACTOR and all sub tier Sub-contractors), regardless of the sub-tier which performs the work, will not exceed 15%.

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

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

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

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

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

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

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

.4 The compensation provided for herein, will be received by as payment in full for work done pursuant to the Change Order and will include use of small tools, and total overhead expense and profit. CONTRACTOR and the OWNER will compare records of

work done by Change Order at the end of each day. Copies of these records will be made upon forms provided for this purpose by the OWNER and signed by both the OWNER and CONTRACTOR, with one copy being retained by the OWNER and one by CONTRACTOR. Refusal by CONTRACTOR to sign these records within two working days of presentation does not invalidate the accuracy of the record.

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

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

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

13.6.1 CONTRACTOR will advise the OWNER in writing, promptly and in any event no later than ten days after issuance of the Unilateral Change Instrument, of CONTRACTOR's objection (i) to the amount or method, if any, provided for in the Change Instrument for adjustment to Project Price or Project Time, or (ii) to the absence of any adjustment to the Project Price or Project Time. In order to be valid, a claim for an adjustment of Project Price or Project Time, must contain the specific adjustment requested, must be supported by a detailed explanation of the basis for the claim. In addition, to be valid a claim for increase in Project Time must be supported by the documentation specified in Subsection 11.4, and a claim for an increase in the Contract Price must be documented and calculated as specified in Subsection 13.2.2. **Failure of CONTRACTOR to object as and when specified in this Subsection is deemed an acceptance of the Unilateral Change Order as issued and a waiver of any claim by CONTRACTOR to any adjustment to the Project Price or Project Time.**

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

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

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

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

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

14.2 Tests and Inspections.

14.2.1 CONTRACTOR will give timely notice of readiness of the Work for all required inspections, tests or approvals, and will cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

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

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

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

14.3 Uncovering Work.

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

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

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

14.4 The OWNER May Stop the Work.

14.4.1 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the OWNER to stop the Work will not give rise to any duty on the part of the OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

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

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

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

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

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

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

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

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

14.9 The OWNER May Correct Defective Work. If CONTRACTOR fails within a reasonable time after written notice of the OWNER to correct Defective Work, or to remove and replace rejected Work, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. If, in the opinion of the Contract Administrator, significant progress has not been made during this seven-day period to correct the deficiency, the OWNER may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, the OWNER will proceed expeditiously. In connection with such corrective and remedial action, the OWNER may exclude CONTRACTOR from all or part of Project Site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at Project Site or for which the OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR will allow the OWNER, its agents and employees, the OWNER's other contractors, E/A and E/A's consultants access to Project Site to enable the OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's Defective Work. CONTRACTOR will not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by the OWNER of the OWNER's rights and remedies hereunder.

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

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

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

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

14.11.1 Observations by the E/A;

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

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

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

14.11.5 Any review of a Shop Drawing or sample submittal;

14.11.6 Any inspection, test or approval by others; or

14.11.7 Any correction of Defective Work by the OWNER.

ARTICLE 15 – PROGRESS PAYMENTS, PARTIAL UTILIZATION AND FINAL COMPLETION

15.1 General Method of Payment. For each work authorization, payment of the Project Price will be made in a series of Progress Payments and after Final Completion, a Final Payment, in accordance with this Article.

15.1.1 If CONTRACTOR is required by the work authorization to provide a payment or performance bond, no payment will be made unless and until CONTRACTOR records the bonds and provides the OWNER certified copies of the recorded bonds in accordance with Florida Statutes Section 255.05.

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

15.2.1 The current approved Progress Schedule;

15.2.2 If applicable, the Schedule of Values;

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

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

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

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

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

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

15.3 Review of Application for Payment. As soon as practicable after receipt of an application for Payment, and within the 10-day period following receipt of the application as provided by the Prompt Payment Act, the OWNER will approve, partially approve, or reject the application. The OWNER will provide written notice if payment is rejected or partially rejected, specifying the deficiency in the application for payment and the action necessary to make the request proper. In addition to rejecting payment of all or a portion of the application for failure to comply with submittal requirements referenced above, the OWNER will have the right to reject all or a portion of the application for any of the following reasons:

- 15.3.1 Defective Work not remedied;
- 15.3.2 Third party Claims filed or reasonable evidence indicating probable filing of such Claims;
- 15.3.3 Unless CONTRACTOR has provided payment and performance bonds and complied procedurally with Florida Statutes Section 255.05, failure of CONTRACTOR to make payments properly to Sub-contractor or for labor, materials or equipment;
- 15.3.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Project Price;
- 15.3.5 Damage to the OWNER or another CONTRACTOR;
- 15.3.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 15.3.7 Failure of CONTRACTOR to submit a Schedule of Values in accordance with the Contract Documents, if one is required;
- 15.3.8 Failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;
- 15.3.9 Failure of CONTRACTOR to submit and update a Progress Schedule in accordance with the Contract Documents;
- 15.3.10 Failure of CONTRACTOR to maintain a record of changes on drawings and documents;
- 15.3.11 Failure of CONTRACTOR to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of the OWNER;
- 15.3.12 Reserved
- 15.3.13 CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up; or
- 15.3.14 CONTRACTOR's failure to comply with any provision of the Contract Documents.

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

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

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

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

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

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

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

15.7 Substantial Completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

15.10.3.2 An affidavit that all of CONTRACTOR's debts, and claims, including from all Sub-contractors, Sub-sub-contractors, and Suppliers in connection with the Work, have been paid or otherwise satisfied;

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

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

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

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

15.10.8 Any other documentation required pursuant to the Contract Documents.

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

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

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

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

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

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

16.1 The OWNER May Suspend Project Without Cause. At any time and without cause, the OWNER may suspend any or all of the Work, or any portion thereof, including any or all Projects, for a period of not more than 90 days by written notice to CONTRACTOR which will fix the date on which such Work will be resumed. CONTRACTOR will resume such Work on the date so fixed. CONTRACTOR will be allowed an adjustment in the Project Price or an extension of the Project Time, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim for such an adjustment as provided herein.

16.2 The OWNER May Terminate Without Cause. Upon seven days' notice to CONTRACTOR, the OWNER may, without cause and without prejudice to any right or remedy of the OWNER, elect to terminate one or more work authorizations or the Contract in its entirety. In such case, CONTRACTOR will be paid for completed and acceptable Work executed in accordance with the Contract Documents and work authorizations prior to the date of termination, and, unless the Contract is for unit prices, the following:

16.2.1 For reasonable demobilization costs;

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

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

16.3 The OWNER May Terminate With Cause.

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

- .1 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents or work authorization(s);
- .2 if CONTRACTOR disregards Legal Requirements;
- .3 if CONTRACTOR disregards the authority of the Contract Administrator or the City Manager;
- .4 if CONTRACTOR makes fraudulent statements;
- .5 if CONTRACTOR fails to maintain a work force adequate to accomplish one or more Projects within the Project Time(s);
- .6 if CONTRACTOR fails to make adequate progress and endangers successful completion of one or more Projects; or
- .7 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents or work authorizations;

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

16.3.2 Where CONTRACTOR's services have been so terminated by the OWNER, the termination will not affect any rights or remedies of the OWNER against CONTRACTOR and surety then existing or which may thereafter accrue, including any such rights under other work authorizations. Any retention or payment of moneys due CONTRACTOR by the OWNER will not release CONTRACTOR from liability.

16.4 CONTRACTOR May Stop Work or Terminate. If through no act or fault of CONTRACTOR, the Project is suspended for a period of more than 90 days by the OWNER or under an order of court or other public authority, or (except during disputes) the Contract Administrator fails to forward for processing any mutually acceptable Application for Payment within 30 days after it is submitted, or (except during disputes) the OWNER fails for 60 days after it is submitted to pay CONTRACTOR any sum finally determined by the OWNER to be due, then CONTRACTOR may, upon seven days' written notice to the OWNER, and provided the OWNER does not remedy such suspension or failure within that time, terminate the work authorization and recover from the OWNER payment on the same terms as provided in Section 16.2, above. In lieu of terminating the work authorization and without prejudice to any other right or remedy, if (except during disputes) the Contract Administrator has failed to forward for processing any mutually acceptable Application for Payment within 30 days after it is submitted, or (except during disputes) the OWNER has failed for 60 days after it is submitted to pay CONTRACTOR any sum finally determined by the OWNER to be due, CONTRACTOR may upon seven days' written notice to the OWNER stop the Project until payment of all such amounts due CONTRACTOR under the work authorization, including interest thereon. The provisions of this Section 16.4 are not intended to preclude CONTRACTOR from

making a Claim for an increase in Project Price or Project Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Project as permitted by this Section.

16.5 Discretionary Notice to Cure. In its complete discretion, the OWNER may, but is not required to, provide a Notice to Cure to CONTRACTOR and its surety (if any) to cure any of the conditions outlined in Section 16.3.1 or an anticipatory breach of contract and, if required by the OWNER, to attend a meeting with the OWNER, regarding the Notice to Cure, the event of default, or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, CONTRACTOR will prepare a report describing its program and measures to affect the cure of the event of default or anticipatory breach of contract within the time required by the Notice to Cure. The CONTRACTOR's report will be delivered to the OWNER at least three days prior to any requested meeting with the OWNER and surety.

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

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

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

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

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

ARTICLE 17 - DISPUTE RESOLUTION

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

17.1 Negotiations Required. A Party will request in writing that a meeting be held between representatives of each Party within 14 Calendar Days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

17.2 Non-Binding Mediation. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Section 17.1 proves unsuccessful or the Parties mutually waive the Section 17.1 procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

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

EARTHWORK, GRADING, AND SODDING

I. PURPOSE

The City of Daytona Beach (City) is seeking qualified CONTRACTOR(S) to perform supplementary routine Earthwork, Grading and Sodding Services for designated City properties and rights of way to assist the City with meeting its goal to provide more timely and cost-effective customer service. The intended purpose for the services in this contract is to improve, maintain and/or restore CITY owned or controlled properties by providing a safe and accessible aesthetically pleasing condition.

II. SCOPE OF WORK AND SPECIFICATIONS

1. General

The following requirements shall apply unless otherwise directed by the CITY in this Scope of Work:

a. The CONTRACTOR shall examine all contract bid documents and will provide all coordination, labor, equipment, and materials to complete the work required in accordance with the specifications.

b. The CONTRACTOR has included in the Bid Schedule unit prices the cost of all necessary coordination, mobilization, demobilization, bonds, maintenance of traffic, labor, equipment, materials, disposal and all other ancillary items and tasks needed to complete the required work.

c. The CONTRACTOR will provide soil, sod, fertilizer, pest control and water that complies with the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction, latest edition. The CONTRACTOR will address any questions regarding the final determination on the use of materials to the City should any questions regarding suitability arise.

d. The CONTRACTOR must possess a Florida Pesticide Applicator's License with an Ornamental and Turf designation and trained to handle, dispense and oversee the disbursement of all chemicals utilized in the performance of this Contract.

e. The CONTRACTOR will accomplish all work under the direct supervision of onsite managers experienced in sodding and grading operations for a minimum of 5 years with 8 years preferred.

f. The CONTRACTOR will prevent all debris associated with the work found in and around berms, ditches, curb and gutter systems and structures from accumulating on hard surfaces and from entering the City's storm water system. The CONTRACTOR will be responsible at his cost for repairing and or replacing any area damaged by the onsite accumulation or storage of debris and construction materials.

g. CONTRACTOR shall notify the City Representative within 2 calendar days of the discovery of any unusual conditions out of the norm in the area where the work is to be

performed. Examples of unusual conditions include but are not limited to significant amount of buried rock, concrete or metal debris, volatile organic contaminants, use as a dump site, etc.

h. The CONTRACTOR will operate equipment in a safe professional manner and will maintain such equipment in good repair, working order and appearance, capable of providing quality finished project with an aesthetically pleasing appearance.

i. The CONTRACTOR'S personnel shall conduct themselves in a courteous, respectful and professional manner and carry identification at all times.

j. The CONTRACTOR'S company vehicles used for transportation or towing trailers shall be marked with the company name and telephone number in a font style and size that is easily read from a distance of 50'.

2. Sodding

The CONTRACTOR will provide sod for use in this work consists of market available varieties of:

- St. Augustine,
- Centipede,
- Bahia,
- Zoysia
- Bermuda

The CONTRACTOR will provide empirical data for at least 10 years that show that the sod varieties used are sustainable with an average level of maintenance in the coastal Volusia County area and that they are listed as reasonable choices for East Volusia County area by the University of Florida Institute of Agriculture and Food Sciences (UF/IFAS).

The CONTRACTOR will base his sod selection to match the predominant variety that is existing in the adjacent area, unless one particular type/variety of sod is called for at the time of issuance of the work request. The CONTRACTOR shall use Pensacola Bahia sod. Argentine Bahia may be substituted, based on approval and availability in sandy areas or where little or no grass is established and the adjacent area is a mixture of weeds. The CONTRACTOR will use types of sod used should match the adjacent lawn variety if desired by the affected property owners and approved by the City Representative where sodding will adjoin, or be in sufficiently close proximity to private communities and other neighborhoods where well healthy well maintained lawns are the norm.

The CONTRACTOR will provide sod taken up in commercial-size rectangles, or rolls, preferably 12 by 24 inch or larger, except where 6 inch strip sodding is called for, or as rolled sod at least 12 inches in width and length consistent with the equipment and methods used to handle the rolls and place the sod. Sod shall be a minimum of 1 1/4 inch thick including a 3/4 inch thick layer of roots and topsoil. The CONTRACTOR may not reduce the width of rolled sod after the sod has been taken up from its initial growing location/sod farm. The CONTRACTOR will remove any netting contained within the sod at the time of installation. CONTRACTOR shall remove from site and dispose of any materials and debris created as a result of the performance of the required work.

In no case will the CONTRACTOR allow the top of the finished sod grade to extend above the adjacent hard surface. The CONTRACTOR will place the top of the St. Augustine, Bahia and Bermuda sod varieties approximately one-half (1/2) inches below the adjacent hard surface, in reference to the soil portion of the sod, not the leaf tissue. The CONTRACTOR shall place the top of the Centipede and Zoysia sod varieties level with the adjacent hard surface.

The CONTRACTOR will provide sod that is sufficiently thick to secure a dense stand of live turf and provide reasonable stability. The sod shall be live, fresh, uninjured and certified free of contaminants, species invasive to Florida and weeds at the time of installation. The sod shall have a soil profile of sufficient thickness, adhering firmly to the roots to withstand all necessary handling. The CONTRACTOR shall place the sod within 48 hours after being harvested and kept moist from the time it is cut until it is planted. The CONTRACTOR may not use sod which has been cut for more than 48 hours, unless specifically authorized by the City Representative. The CONTRACTOR will provide the Project Manager a letter of certification from the turf supplier of the date and the sod was cut, the type of sod cut upon delivery of the sod to the job site. The CONTRACTOR may inspect the source of the sod and will obtain the City's prior written approval of the sod to being cut for use in the work. The CONTRACTOR shall lay the sod firmly in contact with the soil. The Contractor shall ensure each piece is touching the adjoining pieces, allowing no space between pieces and no overlapping.

The CONTRACTOR shall adequately suppress populations of visible, undesirable weeds utilizing a non-selective herbicide prior to planting, in accordance with the manufacturer's label prior to sod installation. The CONTRACTOR will inspect the area to be sodded and, if necessary, treat for insects that feed primarily on, or may otherwise cause harm to the sod variety that is used. The CONTRACTOR shall perform post planting inspections at 48 and 96 hour intervals in an attempt to detect, identify and treat post planting pest occurrences. The CONTRACTOR will use materials and application procedures for the treatments that follow the manufacturer's label recommendations and best management practices so as to not harm the sod or reduce its ability to grow and thrive.

The City may inspect sod within 90 days of installation for evidence of establishment of root growth during the typical Florida coastal Volusia County growing season. The CONTRACTOR shall replace sod determined to be unacceptable to the City within 14 days of written notification.

3. Fertilization

The CONTRACTOR's use of commercial fertilizers for establishment of sod shall be in compliance with the State fertilizer laws and regulations. The numeric designations for the fertilizer content shall represent the three (3) primary constituents respectively in this order; total nitrogen, available phosphoric acid, and water soluble potash.

The CONTRACTOR will use the base nutrient analysis, 12-24-14, or approved equivalent with at least fifty percent (50%) of the phosphoric acid derived from normal super-phosphate or an equivalent source providing a minimum of two units of sulfur and noted on the quantitative analysis card located on the bag. during the growing season (May through October). The analysis will also contain fifty percent (50%) SRN (slow release nitrogen) poly-coated.

If the CONTRACTOR determines that a "cooler" season fertilizer application is required, an equivalent 6-2-0, 4% Iron, organic bio-solids product equal to Milorganite brand will be used.

The CONTRACTOR will follow manufacturer's recommendations for rate of application and timing for the variety of sod being used, time of year and the site location soil and/or other local conditions. Suggested application rates are as follows:

12-24-14 applied at a rate of 1 pound of nitrogen per thousand square feet of sod and "watered in" immediately upon application.

6-2-0 organic bio-solids applied at a rate of one half pound of nitrogen per one thousand feet of installed sod and "watered in" immediately upon application.

4. Temporary Watering

The CONTRACTOR shall provide growth enhancing, uncontaminated water and the equipment to transport, accurately meter and safely apply the water without causing soil erosion or damage to sod and plant materials. The CONTRACTOR will provide and implement an FDOT compliant Traffic Control Plan as needed for each water application involving a public right of way, the cost of which will be included in the unit cost of the temporary water. Areas to receive temporary water shall include but not necessarily be limited to City owned street and recreational trail right of ways, FDOT and County roadway right of ways, City park facilities, landscape beds, new sod installations, and for maintenance of other sod/grassed/landscaped areas as requested by the CITY., the CONTRACTOR shall provide watering of the newly planted areas daily for 30 calendar in the absence of properly functioning automatic irrigation or a CITY verified minimum of ¼" of natural daily rainfall on the planted area.

The CONTRACTOR will transport or otherwise provide a sufficient amount of water to the designated sites. The CONTRACTOR will apply the water at the frequency, amount and rate of water application in accordance with the recommendations and best management practices of UF/IFAS and the Florida Irrigation Society (FIS) for the type of sod or planting area being addressed with any required adjustments for sod/plant variety soil type and other local conditions. The metering device on the transporting equipment for the application of the water shall be certified accurate by the State of Florida on an annual basis. The date and time of application, the before application and after application meter readings shall be provided by the Contractor on each invoice and certified as being true and correct by an officer of the Contractor affixing their signature to the invoiced reading.

5. Earthwork and Grading

CONTRACTOR will provide, place and grade appropriate clean fill, to be approved by City representative, which closely matches the existing soil, except where the existing material is either rocky or of a heavy material which would compromise vertical percolation/ drainage. In these occurrences, a 70/ 30 mix of 70% "trap sand" and 30% Florida peat mix would be required.

The CONTRACTOR will "plate compact" the material with a motorized compacting unit prior to finish grading and sod installation. The CONTRACTOR shall finish grade (top soil) material to a level surface or other City Representative approved easily and safely pedestrian friendly sloped finish grade that will accept sod when adjacent to a hard surface. The CONTRACTOR will ensure the fill and Finish Soil Layer (top soil) have appropriate supporting and transitional slopes (whether rising or falling) to the surrounding existing surface that are no steeper than twenty five percent (25%) unless approved in advance by the City Representative.

The CONTRACTOR will provide fill and Finish Soil Layer (top soil) soil material that is free of chemical contaminants, lumps, trash, concrete, metal, asphalt, glass and all other foreign objects that are not conducive to immediate establishment of a good stand of grass from the varieties of sod that are permitted for use in this contract. The CONTRACTOR will provide Finish Soil Layer (top soil) that meets the PH, organics and other nutritional requirements for the establishment of a thriving stand of grass as set forth by FDOT.

6. Work Requests

CONTRACTOR will visit each project site upon receipt of the work request from the City, and will review any provided plans prior to any work beginning.

The CITY will issue work requests to the CONTRACTOR with the lowest unit costs for the primary items of work identified by the project scope of work included in the work request. "Primary items of work" means those line items required by the work request that represent the highest costs due to having the anticipated greatest volume or quantity. If that CONTRACTOR is determined by the CITY to be unavailable or unable to respond promptly and perform the identified work promptly, a work request will be issued to the CONTRACTOR with the second lowest unit costs for the primary items of work identified by the project scope of work.

The CONTRACTOR will provide a project fee proposal with estimated quantities for each item identified to be part of the scope of work within 7 calendar days of the date of the City's work request. The CONTRACTOR will include the supporting measurements and calculations in an orderly and logical manner that were used to compute the proposed quantity for each pay item of work in the fee proposal. Upon CITY review and acceptance a Work Authorization and Purchase Order will be issued for the project work. The CONTRACTOR will begin work within 5 calendar days after receiving the Purchase Order.

The City representative will inspect the work periodically and verify using various means such as but not limited to observation, testing, mill analysis tickets, bag labels, measurements, weights, readings and other appropriate means at City discretion that the required work is being performed in accordance with City directions and the requirements of the contract and Work Authorization. The City's representative will be provided all requested documentation in completed condition and a timely manner that is needed to verify the quality and quantity of the materials used prior to payment being made.

End Section