



FRUITLAND PARK CITY COMMISSION
REGULAR MEETING AGENDA
November 9, 2017 (Revised 5:00 p.m., 11.08.17.)
City Hall Commission Chambers
506 W. Berckman Street
Fruitland Park, FL 34731
6:00 p.m.

1. CALL TO ORDER, INVOCATION, AND PLEDGE OF ALLEGIANCE
Invocation – Pastor Jim Keegan, New Life Presbyterian Church

Pledge of Allegiance - Police Chief Michael A. Fewless

2. ROLL CALL

3. ANNUAL ELECTION (city clerk)

Elect a city commission member to the following positions Section 3.07, City Charter:

(a) Mayor

(b) Vice Mayor

4. CONSENT AGENDA

Routine items and items not anticipated to be controversial are placed on the Consent Agenda to expedite the meeting. If a Commissioner, staff member or member of the public wish to discuss any item, the procedure is as follows: (1) Pull the item(s) from the Consent Agenda; (2) Vote on remaining item(s); and (3) Discuss each pulled item separately and vote.

(a) Approval of Minutes (city clerk) (revised)
October 26, 2017 regular meeting.

(b) Resolution 2017-047 Board of Trustees Municipal Firefighters Pension Trust Fund Appointment – K Ducharme (city clerk)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPOINTING A MEMBER TO THE BOARD OF TRUSTEES OF THE MUNICIPAL FIRE FIGHTERS PENSION TRUST FUND OF THE CITY OF FRUITLAND PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

5. REGULAR AGENDA

- (a) **2018 Meeting Schedule Discussion** (city clerk)
- (b) **Resolution 2017-046 CR 466A - Phase IIIA Improvements** (city manager) (revised 2)
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN LAKE COUNTY, FLORIDA, AND THE CITY OF FRUITLAND PARK FOR THE INSTALLATION OF CITY'S WATER AND SEWER LINES ALONG THE PROPOSED CR 466A PHASE IIIA ROAD PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.
- (c) **Proposed Recreation Fees Revision Discussion** (city manager/parks and recreation director)
Discussion on proposed revision to the parks and recreation fees.
- (d) **Janitorial Cleaning Service Bids** (city manager)
Consideration of janitorial service contracts.
- (e) **ITB 2017-001 New Public Library Facility Construction and Contract Award** (city manager/community development director) (revised 2)
Consider the selection negotiating committee's recommendation to award a contract to the lowest bidder on ITB 2017-001 New Public Library Facility Construction and Contract Award.
- (f) **ITB 2017-002 Site Development of a New Public Library Facility Construction and Contract Award** (city manager/community development director) (revised 2)
Consider the selection negotiating committee's recommendation to award a contract to the lowest bidder on ITB 2017-002 Site Development of a New Public Library Facility Construction and Contract Award

PUBLIC HEARING

- (g) **Second Reading and Public Hearing - Ordinance 2017-029 Floodplain** (city manager/community development director/city attorney)
AN ORDINANCE BY THE FRUITLAND PARK CITY COMMISSION AMENDING THE FRUITLAND PARK LAND DEVELOPMENT REGULATIONS CHAPTER 161.090 TO MAKE MODIFICATIONS TO BRING THE REGULATIONS INTO AGREEMENT WITH THE MOST CURRENT FEMA-APPROVED, CODE-COMPANION FLOODPLAIN MANAGEMENT ORDINANCE FOR FLORIDA COMMUNITIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (The first reading was held on October 26, 2017.)

SUPPLEMENTAL AGENDA ITEM

- (h) Police Department Vehicle Purchases – Bartow Ford** (city manager/police chief)
Approve the contract to purchase two police vehicles from Bartow Ford for \$30,800.22.
- (i) Police Department HG2 Emergency Lighting Quote** (city manager/police chief) (revised 2)
Approve the quote for \$14,000 equipment installation lights for 2017 Ford Interceptor SUV.

6. OFFICERS' REPORTS

- (a) City Manager**
- (b) City Attorney** (revised 2)
 - i. Lawsuits**
 - ii. Notice of Claims**

7. PUBLIC COMMENTS

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Action may not be taken by the City Commission at this meeting; however, questions may be answered by staff or issues may be referred for appropriate staff action.

Note: Pursuant to F.S. 286.0114 and the City of Fruitland Park's Public Participation Policy adopted by Resolution 2013-023, members of the public shall be given a reasonable opportunity to be heard on propositions before the City Commission. Accordingly, comments, questions, and concerns regarding items listed on this agenda shall be received at the time the City Commission addresses such items during this meeting. Pursuant to Resolution 2013-023, public comments are limited to three minutes.

8. COMMISSIONERS' COMMENTS

- (a) Commissioner Ranize**
- (b) Commissioner Lewis**
- (c) Commissioner Bell**
- (d) Vice Mayor Gunter, Jr.**

9. MAYOR'S COMMENTS

10. ADJOURNMENT

DATES TO REMEMBER (revised 2)

Please note that in addition to the city commission meetings, more than one city commissioner may be present at the above-mentioned events.

November 10, 2017 – Veteran’s Day – City Hall Closed

November 18, 2017 *Coffee with the Mayor*, Moyer Village Recreation Center, 3000 Moyer Loop, The Villages, Florida 32162 at 8:00 a.m.

November 23, 2017 –Thanksgiving - City Hall Closed

November 24, 2017 – Day After Thanksgiving - City Hall Closed

December 1, 2017 – Employee Holiday Party, Community United Methodist Church, 309 College Avenue, Fruitland Park, Florida 34731 at 7:00 p.m.

December 8, 2017 – *Hometown Christmas* at 5:30 p.m.

December 12, 2017 –LCLC *Year-End Wrap-up*, Lake Receptions 4425 N Highway 19-A, Mount Dora, Florida 32757 at 12:00 p.m.

December 14, 2017 – Annual School Concurrency Meeting, Lake County District School Offices, 201 W Burleigh Boulevard, Tavares, Florida 32778 at 10:00 a.m.

December 14, 2017 – City Commission/Employees and Operation Bless Fruitland Park Annual Luncheon, 509 West Berckman Street, Fruitland Park, Florida 34731 at 11:30 a.m.

December 14, 2017 City Commission Regular at 6:00 p.m.

December 15, 2017 – Movie on the Lawn “*Elf*” at 6:00 p.m.

December 16 ,2017 – *Wreaths Across America*, Shiloh Cemetery, Shiloh Street, Fruitland Park, Florida 34731 at 12:00 p.m.

December 25, 2017 – Christmas Day - City Hall Closed

December 26, 2017 – Day After Christmas - City Hall Closed

Fruitland Park Library Construction Ground-Breaking Ceremony TBD

January 1, 2018, New Year’s Day – City Hall Closed

January 11, 2018, City Commission Regular at 6:00 p.m.

January 12, 2018 – LCLC *Organizational Meeting* and *Let Cities Work Initiative*, Lake Receptions 4425 N Highway 19-A, Mount Dora, Florida 32757 at 12:00 p.m.

January 25, 2018, City Commission Regular at 6:00 p.m.

Any person requiring a special accommodation at this meeting because of disability or physical impairment should contact the City Clerk’s Office at City Hall (352) 360-6727 at least forty-eight (48) hours prior to the meeting. (§286.26 F.S.)

If a person decides to appeal any decision made by the City of Fruitland Park with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The city does not provide verbatim records. (§286.0105, F.S.)

PLEASE TURN OFF ELECTRONIC DEVICES OR PLACE IN VIBRATE MODE.



**AGENDA ITEM
NUMBER
3ab**

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Annual Election		
For the Meeting of:	November 9, 2017		
Submitted by:	City Clerk		
Date Submitted:	November 1, 2017		
Are Funds Required:		Yes	X No
Account Number:	N/A		
Amount Required:	N/A		
Balance Remaining:	N/A		
Attachments:	No		
Description of Item:			
<p>According to Article III, Section 3.07, Mayor, the city's charter requires the city commission on an annual basis at its first regular meeting or soon thereafter after the November regular election to elect one of its members as:</p> <p>(a) mayor and (b) vice mayor</p>			
Action to be Taken: Approval.			
Staff's Recommendation:			
Additional Comments:			

Reviewed by: _____
City Manager

Authorized to be placed on the Regular agenda: _____
Mayor



**AGENDA ITEM
NUMBER
4ab**

5

CONSENT AGENDA ITEM SUMMARY SHEET

Revised

ITEM TITLE:	Draft Meeting Minutes and Resolution 2017-047				
For the Meeting of:	November 9, 2017				
Submitted by:	City Clerk				
Date Submitted:	November 1, 2017				
Are Funds Required:			Yes	X	No
Account Number:	N/A				
Amount Required:	N/A				
Balance Remaining:	N/A				
Attachments:	Yes				
Description of Items:					
<p>Routine items and items not anticipated to be controversial are placed on the Consent Agenda to expedite the meeting. If a Commissioner, staff member or member of the public wish to discuss any item, the procedure is as follows: (1) Pull the item(s) from the Consent Agenda; (2) Vote on remaining item(s); and (3) Discuss each pulled item separately and vote</p> <p>a Approve regular minutes – October 26, 2017 regular meeting minutes, if there are no corrections and</p> <p>b Adopt Resolution 2017-047 reappointing Mr. K Ducharme, (Firefighters Category) Vice Chair, to a two-year term to expire December 31, 2019.</p>					
Action to be Taken: Adopt Resolution 2017-043					
Staff's Recommendation:					
Additional Comments:					

Reviewed by: _____
City Manager

Authorized to be placed on the Consent Agenda: _____
Mayor

**FRUITLAND PARK CITY COMMISSION REGULAR
MEETING MINUTES
October 26, 2017**

A regular meeting of the Fruitland Park City Commission was held at 506 W. Berckman Street, Fruitland Park, Florida 34731 on Thursday, October 26, 2017 at 6:00 p.m.

Members Present: Mayor Chris Cheshire, Vice Mayor John L. Gunter, Jr., Commissioners Christopher Bell, Ray Lewis, and Rick Ranize.

Also Present: City Manager Gary La Venia, City Attorney Anita Geraci-Carver; City Treasurer Jeannine Racine; Captain Eric Luce; Interim Fire Chief Don Gilpin; Deputy Fire Chief Tim Yoder; Firefighters Madison Leary and Chris Lewis, Fire Department; Michelle Yoder, Parks and Recreation Director; Community Development Director Charlie Rector; Public Works Director Dale Bogle, and City Clerk Esther B. Coulson.

1. CALL TO ORDER, INVOCATION, AND PLEDGE OF ALLEGIANCE

After Mayor Cheshire called the meeting to order at 6:00 p.m., Pastor Chuck Padgett, Trinity Assembly of God, gave the invocation and Chief Fewless led in the Pledge of Allegiance to the Flag.

2. ROLL CALL

At Mayor Cheshire's request, Ms. Coulson called the roll and a quorum was present.

3. SPECIAL PRESENTATIONS

(a) Proclamation –Former Commissioner Reverend Robert D. Harden

At Mayor Cheshire's recommendation and **by unanimous consent, the city commission agreed to present the proclamation honoring former Commissioner Reverend Robert D. Harden at the next meeting when his family member would be present.**

(b) Local Schools Recognition – Florida City Government Week – October 23 to 29, 2017 “My City: I’m Part of It, I’m Proud of It”

Mayor Cheshire Fruitland Park Elementary School

On behalf of the city commission, Mayor Cheshire read into the record a proclamation supporting the Florida League of Cities' initiative in sponsoring October 23 through 29 as *Florida City Government Week*. The city commission encouraged all citizens to volunteer to improve lives in this community.

Mayor Cheshire recognized the presence of Ms. Sophia Hurtt, 12 year-old 7th grader who attends The Villages Charter Middle School and is on its honor society and the dean's list.

Mayor Cheshire also acknowledged Ms. Tammy Langley, Fruitland Park Elementary School Principal, at this evening's meeting who introduced the Fruitland Park National Elementary Honor Society (FP NEHS) 2017-18 students

who earned and maintained a 3.5 grade point average, showed leadership, community service and good citizenship. She introduced FP NEHS President Carson Miller who, on behalf of the society, described the NEHS and defined the importance of leadership and welcomed NEHS Secretary Jessica Dawson who highlighted *the world without leadership*.

The city commission thanked the students for their involvement in the community.

4. LOCAL PLANNING AGENCY

By unanimous consent, the city commission recessed its meeting at 6:15 p.m. to convene the Local Planning Agency meeting, and reconvened the regular meeting at 6:24 p.m.

5. CONSENT AGENDA

On motion of Commissioner Ranize, seconded by Commissioner Bell and unanimously carried, the city commission approved the following consent Agenda items:

(a) Approval of Minutes

i. September 18, 2017 special meeting and

ii. September 28, 2017 regular meeting minutes as submitted

and

(b) Munis Three-Year Contract Renewal

the three-year year contract renewal from Tyler Technologies for the City of Fruitland Park's Munis accounting software.

6. REGULAR AGENDA

(a) Resolution 2017-043 Lake County League of Cities' Appointments

Ms. Geraci-Carver read into the record proposed Resolution 2017-043 the substance of which is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPOINTING A MEMBER AND ALTERNATE TO THE LAKE COUNTY LEAGUE OF CITIES, INC.; PROVIDING THE TERM EXPIRATION DATE; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by ice Mayor Gunter and seconded by Commissioner Ranize that the city commission adopt Resolution 2017-043 as previously cited.

After discussion and following Commissioner Bell's remarks that he will be serving as the Lake County League of Cities; President for the third time, **Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.**

(b) **Resolution 2017-045 - Planning and Zoning Board Chair and Vice Chair Approval**

Ms. Geraci-Carver read into the record proposed Resolution 2017-045 the substance of which is as follows;

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING THE PLANNING AND ZONING BOARD CHAIR AND VICE-CHAIRMAN SELECTION FOR FISCAL YEAR 2017/2018; PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by Commissioner Bell and seconded by Vice Mayor Gunter that the city commission adopt Resolution 2017-045 as previously cited.

After discussion, **Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.**

Vice Mayor Gunter encouraged the public to volunteer in the community and identified the city's boards and committees where application forms are available for those interested in applying.

(c) **Resolution 2017-044 Recreation Software Program Agreements R.C. Systems Inc.**

Ms. Geraci-Carver read into the record proposed Resolution 2017-044 the substance of which is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING THE END-USER LICENSING AGREEMENT; THE PURCHASE, SUPPORT AND MAINTENANCE AGREEMENT, AND THE CLOUD HOSTING AGREEMENT, ALL AMONG THE CITY OF FRUITLAND PARK AND R.C. SYSTEMS, INC.; PROVIDING FOR AN EFFECTIVE DATE.

At Mayor Cheshire's request, Ms. Yoder explained that the Rec Pro Software -- initial setup, signup and register, pay and reserve online -- was included in the FY 2017-18 budget accepted by the city commission at its July 12, 2017 workshop and relayed the city commission's previous request for staff to appear before the city commission for approval, if costs exceed \$4,000.

In response to Commissioner Ranize' inquiry, Ms. Yoder indicated that she would provide Ms. Coulson access to public records with a user name and password and described how payments would be processed through R.C. Systems and provided to Ms. Racine.

After Mr. La Venia referred to the second quote received from Maximum Solutions Inc. to set up and configure software for \$13,000, Ms. Yoder, in response to Vice Mayor Gunter's inquiry, identified R.C. Systems' initial costs, its coverage period and expiration date.

Following further discussion Vice Mayor Gunter referred to Exhibit B, 10-Year Cost of Ownership and the suggested implementing the software program for one year.

After some discussion, **a motion was made by Commissioner Ranize and seconded by Commissioner Bell that the city commission adopt Resolution 2017-044 as previously cited.**

Whereupon Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.

(d) August 2017 EOM Finance Report

The city commission considered its action on the financial report reflecting revenues and expenses for all funds through August 31, 2017.

After Ms. Racine reviewed the end-of-month financial report, and **on motion of Commissioner Ranize, second by Commissioner Bell and unanimously carried, the city commission accepted the report as previously cited.**

(e) First Reading - Ordinance 2017-029 Floodplain

Ms. Geraci-Carver read into the record proposed Ordinance 2017-029 the substance of which is as follows:

AN ORDINANCE BY THE FRUITLAND PARK CITY COMMISSION AMENDING THE FRUITLAND PARK LAND DEVELOPMENT REGULATIONS CHAPTER 161.090 TO MAKE MODIFICATIONS TO BRING THE REGULATIONS INTO AGREEMENT WITH THE MOST CURRENT FEMA-APPROVED, CODE-COMPANION FLOODPLAIN MANAGEMENT ORDINANCE FOR FLORIDA COMMUNITIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (The second reading will be held on November 9, 2017.)

A motion was made by Commissioner Lewis and seconded by Commissioner Ranize that the city commission approve the local planning agency's recommendation of approval on Ordinance 2017-029 as previously cited.

There being no comments from the public, **Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.**

PUBLIC HEARING

By unanimous consent, Mayor Cheshire opened the public hearings at this evening's meeting.

(f) Public Hearing Resolution 2017-041 Final Millage Rate FY 2017-18

It now being the time advertised to hold a public hearing, Mayor Cheshire announced the city's preparedness to set the tentative millage rate of 3.9863, an 8.63% increase over the roll back rate of 3.6696 and over 64% increase in taxable assessed value of \$192,233,050 value generated by The Villages.

After Ms. Geraci-Carver read into the record proposed Resolution 2017-041 the substance of which is as follows, Mayor Cheshire called for the public to be heard:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, LAKE COUNTY, FLORIDA, ADOPTING A FINAL OPERATING MILLAGE RATE OF 3.9863 LEVYING OF AD VALOREM TAXES FOR LAKE COUNTY FOR FISCAL YEAR 2017-2018; PROVIDING FOR AN EFFECTIVE DATE. (The first public hearing was held on September 14, and the final public hearing was held on September 28, 2017.)

Ms. Racine referred to a telephone call she recently received from the Florida Department of Revenue, General Tax Administration Program where she was informed that the figure featured in the September 24, 2017 newspaper publications reflected the FY 2016-17 actual tax levy instead of the actual tax proceeds received, an error on her part that needed to be re-advertised.

A motion was made by Commissioner Lewis and seconded by Commissioner Bell that the city commission adopt Resolution 2017-041 as previously cited.

In response to an inquiry posed by Ms. Julie Moterson, The Villages of Fruitland Park resident, Mayor Cheshire and Mr. La Venia described how the water and wastewater services, infrastructure, and costs are apportioned and that The Villages contract with a vendor to provide solid waste services to its residents.

After pointing out several emails received from The Villages residents, regarding their concerns on the subject issue, Commissioner Ranize explained the property tax charged. Copies of the respective emails are filed with the supplemental papers to the minutes of this meeting.

In answering a question posed by Ms. Sue Line (inaudible) regarding her property taxes, The Villages of Fruitland Park resident, Mr. La Venia and Vice Mayor Gunter explained how the fire assessment (fire protection) and water and

wastewater services are paid for by The Villages of Fruitland Park (Pine Ridge and Pine Hill Residents).

Following an inquiry raised by Ms. Carol Shandy, The Villages of Fruitland Park resident, Mr. La Venia recognized the Villages Community Development District (VCDD) No. 11 as the one of communities The Villages of Fruitland Park residents joined. He indicated that District Manager Janet Y. Tutt's office can be reached at (352) 751-3939 who would provide information on VCDD's assessment of residents homes; the Lake County Tax Assessor who would submit the county's portion of the tax bill, and the city would answer anything regarding local taxes.

In response to an inquiry posed by Mr. Peter J. Hurtt,, City of Fruitland Park resident, Mayor Cheshire relayed Ms. Coulson's statement identifying Lake County Value Adjustment Board as the appeals process for assessed property values.

After discussion, **Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.**

(g) Public Hearing - Resolution 2017-042 Final Adoption Budget FY 2017-18

It now being the time advertised to hold a public hearing to consider proposed Resolution 2017-042 and after Ms. Geraci-Carver read into the record the title, the substance of which is as follows, Mayor Cheshire called for the public to be heard:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, LAKE COUNTY, FLORIDA, ADOPTING A FINAL MILLAGE RATE OF 3.9863 LEVYING OF AD VALOREM TAXES FOR LAKE COUNTY FOR FISCAL YEAR 2017-2018; PROVIDING FOR AN EFFECTIVE DATE. (The first public hearing was held on September 14, and the final public hearing was held on September 28, 2017.)

A motion was made by Commissioner Ranize and seconded by Commissioner Lewis that the city commission adopt Resolution 2017-042 as previously cited.

With respect to a question posed by Ms. Martha Rosenbaugh, The Villages of Fruitland Park, regarding funding for roads in the Pine Ridge area, the city commission explained how it borrowed funds to pay off the loan for roads belonging to the city which needed to be maintained and that the infrastructure is for The Villages.

Following Mr. Hurtt's explanation on the bond process and in response to Commissioner Bell's inquiry, Mayor Cheshire recognized the *Where Does Our Money Go?* presentation (for residents living north of CR 466) held on October 25, 2017 at The Villages Savannah Center; however, it was acknowledged that said presentation did not apply to residents residing south of CR 466A. Mayor

Cheshire requested that Mr. La Venia or Ms. Coulson contact Ms. Tutt to attend a future city commission meeting to give a presentation in this regard.

After discussion, **Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.**

(h) Second Reading and Public Hearing – Ordinance 2017-027 - Wastewater Rates Increase

It now being the time advertised to hold a public hearing to consider the enactment of proposed Ordinance 2017-027, after Ms. Geraci-Carver read into the record the title the substance of which is as follows, Mayor Cheshire called for the public to be heard:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AMENDING CHAPTER 99, SECTION 99.60 (B) OF THE CODE OF ORDINANCES TO PROVIDE FOR AN INCREASE IN WASTERWATER RATES; PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE. (The first reading was held on September 14, 2017.)

A motion was made by Commissioner Ranize and seconded by Commissioner Lewis that the city commission enact Ordinance 2017-027 to become effective October 1, 2017 as provided by law.

Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.

(i) Second Reading and Public Hearing – Ordinance 2017-028 – Water Rate Increase

It now being the time advertised to hold a public hearing and after Ms. Geraci-Carver read into the record proposed Ordinance 2017-028 the substance of which is as follows, Mayor Cheshire called for the public to be heard:

AN ORDINANCE OF THE CITY OF FRUITLAND PARK, LAKE COUNTY, FLORIDA ADJUSTING THE WATER UTILITY RATES BASED ON THE CIP IN ACCORDANCE WITH SECTION 50.30(N) IN CHAPTER 50 OF THE CODE OF ORDINANCES; TO BE EFFECTIVE OCTOBER 1, 2017; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. (The first reading was held on September 14, 2017.)

A motion was made by Commissioner Ranize and seconded by Commissioner Bell that the city commission enact Ordinance 2017-027 to become effective October 1, 2017 as provided by law.

Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.

END OF PUBLIC HEARING

7. OFFICERS' REPORTS

(a) City Manager

Mr. La Venia announced that he is not going anywhere, contrary to rumors heard.

i. Proposed Personnel Policy Revisions

Mr. La Venia referred to the proposed personnel policy revisions (Subsection 10.1, Education Reimbursement, Ordinance 2014-018 Personnel Policy and Procedures); requested that the city commission include the college credits provision beneficial to the employees position and pointed out the city's current reimbursement of \$250. He recommended the tuition rates and fees per credit hours -- with additional costs -- to be borne by the employee for certificate and associate and baccalaureate degree programs by Lake-Sumter State College and noted the University of Notre Dame's online programs.

In response to several questions posed by Vice Mayor Gunter, Mr. La Venia explained that if the employee leaves after one year, 50 percent would be pro-rated on the time the employee stays with the city and after two years, they would receive 100 percent after the course-work is completed, depending on the credits taken and the city's expended costs.

In answering Commissioner Ranize' inquiry and after Mr. La Venia confirmed, in the affirmative, the difficulty of collection from the employee, Ms. Geraci-Carver, in agreement, addressed the option for the employee to pay the tuition fees in advance where reimbursement would occur after employment is completed with the city.

Mr. La Venia explained that two employees are currently taking advantage of the city's education reimbursement program which will not affect them in the current semester.

Commissioner Ranize recalled the city's scholarship/employee classes; addressed his preference for same to be geared towards college credits, and voiced his support of further education and training for city employees to which Mayor Cheshire explained that the scholarship program is no longer included in the city's budget.

In response to Mr. Hurtt's inquiry, Mr. La Venia explained that city employees ought to maintain a "C" grade and a rating of 2.0 or better.

After discussion, Commissioner Bell concurred with Commissioner Lewis' statements for the program to be encouraged to employees; the grade weight structure to be connected to a local college, and for the city attorney to draft an ordinance revising career development.

In response to Mayor Cheshire's inquiry regarding the proposed personnel policy revisions for paid time off (PTO) (the subject of Mr. La Venia's August 22, memorandum provided at the September 14, 2017 regular meeting), Mr. La Venia referred to Ms. Racine's subsequent September 22 and 26, 2017 emails regarding PTO.

After Ms. Racine, at Mayor Cheshire's request, explained the financial liability in converting sick leave to PTO, a method which she disagreed, Commissioner Lewis and Mayor Cheshire voiced their concurrence with her statements and Commissioner Ranize cited reasons why he opposes.

Following further deliberations and after Mr. La Venia's affirmative response to Mayor Cheshire's suggestion on the ability to utilize the Family Medical Leave Act, Ms. Geraci-Carver explained that it cannot be used if the city has less than 50 employees.

After Commissioner Ranize addressed the ability to donate sick leave, Ms. Geraci-Carver confirmed that PTO would be another option.

After extensive discussions, Mayor Cheshire reiterated the need to find out the city employees' preference on utilizing sick leave in comparison to PTO; indicated that Ms. Coulson just referenced subsection 8.5(h), Donation of Sick Leave, Ordinance 2014-018 Personnel Policy Procedures, and voiced his agreement with Commissioner Ranize that the city commission ought to hold a workshop to address same.

By unanimous consent, the city commission agreed with Mayor Cheshire's suggestion to proceed with the drafting of an ordinance relating to college credits and postpone the city commission's consideration on the revisions relating to paid time off.

iii. Hurricane Irma Status Update

At Mayor Cheshire's request, Ms. Racine reiterated her statements made at the September 28, 2017 regular meeting on actual funding and available funds in the bank and the impression she received that excess monies remained. She addressed her plan, after payments have been made on Hurricane Irma debris pickup, to go back to the respective departments requesting that they give back some of their budget.

In response, Mayor Cheshire noted the misunderstanding received on the extra funds remaining and accumulated and the need to reduce the budget.

Commissioner Lewis expressed concerns with the statements made by Ms. Racine at the September 18 special and September 28, 2017 regular meetings on the actual, available and unrestricted and fund balance for year ending FY 2016-17; her email dated September 27, 2017 regarding the restricted funds balance accompanying the explanation from Ms. Kelly Leary, McDirmit Davis CPA, auditors retained by the city, and Ms. Leary's presentation made at the September 14, 2017 regular meeting regarding the 2016 Financial Audit where no mention was made on same.

Commissioner Lewis voiced his belief that available funds existed on collected advance revenues and pointed out his previous meeting with Ms. Racine addressing the retention of a contract; the city's payment allocated towards hurricane-related costs, and the budget amendment to transfer funds in that regard.

Following considerable discussion, Commissioner Lewis voiced his belief on the availability of funds in the city's financial institution without utilizing the budget or a line of credit. He questioned the explanation of entering into a contract, the allocation of \$150,000, and the city commission's future action to amend the budget.

After continued deliberations, Commissioner Lewis pointed out the \$13,880 available for spending at the city's discretion reflected under governmental funds -- management's discussion and analysis from the auditor's report on the financial statements presented on September 14, 2017 and mentioned the assurance he received from Ms. Racine to fulfil same; thus, Mr. La Venia's concurrence in that regard.

Subsequent to extensive dialogue, and **by unanimous consent, the city commission agreed with Mayor Cheshire's suggestion for McDirmit Davis, auditor, to appear before the city commission to explain the ability of the negative fund balance and directed the city manager to contact the auditor to determine the city commission's direction.**

In response to Mayor Cheshire's inquiry on the status report of Hurricane Irma, Mr. Bogle identified the clearing of storm-related debris from city streets; addressed his plan to meet with Agri-Timber Inc., contractor retained by the city to remove same, and anticipated completion to be mid-November 2017.

Commissioner Ranize referred to county arterials Miller Street, Poinsettia and Dixie Avenues and requested that they be cleaned up as the roadways are located in the city.

Following considerable discussion and **by unanimous consent, the city commission agreed with Mayor Cheshire's suggestion for staff to contact the Federal Emergency Management Agency's (FEMA's) monitor to make a determination on city staff clearing the aforementioned roadways.**

iv. Northwest Lake Community – Cales Park Multipurpose Soccer Field Complex

Mr. La Venia mentioned the problems in obtaining quotations for seeding and sod for the Northwest Lake Community Cales Park Multipurpose Soccer Field Complex and referred to the sales order received from Lake Jem Farms Inc. for \$21,080 for sod installation; a copy of which is filed with the supplemental papers to the minutes of this meeting.

Mr. La Venia recognized grant funds set aside by Lake County for FY 2017-18 towards the fine grading, irrigation installation and seeding recreational facilities; noted the cost to sprig one field for approximately \$20,000 to be ready in about six weeks, and mentioned the plans for Dozier Irrigation Inc. (landscaper previously retained by the city) and Logan Sitework Contractors Inc. to proceed.

Following much discussion and **on motion of Commissioner Bell, seconded by Vice Mayor Gunter and unanimously carried, the city commission approved the city manager's recommendation to accept the quote from Lake Gem and proceed with sod installation of both fields at the Northwest Lake Community Cales Park Multipurpose Soccer Field Complex for \$42,000.**

v. Gardenia Park FRDAP Amendment

Mr. La Venia addressed the plan to resubmit to the Florida Department of Environmental Protection Florida Recreation Development Assistance Program grant funding (Gardenia Park Phase III) of \$100,000 for FY 2017-18 for additional playground equipment installation as the shades are too expensive.

Ms. Yoder addressed the plan to relocate the existing playground equipment from Gardenia Park to Olive Park; gave a power-point presentation and the video featuring various interactive playground equipment by Kompan® for Gardenia Park (anticipated to be completed by March 2018), and highlighted the improvements made to Olive and Veterans Memorial Parks. (A copy of the presentation is filed with the supplemental papers to the minutes of this meeting.)

On motion of Vice Mayor Gunter, seconded by Commissioner Ranize and unanimously carried, the city commission approved the city manager's recommendation to resubmit Gardenia Park Phase III grant as previously cited.

(b) City Attorney

i. Lawsuits

Ms. Geraci-Carver recognized the pending litigations

- **James and Rita Homonai v. Foster, Crenshaw and the City of Fruitland Park** where they are requesting that the plaintiff provide an updated settlement demand to reassess the case.
- **Green v. City of Fruitland Park, Hunnewell, Isom & Isaacs** who is waiting for the court to rule on the motions to dismiss.

ii. Notice of Claims

Ms. Geraci-Carver explained that there are no new matters on notice of claims.

8. PUBLIC COMMENTS

In response to Mr. Hurtt's inquiry, Commissioner Ranize explained that he is the district commissioner representing residents of The Glen.

9. COMMISSIONERS' COMMENTS

(a) Commissioner Ranize

i. MPO

Commissioner Ranize pointed out on his attendance at the October 25, 2017 Lake~Sumter Metropolitan Planning Organization (LSMPO) Governing Board meeting and later gave reasons why he departed prior to its conclusion. He reported on:

- the suggestion made by District Sumter County Commissioner Steve Printz' to seek funding sources in the forthcoming year on the paving of roadways;
- Sumter County's withdrawal from participating with LSMPO other than what is required by state law;
- District 5 Lake County Commissioner Josh Blake's motion to terminate LSMPO Executive Director T.J. Fish's contract immediately;
- the supplemental materials reflecting roadway construction improvements on the resurfacing and improvement of the Florida's Turnpike -- Sumter County to south of Lake County Line -- and the

postponing of the remaining roadway projects due to lack of funding, and

- District 2 Sumter County Commissioner Doug Gilpin's intent to withdraw from the LSMPO Governing Board seat and the alternative to obtain what is required by communicating with Tallahassee .

Commissioner Ranize recognized the work performed by LSMPO and stated that he wished more could have been accomplished for the city as it related to CR 466A.

ii. City Commission Meetings

Commissioner Ranize expressed his disappointment on the cancellation of the October 12, 2017 regular meeting; identified the outstanding issues to be considered by the city commission, and addressed the ability to have held workshops instead.

Commissioner Ranize cited reasons, in preparing for the next elected commissioner to replace him, on the need to conduct a workshop relating to storm response; namely, hurricane preparedness and revisiting and updating the city's policies when FEMA changes its requirements.

iii. ITB 2017-001 New Public Library Facility Construction -- ITB 2017-002 Site Development of a New Public Library Facility Construction

In response to a question posed by Commissioner Ranize, Mr. Le Venia described the procurement process for the Invitation to Bid (ITB) 2017-001 New Public Library Facility Construction and ITB 2017-002 Site Development of a New Public Library Facility Construction whereby on November 6, 2017, the bids will be due, opened and announced; Ms. Coulson will distribute copies of same for the November 9, 2017 regular meeting, and the contractors will be invited to give a presentation at that time.

Messrs. La Venia and Rector identified the construction contractors that were present at the October 13, 2017 ITB pre-bid meeting; reported on the review of the bid documents with request for information submitted by James P. Senatore Inc., the architect retained by the city, and Mr. Rector outlined the following procedure:

- November 6, 2017, the bids will be received;
- November 7, 2017, the selection committee -- comprising of James P. Senatore Inc., Booth Ern Straughan & Hiott Inc (BESH), (engineers, surveyors, and land planners retained by the city); Mr. La Venia and himself – would review and rank the bids, and

- prior to November 9, 2017, submit to the city commission the recommended ranking and awarding of the contract to the most responsive, responsible low bidder for consideration;

In response to Commissioner Ranize' request for a list of the contractors and vendors' binders, Mr. Rector explained that it has passed the timeline and was not requested by staff.

After Mayor Cheshire indicated that Ms. Coulson will provide the list of all the contractors by email to the city commission and in response to Commissioner Ranize' request, Mr. Rector indicated that he will ask Ms. Tracy Kelley, Community Development Department Administrative Assistant, to email each contractor and print out a list requesting that the contractors submit to the commission information on completed projects.

iv. City Manager

Commissioner Ranize referred to The Villages-News article dated October 21, 2017 entitled "Villager who Serves as Fruitland Park City Manager Appears to be Shopping for Greener Pastures"; a copy of which is filed with the supplemental papers to the minutes of this meeting.

Commissioner Ranize expressed his disappointment in Mr. La Venia's pursuit of another job (top running for the City of Treasure Island) without being notified, and stated that he relayed same to his wife who posted the announcement on social media Facebook. Commissioner Ranize stated that he will not prevent anyone from bettering themselves; questioned prior to this evening's meeting, whether the city would have a manager by the next meeting, and after he recommended that the city commission contact companies to look for a new city manager, Mr. La Venia reiterated his earlier comments that he is not going to the City of Treasure Island.

(b) Commissioner Lewis

i. FY 2016-17 Year End Budget

Commissioner Lewis referred to McDirmit Davis' financial report for the year ended September 30, 2016 on the Comprehensive Annual Financial report and its recommendations on the utility billing. He reiterated the need to have \$13,880 in the general fund balance at the end of the year which was not addressed at the September 14, 2017 regular meeting.

ii. City Manager

Commissioner Lewis shared his sentiments, in response to Commissioner Ranize' comments and referred to his previous call extending congratulations to Mr. La Venia who relayed his satisfaction to the comments resulting from the performance review which was not the reason him pursuing another position.

iii. Excused Absence

Commissioner Lewis requested that the city commission excuse his absence for the November 9, 2017 regular meeting.

iv. ITB 2017-001 New Public Library Facility Construction and ITB 2017-002 Site Development of a New Public Library Facility Construction

Commissioner Lewis recognized the city commission's consideration of the ITB 2017-001 New Public Library Facility Construction and ITB 2017-002 Site Development of a New Public Library Facility Construction. He addressed the need to recuse himself from participating as he has a client who may potentially bid on the project and referred to his discussions held prior to this evening's meeting with Mr. La Venia and Ms. Geraci-Carver as to his role in the matter.

In response to Mr. La Venia's explanation, Ms. Geraci-Carver addressed her intent to review same and inform Mr. La Venia by October 27, 2017 as she will be away from the office during the week commencing November 30, 2017.

(c) Commissioner Bell

i. Hurricane Irma Status Update

Commissioner Bell expressed his satisfaction with the contractor's performance as it relates to the cleanup due to the aftermath of Hurricane Irma.

ii. Officers' Performance Evaluations

After Commissioner Bell reiterated his position made at the September 28, 2017 regular meeting on Mr. La Venia's performance, Mr. La Venia interjected that the evaluations had nothing to do with his seeking another position and that he has no issues. He voiced his respect for the commission who performs a good job. After Mr. La Venia expressed his admiration to the city and it is not his desire to go anywhere, Commissioner Bell indicated that the city commission should not be prepared to seek candidates at this point.

(d) Vice Mayor Gunter, Jr.

i. Infrastructure Sales Surtax

Vice Mayor Gunter pointed out Commissioner Ranize's statement regarding the previous years' infrastructure sales surtax. He recalled a class he previously undertook which related to electric vehicles, higher gasoline mileage and the reduction of municipal public transportation gas revenues and questioned the generation of revenue.

ii. Outstanding Issues

Vice Mayor Gunter recognized the number of ongoing issues the city is dealing with; namely, post Hurricane Irma cleanup, the proposed Fruitland Park Library construction, Northwest Lake Community – Cales Park Multipurpose Soccer Field Complex, the community center earmarked for FY 2017-18, and the water and wastewater treatment connection lines currently underway.

10. MAYOR'S COMMENTS

Dates to Remember

Mayor Cheshire recognized the following dates:

- November 3, 2017 – *2018 New Officers* LCLC Lake Receptions at 12:00 p.m.
- November 3, 2017 – Movie on the Lawn “*How the Grinch Stole Christmas*” at 7:00 p.m.;
- November 4, 2017 – 22nd Annual Government Day, Eisenhower Regional Recreation Center;
- November 9, 2017 Regular City Commission Meeting at 6:00 p.m.;
- November 10, 2017 City Offices Closed – Veterans Day;
- November 20, 2017 Lake EMS Employee Issues Committee Meeting at 2:00 p.m.;
- November 21, 2017 Lake EMS Finance Committee Meeting at 3:00 p.m.;
- November 21, 2017 Lake EMS Operations Committee Meeting at 2:00 p.m.;
- November 13, 2017, Parks. Recreation Trails Advisory Board at 3:30 p.m.;
- November 18, 2017 *Coffee with the Mayor*, Moyer Village Recreation Center at 8:00 a.m.;
- November 23, 2017 Regular City Commission Meeting Cancelled;
- November 23, 2017 –Thanksgiving - City Hall Closed;
- November 24, 2017 – Day After Thanksgiving - City Hall Closed;
- December 1, 2017 – Fruitland Park Library Construction Ground-Breaking Ceremony at 11:00 a.m.;
- December 1, 2017 – Employee Holiday Party, Community United Methodist Church, at 7:00 p.m.

Mayor Cheshire expressed concerns on the proposed date of the new Fruitland Park Library Ground-Breaking Ceremony (proposed by Fruitland Park Library Director Jo-Ann Glendinning by email dated October 24, 2017) and noted that it occurs at the same day as the employee holiday party.

The city commission discussed with Mr. Rector the city commission's consideration of awarding a contract to perform work on the construction of the new public library facility and awarding a contract to the lowest base bid for the library site development library construction at its November 9, 2017 regular meeting and indicated that the ceremony can take place any time after.

In response, Ms. Geraci-Carver indicated that the contracts to be entered into may be approved at the November 9, 2017 regular meeting.

After discussion and **by unanimous consent, the city commission agreed with the city manager's suggestion that he would communicate with the Fruitland Park Library Director on the possibility of holding the Fruitland Park Library Construction Ground-Breaking Ceremony in January 2017.**

- December 8, 2017 – *Hometown Christmas* at 5:30 p.m.;
- December 14, 2017 – Annual School Concurrency Meeting, Lake County District School Offices at 10:00 a.m.;
- December 14, 2017 – City Commission/Employees and Operation Bless Fruitland Park at 11:30 a.m.;
- December 15, 2017 – Movie on the Lawn “*Elf*” at 6:00 p.m.;
- December 16, 2017 – *Wreaths Across America*, Shiloh Cemetery at 12 noon;
- December 25, 2017 – Christmas Day - City Hall Closed, and
- December 26, 2017 – Day After Christmas - City Hall Closed;

11. **ADJOURNMENT**

There being no further business and on motion made and seconded, the meeting adjourned at 8:53 p.m.

The minutes were approved at the November 9, 2017 regular meeting.

Signed _____
Esther B. Coulson, City Clerk

Signed _____
Chris Cheshire, Mayor

RESOLUTION 2017-047

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPOINTING A MEMBER TO THE BOARD OF TRUSTEES OF THE MUNICIPAL FIRE FIGHTERS PENSION TRUST FUND OF THE CITY OF FRUITLAND PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fruitland Park established a municipal fire fighters pension trust fund; and

WHEREAS, Mr. Kevin Ducharme was appointed for a term of two years; and

WHEREAS, Mr. Ducharme’s term will expire on December 31, 2017 and he wishes to serve for another two-year term.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA:

1. Mr. Kevin Ducharme is hereby reappointed to serve another term of two years to December 31, 2019 on the City of Fruitland Park Board of Trustees of the Municipal Fire Fighters Pension Trust Fund.

2. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this 9th day of November, 2017, by the City Commission of the City of Fruitland Park, Florida.

City of Fruitland Park
Chris Cheshire, Mayor

Attest:
Esther B. Coulson, City Clerk

Commissioner Bell	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Vice Mayor Gunter	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Lewis	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Ranize	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Mayor Cheshire	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)

Approved as to form and legality:

Anita Geraci-Carver, City Attorney



**AGENDA ITEM
NUMBER
5a**

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	2017 Meeting Schedule			
For the Meeting of:	November 9, 2017			
Submitted by:	City Clerk			
Date Submitted:	November 1, 2017			
Are Funds Required:	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> X	<input type="checkbox"/> No
Account Number:	N/A			
Amount Required:	N/A			
Balance Remaining:	N/A			
Attachments:	No			
Description of Item:	Discuss the tentative dates and times of the city commission future meetings.			
Action to be Taken:	City commission discretion.			
Staff's Recommendation:				
Additional Comments:				

Reviewed by: _____
City Manager

Authorized to be placed on the Regular agenda: _____
Mayor



CITY OF FRUITLAND PARK 2018 MEETING SCHEDULE

The City of Fruitland Park holds its regularly scheduled meetings every second and third Thursday of the month at 6:00 pm at 506 West Berckman Street, Fruitland Park, Florida, 34731. (City code reflects at least once in every month ss3.11, procedure.) The following meeting dates, times and locations are subject to change due to special and/or workshops meetings, public hearings, national holidays, office closings, and other unforeseen circumstances such as emergencies:

January 11, regular
January 25, regular

February 11 regular
February 25 regular

March 8 regular
March 22 regular

April 12 regular
April 26 regular

May 10 regular
May 24 regular

June 14 regular
June 28 regular

July 12 regular
July 26 regular

August 9 regular
August 23 regular

September 13 regular
September 27 regular

October 11 regular
October 25 regular

November 8 regular
November 22 regular – TO BE CANCELLED – Thanksgiving

December 13 regular
December 27 regular – TO BE CANCELLED - Holidays



**AGENDA ITEM
NUMBER
5b**

5

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Resolution 2017-046 CR 466A Phase III Improvements			
For the Meeting of:	November 9, 2017			
Submitted by:	City Manager			
Date Submitted:	November 1, 2017			
Are Funds Required:		Yes	X	No
Account Number:	N/A			
Amount Required:	N/A			
Balance Remaining:	N/A			
Attachments:	Yes			
Description of Items:				
Interlocal agreement with Lake County to install the city's water and wastewater lines along the proposed CR 466A Phase IIIA road project.				
Action to be Taken: Adopt Resolution 2017-046				
Staff's Recommendation: Approval.				
Additional Comments:				

Reviewed by: _____
City Manager

Authorized to be placed on the Regular agenda: _____
Mayor

RESOLUTION 2017-046

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN LAKE COUNTY, FLORIDA, AND THE CITY OF FRUITLAND PARK FOR THE INSTALLATION OF CITY'S WATER AND SEWER LINES ALONG THE PROPOSED CR 466A PHASE IIIA ROAD PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fruitland Park, a municipal corporation organized under the laws of the State of Florida, hereinafter the "City and Lake County, Florida, a political subdivision of the State of Florida, hereinafter the "County," desires to enter into an interlocal agreement for the installation of City's water and sewer lines along the proposed CR 466A Phase IIIA Road Project, and

WHEREAS, Section 163.01, Florida Statutes, provides that local governments may enter into interlocal agreements to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, Lake County is bidding the CR 466A Phase IIIA Road Project, which includes the relocation and installation of city utilities, at an estimated cost of \$299,810.40; and

WHEREAS, the parties have determined that it would be more efficient for the city water and sewer lines to be constructed in conjunction with the road project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA:

Section 1. The County Road 466A Phase IIIA Infrastructure Interlocal Agreement between the City of Fruitland and Lake County, a copy of which is attached, is approved.

Section 2. The city commission authorizes the Mayor to execute the interlocal agreement.

Section 3. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this 9th day of November 2017, by the City Commission of the City of Fruitland Park, Florida.

City of Fruitland Park
Chris Cheshire, Mayor

Attest:
Esther B. Coulson, City Clerk

Deleted: incorporated as Exhibit A, attached;

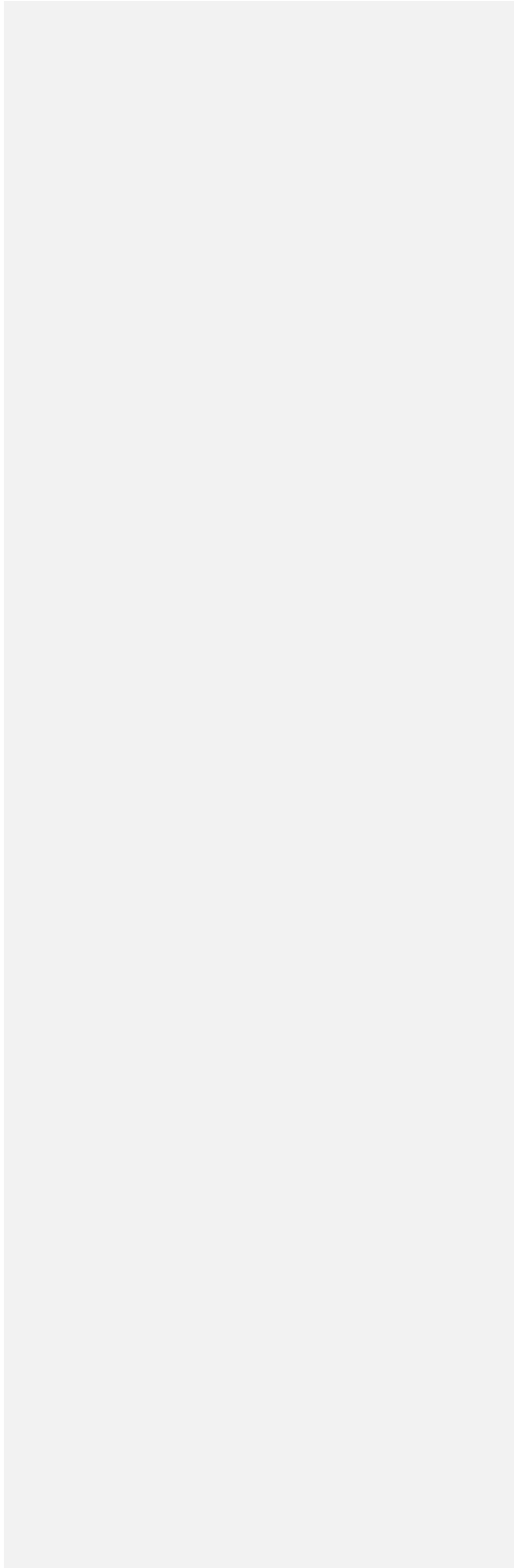
Deleted: ; incorporating the utility adjustment plans, as amended, as Exhibit B

Deleted: , a cost estimate attached by reference as Exhibit C

Commissioner Bell ___ (Yes), ___ (No), ___ (Abstained), ___ (Absent)
Vice Mayor Gunter ___ (Yes), ___ (No), ___ (Abstained), ___ (Absent)
Commissioner Lewis ___ (Yes), ___ (No), ___ (Abstained), ___ (Absent)
Commissioner Ranize ___ (Yes), ___ (No), ___ (Abstained), ___ (Absent)
Mayor Cheshire ___ (Yes), ___ (No), ___ (Abstained), ___ (Absent)

Approved as to form and legality:

Anita Geraci-Carver, City Attorney



**INTERLOCAL AGREEMENT BETWEEN
LAKE COUNTY, FLORIDA AND
THE CITY OF FRUITLAND PARK FOR
CR 466A PHASE IIIA INFRASTRUCTURE AGREEMENT**

THIS IS AN INTERLOCAL AGREEMENT by and between Lake County, Florida, a political subdivision of the State of Florida, hereinafter the “County,” and the City of Fruitland Park, a municipal corporation organized under the laws of the State of Florida, hereinafter the “City,” for the installation of City’s water and sewer lines along the proposed CR 466A Phase IIIA Road Project.

WHEREAS, Section 163.01, Florida Statutes (2017), provides that local governments may enter into interlocal agreements to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, the County is bidding the CR 466A Phase IIIA Road Project, which runs from Century Avenue to west of Spring Lake Road, hereinafter the “Road Project”, more particularly described in the Construction Plans for County Road 466A Phase 3A from West of Spring Lake Road to Century Avenue, Lake County, Florida, Financial Project ID 430253-4-54-01 dated June 6, 2017, signed and sealed by L. Frederick Burkett, P.A., as may be amended, which are a material part of this Agreement, and incorporated herein as **Exhibit A**, attached hereto; and

WHEREAS, the County and City have coordinated on the project including the relocation and installation of City utilities including water lines and force mains; and

WHEREAS, the City is required to relocate the City utilities at its expense in order to facilitate the construction of CR 466A and desires to install new water and sewer lines at the same time the County improves CR 466A, hereinafter the “Utility Project”, more particularly described in the City of Fruitland Park County Road 466A, Phase 3A Utility Adjustment Plans, dated June 26, 2017 and signed and sealed by Duane K. Booth, P.E., as amended, which are a material part of this Agreement and incorporated herein as **Exhibit B**, attached hereto; and

WHEREAS, the parties have determined that it would be more efficient for the City water and sewer lines to be constructed in conjunction with the Road Project.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, and covenants hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. County Obligations.

A. The parties agree that the County shall include the Utility Project when it releases the bid for the Road Project. The County shall comply with all applicable provisions of the Florida Statutes regarding the bidding of construction services, including Section 255.0525, Florida Statutes and Section 255.20, Florida Statutes (2017). Upon receipt of the bids, the County shall provide copies to the City for the City's review and the City shall then have ten (10) days to notify the County if the City elects to abandon the Utility Project. If the City elects to move forward with the Utility Project through the County's contract, the construction contract shall be awarded to the bidder who submits the lowest combined bid for both Projects. If the City decides to abandon the Utility Project, the County has the right to award the Road Project to the lowest bidder for the Road Project and the City will be responsible to bid and contract for its utility relocations under its own contracting procedures.

B. The County shall be solely responsible for construction of both the Utility Project and the Road Project. The City shall be responsible for the inspection of the Utility Project. The final plans and specifications for the Utility Project shall be incorporated by reference upon approval of the City and the County, and are a material part of this Agreement.

C. Once a contract is awarded to the selected contractor, the County shall not permit any changes to be made to the Utility Project unless the City agrees to assume all costs associated with the changes, including pre-payment to the County of any additional costs to be incurred based upon the impact the changes have on the Utility Project, and to the Road Project, if any.

3. City Obligations. The City shall provide funding to the County to cover all costs associated with the Utility Project. The Utility Project is estimated to cost **\$299,810.40** and a Cost Estimate is attached hereto and incorporated herein by reference as **Exhibit C**. The City shall remit to the County the estimated costs within thirty (30) days of the full execution of this Agreement. If the bids for the Utility Project exceed the estimate, the City shall remit the remainder of the funding to the County within twenty (20) days of the date the County issues the Notice of Intent to Award to the selected contractor. Upon final completion and acceptance of the Utility Project, the County shall send a final invoice to the City for any outstanding amounts due and owing. If the Utility Project is completed under budget, the County shall refund the City the appropriate amount within twenty (20) days of final acceptance of the Utility Project.

4. Ownership and Maintenance of Completed Project. The parties agree that nothing herein shall be construed as placing any ownership or maintenance responsibilities upon the County for the Utility Project. At all times during construction and after completion of the Utility Project, the City shall take ownership and maintenance responsibility for the infrastructure associated therewith.

5. Termination. Either party shall have the right to terminate this Agreement for cause with thirty (30) days written notice to the other, so long as the construction of the Utility Project has not commenced. Once construction commences, this Agreement cannot be terminated unless mutually agreed upon by the parties in writing.

6. Modifications. Unless otherwise specified herein, no modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

7. Notices.

A. All notices, demands, or other writings required to be given or made or sent in this Agreement, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when in writing and addressed as follows:

COUNTY
County Manager
P.O. Box 7800
Tavares, Florida 32778-7800

CITY
City Manager
506 West Berckman Street
Fruitland Park, Florida 34731

Lake County Public Works
Attn: County Engineer
P.O. Box 7800
Tavares, Florida 32778-7800

B. All notices required, or which may be given hereunder, shall be considered properly given if (1) personally delivered, (2) sent by certified United States mail, return receipt requested, or (3) sent by Federal Express or other equivalent overnight letter delivery company.

C. The effective date of such notices shall be the date personally delivered, or if sent by certified mail, the date the notice was signed for, or if sent by overnight letter delivery company, the date the notice was delivered by the overnight letter delivery company.

D. Parties may designate other parties or addresses to which notice shall be sent by notifying, in writing, the other party in a manner designated for the filing of notice hereunder.

8. Entire Agreement. This document embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein.

9. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, it shall be considered deleted here from, and shall not invalidate the remaining provisions.

10. Effective Date. This Agreement shall become effective upon the date the last party hereto executes it.

11. Exhibit List. The following exhibits are attached hereto and by this reference made a part hereof:

- Exhibit A Road Project, CR 466A, Phase IIIA
- Exhibit B Utility Project
- Exhibit C Cost Estimate

IN WITNESS WHEREOF, the parties hereto have made and executed this Interlocal Agreement on the respective dates under each signature: Lake County, through its Board of County Commissioners, signing by and through its Chairman, and the City of Fruitland Park, Florida, through its City Commission, signing by its duly authorized representative.

ATTEST:

LAKE COUNTY, FLORIDA through its
BOARD OF COUNTY COMMISSIONERS

Neil Kelly, Clerk
of the Board of County
Commissioners of Lake
County, Florida

Timothy I. Sullivan, Chairman

This _____ of _____, 20__.

Approved as to form and legality:

Melanie Marsh, County Attorney

Interlocal Agreement between Lake County and the City of Fruitland Park for Utility Line Installation during construction of the CR 466A Phase IIIA Project

CITY OF FRUITLAND PARK

Christopher Cheshire, Mayor

This ____ day of _____, 20____.

ATTEST:

Esther Lewin-Coulson, City Clerk

Approved as to form and legality:

Anita Geraci-Carver, City Attorney

EXHIBIT A: ROAD PROJECT, CR 466A, PHASE IIIA

{First page below, full copy will be provided separately}

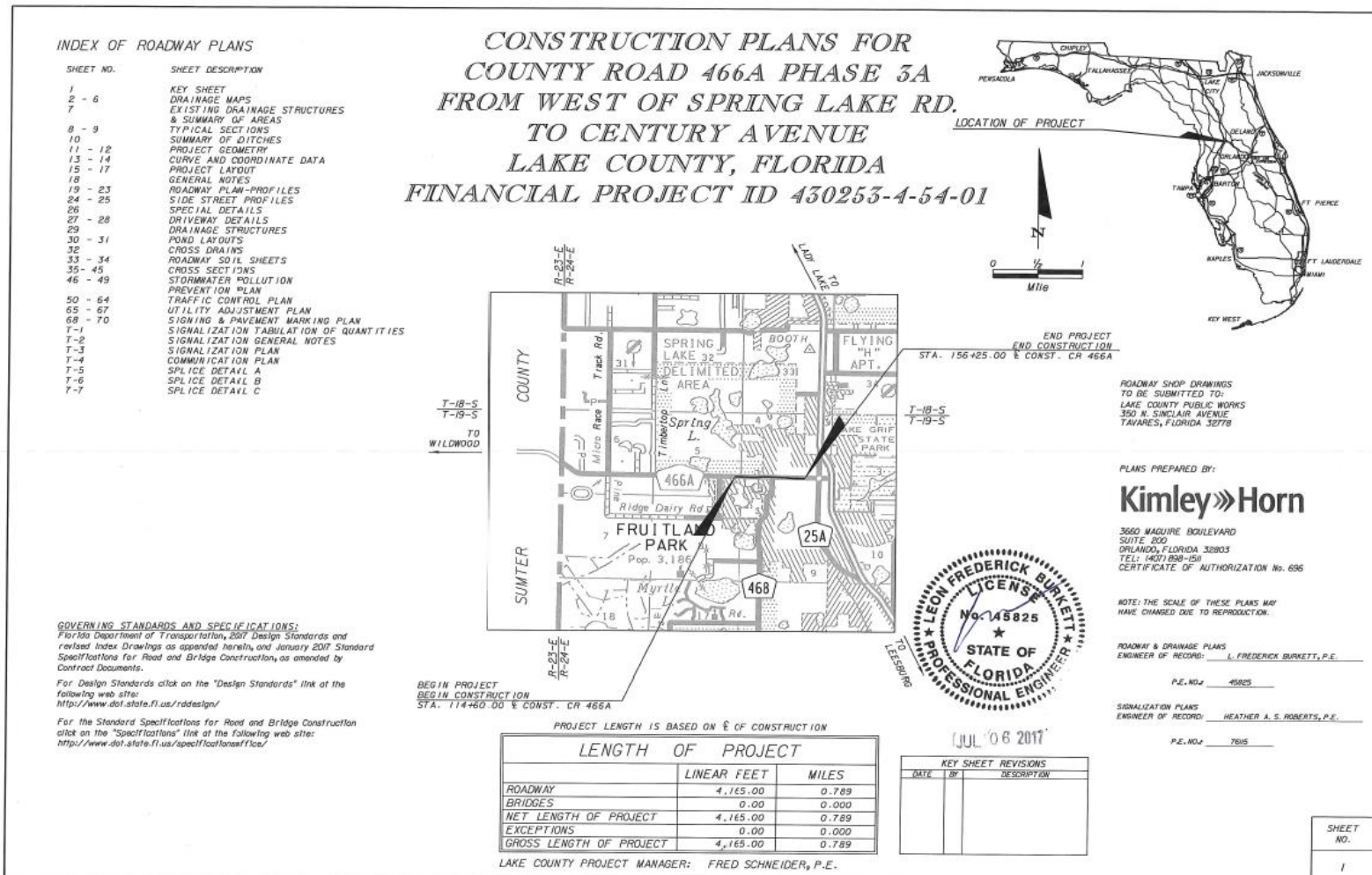


EXHIBIT B: UTILITY PROJECT

{First page below, full copy will be provided separately}

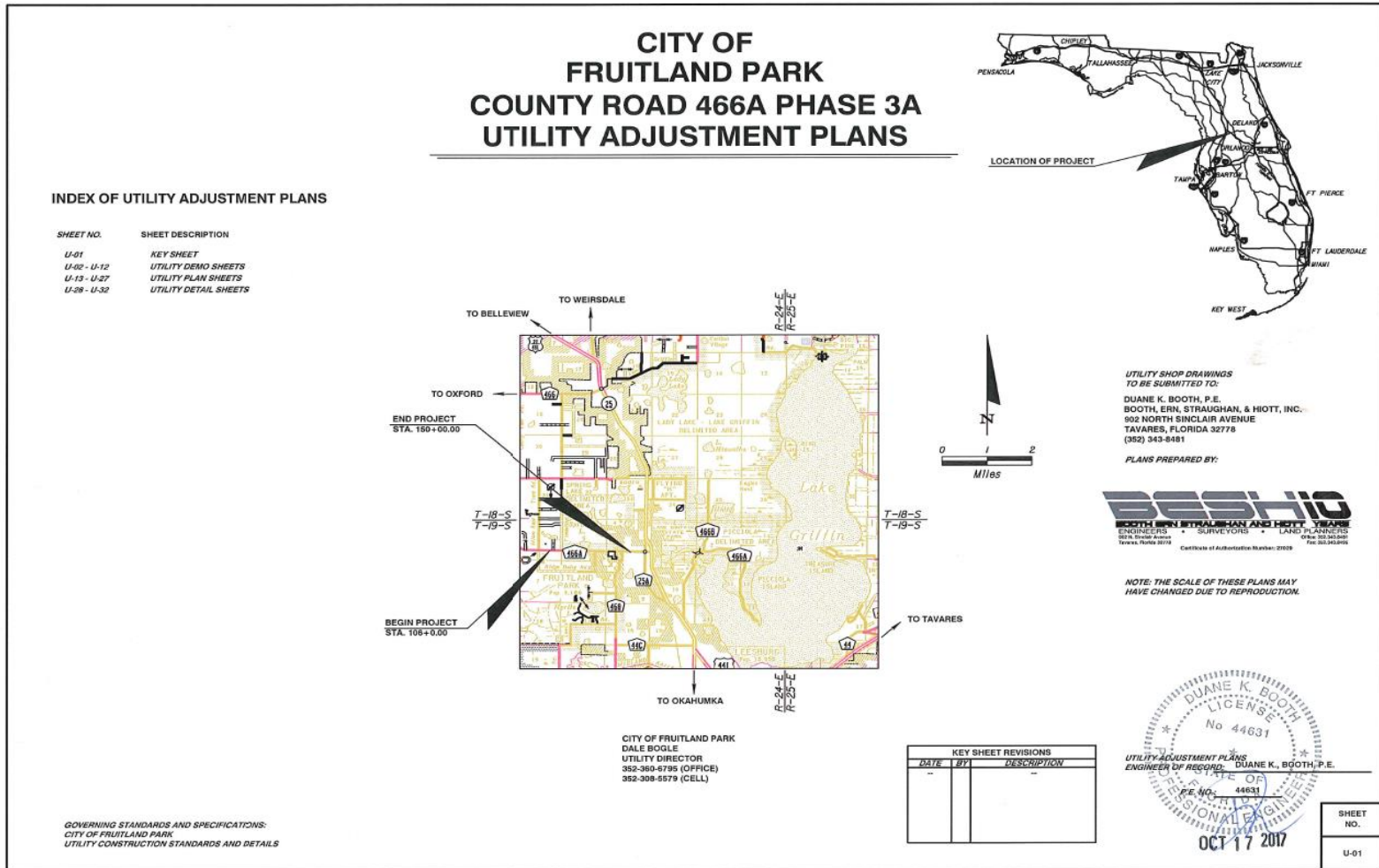


EXHIBIT C: COST ESTIMATE

C.R. 466A Phase 3A Utility Adjustment Engineers Cost Estimate					
Description	Qty	Unit	Price	Amount	
Mobilization					
Mobilization	1	LS	\$ 25,000.00	\$	25,000.00
TOTAL				\$	25,000.00
WATER DISTRIBUTION					
12" Watermain	2275	LF	\$ 38.00	\$	86,450.00
12" x 12" Tee	2	EA	\$ 2,000.00	\$	4,000.00
12" Gate Valve	9	EA	\$ 3,200.00	\$	28,800.00
12" x 8" Reducer	2	EA	\$ 1,500.00	\$	3,000.00
12" x 6" Reducer	1	EA	\$ 1,100.00	\$	1,100.00
Fire Hydrant	6	EA	\$ 3,800.00	\$	22,800.00
12" x 8" Tee	4	EA	\$ 1,250.00	\$	5,000.00
8" x 6" Reducer	1	EA	\$ 750.00	\$	750.00
8" 22.5" Bend	2	EA	\$ 600.00	\$	1,200.00
8" 45" Bend	7	EA	\$ 600.00	\$	4,200.00
8"x8" Tap	1	EA	\$ 1,200.00	\$	1,200.00
8" Gate Valve	7	EA	\$ 1,750.00	\$	12,250.00
2" Watermain	32	LF	\$ 10.00	\$	320.00
8" Watermain	498	LF	\$ 25.00	\$	12,450.00
2" Gate Valve	1	EA	\$ 650.00	\$	650.00
2" x 8" Tap	2	EA	\$ 750.00	\$	1,500.00
6" 45" Bend	1	EA	\$ 500.00	\$	500.00
6" 90" Bend	1	EA	\$ 500.00	\$	500.00
6" Watermain	72	LF	\$ 20.00	\$	1,440.00
Remove 2" Watermain	1244	LF	\$ 4.00	\$	4,976.00
Remove 8" Watermain	1618	LF	\$ 10.00	\$	16,180.00
Remove 6" Watermain	979	LF	\$ 7.50	\$	7,342.50
Connect to existing 12" WM	1	EA	\$ 2,500.00	\$	2,500.00
Connect to existing 8" WM	4	EA	\$ 2,000.00	\$	8,000.00
Connect to existing 6" WM	2	EA	\$ 1,750.00	\$	3,500.00
Connect to existing 2" WM	2	EA	\$ 1,200.00	\$	2,400.00
1" Single Service	13	EA	\$ 500.00	\$	6,500.00
2" Single Service	2	EA	\$ 650.00	\$	1,300.00
2" Double Service	1	EA	\$ 800.00	\$	800.00
TOTAL				\$	241,608.50
SANITARY SEWER					
6" Force Main	643	LF	\$ 20.00	\$	12,860.00
6" 22.5" Bend	2	EA	\$ 500.00	\$	1,000.00
6" 90" Bend	2	EA	\$ 500.00	\$	1,000.00
6" Plug Valve	2	EA	\$ 1,250.00	\$	2,500.00
6" Plug	2	EA	\$ 500.00	\$	1,000.00
6"X4" Tee	1	EA	\$ 800.00	\$	800.00
4" Plug Valve	1	EA	\$ 1,125.00	\$	1,125.00
4" Plug	1	EA	\$ 350.00	\$	350.00
TOTAL				\$	20,635.00
SUBTOTAL				\$	287,243.50
				\$	2,872.44
				\$	5,744.87
				\$	3,949.60
GRAND TOTAL				\$	299,810.40

Prep. By Duane K. Booth
Date:

**Duane
K. Booth,
P.E.**

Digitally signed by Duane K. Booth, P.E.
DN: cn=Duane K. Booth, P.E., o=Booth, Ern, Straughan & Hiott, Inc., email=duanebooth@besa ndh.com, c=US
Date: 2017.10.17 08:54:56 -04'00'



**AGENDA ITEM
NUMBER
5c**

5

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Proposed Parks and Recreation Fees Discussion			
For the Meeting of:	November 9, 2017			
Submitted by:	City Manager/Parks and Recreation Director			
Date Submitted:	October 26, 2017			
Are Funds Required:		Yes	X	No
Account Number:	N/A			
Amount Required:	N/A			
Balance Remaining:	N/A			
Attachments:	Yes			
Description of Items: Discussion on proposed parks and recreation fees.				
Action to be Taken:				
Staff's Recommendation:.				
Additional Comments:				

Reviewed by: _____
City Manager

Authorized to be placed on the Regular agenda: _____
Mayor

PROPOSAL TO REVISE RECREATION FEES

USE OR SERVICE	CURRENT FEE	PROPOSED FEE
Cales Field consession rental, per day	\$20.00	\$10.00
Veteran's Field consession rental, per day	\$20.00	\$10.00
Park pavilion reservation fee	\$20.00/ day	\$5.00/ hour
All Sports Resident	\$30.00	\$30.00
Non-Resident	\$35.00	\$30.00
5K Race Day of Race Entry Fee	\$25.00	\$30.00
5K Race Sponsorship	\$200/ year	\$250,\$500,\$1000/ event
Pool Resident Admission, per person	\$2.50	\$3.00
Non-Resident Admission, per person	\$3.50	\$3.00
Resident 20 visit card, per person	\$45.00	\$45.00
Non-Resident 20 visit card, per person	\$65.00	\$45.00
Resident 30 visit card, per person	\$70.00	\$70.00
Non-Resident 30 visit card, per person	\$100.00	\$70.00
Resident Season Pass, per person	\$50.00	\$50.00
Non-Resident Season Pass, per person	\$60.00	\$50.00
Resident Season Pass, per family	\$150.00	\$150.00
Non-Resident Season Pass, per family	\$180.00	\$150.00
Resident Swim Lessons	\$30.00	\$30.00
Non-Resident Swim Lessons	\$40.00	\$30.00
Resident Exercise Class: 2days/week/month	\$30.00	\$30.00
Non-Res Exercise Class: 2days/week/month	\$50.00	\$30.00
Resident Exercise Class: 2days/week/month	\$40.00	\$40.00
Non-Res Exercise Class: 2days/week/month	\$60.00	\$40.00
Resident Lap Swim	\$2.00	\$2.00
Non-Resident Lap Swim	\$3.00	\$2.00



**AGENDA ITEM
NUMBER
5d**

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Janitorial/Custodial Cleaning Service		
For the Meeting of:	November 9, 2017		
Submitted by:	City Manager		
Date Submitted:	October 27, 2017		
Are Funds Required:		Yes	<input checked="" type="checkbox"/> No
Account Number:	N/A		
Amount Required:	N/A		
Balance Remaining:	N/A		
Attachments:	Yes		
Description of Item: Janitorial cleaning service (piggyback) contracts.			
Action to be Taken: Award janitorial cleaning service to the lowest responsible bidder.			
Staff's Recommendation:			
Additional Comments: The city commission's direction at the July 13, 2017 workshop to provide quotes to retain janitorial/custodial service for review.			

Reviewed by: _____
City Manager

Authorized to be placed on the Regular Consent agenda: _____
Mayor



July 31, 2017

City of Fruitland Park
C/O Mr. A. Dale Bogle – Public Works Director
506 West Berckman Street
Fruitland Park, FL 34731

RE: Janitorial Proposal: City Buildings – City Hall, Fire/EMS, Library, Vets Park, Cales Rec Park and Recreation Department.

Blue Ribbon Cleaning Company, Inc. is pleased to submit this proposal in response to your request for commercial cleaning services. Our proposal's pricing is based on the verbal specifications as outline during our site visit with Mr. Bogle on 07-27-17.

Blue Ribbon Cleaning Company, Inc. Information

- Name of Firm: Blue Ribbon Cleaning Company, Inc.
- Street Address: 6656 South Pine Avenue Ocala, FL 34480
- Mailing Address: Same as above
- Phone: 352-624-0460 Fax: 352-624-3783
- Minority Women Owned Certified Business – Florida Department of Management Services, Office of Supplier Diversity through 02-17-2019
- Locally owned and operated in Marion County since 1986.
- Contact Information: Elizabeth Esperanza Casteneda – President, 352-624-0460
Email: Esperanza@blueribbonocala.com
- Web Site: BlueRibbonOcala.com

6656 South Pine Avenue Ocala, FL 34480 * 352-624-0460

Mission Statement: Provide our customers with professional janitorial services, products & equipment that are cost effective and reliable.

Cleaning Frequency: The frequency of cleaning will be 5 times per week at all locations with a estimated start time of 5:30 pm.

Training:

- **New Hires:** New employees are required to receive BR's interactive training video certification. Once they pass the background and drug testing they are assigned to a team leader/supervisor for a minimum of one weeks of on the job training. The team leader/supervisor may require them to train on the job up to 1 week before letting them work independently.
- **Existing Employees:** Existing employees are required to update their training annually by taking the interactive training video. At larger accounts Team leaders and/or account managers may require monthly "tail gate" safety meetings to update all personnel on any issues, concerning or recent updated cleaning technologies.

E-Verify: Blue Ribbon is enrolled and approved by E-Verify for employee eligibility verification.

Uniforms: All Blue Ribbon employees are required to wear uniforms when working on a job site. Name badges will be issued to all BR employees.

Equipment & Chemicals: Blue Ribbon Cleaning Company has a janitorial supply and equipment division named Discount Janitorial & Paper Supply. DJ is an authorized dealer for Clarke Equipment, Pioneer Eclipse Equipment, Windsor Equipment, Powr-Flite Equipment and NSS equipment. DJ is an authorized dealer for National Chemical Labs (NCL), Simoniz and Pioneer Eclipse which are a full line chemical manufacturer for janitorial cleaning chemicals. We have access to the latest custodial equipment and chemicals available on the market. Our manufacturer representatives keep our staff updated on industry trends and provide us with in-service training.

Response Time for Customers: Blue Ribbon Cleaning Company normal work hours are Monday through Friday, 8:00 AM to 5:00 PM. Emergencies or ASAP situations are handled by the day shift personnel. Blue Ribbon also provides a 24/7 emergency contact person who is responsible for taking all after-hours calls. This person can contact our night supervisors for help or call in other personnel as needed. All equipment/supplies are stored at the corporate office and are

available for emergency use as needed. Emergency call in are billed separate and not included in price.

Subcontractor/Sub-consultants: Blue Ribbon Cleaning Company will **NOT** use any subcontractors/sub-consultants for this contract. All work will be performed by BR employees using BR equipment.

Vital Information

BR will provide the customer with our insurance certificate which documents our Commercial General Liability policy with Umbrella rider amounts that total **3 million dollars** in coverage. BR will also provide proof of our Fidelity Bond with coverage limits of **\$150,000 dollars** per occurrence.

HIPAA: Blue Ribbon requires all employees to sign a written confidentiality agreement and trains its employees on basic HIPAA requirements.

Safety: BR is a drug free workplace that performs pre-employment drug test on all employees. BR has a written safety policy & procedure that is continuously updated in addition to an ongoing safety program/committee that meets quarterly to address any safety related issues or problems.

Safety/Workman's Comp: Current experience mod rate is: **.96**

All doors and other openings permitting access to the premises will be locked upon exiting building. The only persons allowed on the premises are the paid employees of BR. BR shall not duplicate any keys issued to gain access to the premises, unless approved by customer or its representative. Customer will provide to BR a 24-hour emergency number and contact person in order to report any damage, security concerns or problems.

BR will return all interior lights to the desired position (ON or OFF) as directed by the customer upon departing the premises. BR will not override or otherwise adjust thermostat, TVs or timer settings.

Cleaning System to Prevent Cross Contamination:

- Medical grade disinfectants will be used to clean all restrooms and high traffic areas
- Custodial staff is required to wash hands and change gloves regularly. If cleaning restrooms they are required to wash and change gloves between each restroom.
- Color coded microfiber wet mopping systems will be used. Red mops, buckets and wringers for restrooms. Blue/Grey mops, buckets and wringers for common areas. All

microfiber mops will be rotated out and cleaned on a regular basis to prevent any contamination.

- Color coded microfiber rags will be used. Red rags for restroom fixtures. Yellow for restroom mirrors and sinks. Blue for offices and common areas. Green is for kitchens and/or coffee stations.
- Segregated storage for contaminated/used mops and rags will be identified. Separate locations away from clean equipment/rags will prevent cross contamination until they can be removed from the building.

1. Terms: Upon Receipt

2. Tax Exemption: Customer will provide BR with a copy of their Sales Tax Exemption Certificate

3. General Conditions:

General Conditions

- BR will conduct a background check on cleaning employees who will be assigned to this project.
- BR will provide customer with a communications log book which will facilitate communications between the BR and the customer contact upon request.
- BR will provide the customer with additional avenues of communications to improve our performance by providing immediate feedback. (i.e. Company email address, management/supervisor cell phones, & fax numbers)
- BR will provide a night supervisor which will be assigned the responsibility of randomly checking the account during the evening hours. In the event of a problem or a call off by a BR employee, our supervisor is authorized to secure another employee to fill the cleaning time slot or he/she can fill the time slot themselves. BR's supervisor will also perform a quality control inspection during each visit.
- BR will return all interior lights to the desired position (ON or OFF) as directed by the customer upon departing the premises. BR will not override or otherwise adjust thermostat or timer settings.
- BR will provide Safety Data Sheets (SDS) for all cleaning chemicals used at this location.

Weekly Cleaning Scope of Work (5 cleans per week)

City Hall, Fire/EMS, Library, Vets Park, Cales Rec Park and Recreation Department.

Notes: Supplies & Equipment: Cleaning supplies & equipment provided by Blue Ribbon Cleaning Co. Includes janitor carts, rags, vacuums, cleaning chemicals, trash barrels and other related supplies needed to clean buildings on a daily basis. Consumable products provided by customer which includes paper towels, toilet tissue, hand soap, seat covers, feminine care products etc. Blue Ribbon can track and order consumable supplies for customer as needed if approved. Transportation for custodians between locations provided by Blue Ribbon.

- Empty all wastebaskets, garbage cans and trash receptacles and replace with clean can liners.
- Dust / damp-wipe fixtures, low shelves and office furniture.
- Clean and sanitize drinking fountains.
- Clean entry glass and door.
- Spot clean partition glass.
- Dust shelves up to 6 feet.
- **Cleaning exceptions:** Any office/room with a locked door will not be cleaned.

Restrooms

- Clean and disinfect sinks, toilets and urinals.
- Clean all dispensers and fixtures.
- Sanitize all handles, faucets and fixtures.
- Spot clean walls and partitions with germicidal solution.
- Restock all consumable products including paper and soap. Consumables provided by Customer.
- Wash all partitions, tiled walls, and doors with germicidal solution.

Kitchen / Break Room

- Clean and disinfect countertops, tables and sinks with germicidal cleaner.
- Clean and disinfect exterior of appliances.
- Exceptions: Microwaves, dishes in sinks, refrigerators and coffee machines cleaned by customer's staff.

Floor Cleaning

- Sweep corners, baseboards and behind doors.
- Vacuum carpeted floors and entry mats.
- Treat / remove carpet stains as needed.
- Dust mop/ damp mop all hard surface floors with neutral Ph floor cleaner.

City Hall, Fire-EMS, Library, Vets Park, Cales Rec Park and Recreation Department.

\$3,950.00 + \$00.00 sales tax (Lake County Exempt) = \$3,950.00 per month

VCT Full Strip & Wax

- Schedule: Has to be performed on a weekend in order for floor finish to dry & cure properly.
- Recommended annually.
- Remove all exam room & rehab exercise equipment from room and return to original position after floor is done.
- Customer staff will be responsible for removing all papers, boxes, medical instruments and obstructions prior to cleaning the floors.
- Vacuum and/or sweep VCT flooring prior to stripping/scrubbing.
- Strip VCT flooring areas by mechanical scrubbing and/or manual scrubbing using proper cleaning chemicals to remove all built up wax, dirt, scratches and scuffs.
- Rinse VCT flooring to remove all cleaning chemicals prior to installation of floor finish/sealer.
- Apply one coat of commercial grade sealer.
- Apply commercial grade high solids floor finish. Each coat must have approximately thirty (30) minutes of dry time.

Library LVT/VCT Restrooms/Break Room: \$255.00 + \$00.00 sales tax (Lake County Exempt) = \$255.00 per clean

Rec Department Restrooms/lobby: \$115.00 + \$00.00 sales tax (Lake County Exempt) = \$115.00 per clean

Carpet Cleaning

- Customer responsible for moving furniture and then return to original position after cleaning
- Customer staff will be responsible for removing all papers, boxes, medical instruments and obstructions prior to cleaning the floors.
- Steam clean carpeting to remove dirt and stains
- Provide fans to assist in drying process.

- Plastic carpet floor protectors will not be returned to original position after steam cleaning. They must be left off the floor in order for it to dry properly. Customer's staff will have put them back in place the following morning.

**City Hall Carpets: \$1,300.00 + \$00.00 sales tax (Lake County Exempt) = \$1,300.00
per clean**

**Fire/EMS Carpets: \$235.00 + \$00.00 sales tax (Lake County Exempt) = \$235.00 per
clean**

**Library Carpets: \$650.00 + \$00.00 sales tax (Lake County Exempt) = \$650.00 per
clean**

**Rec Department Carpets: \$75.00 + \$00.00 sales tax (Lake County Exempt) = \$75.00
per clean**

Ceramic Tile & Grout Cleaning

- BR will move mats or other portable items prior to cleaning floor and then restore them to their original position after cleaning.
- Customer staff will be responsible for removing all papers, boxes, medical instruments and obstructions prior to cleaning the floors.
- BR will spray a concentrated mixture on the tile, specifically designed for breaking down the grease and grime on the surface of the tiles and in the grout lines. This will be allowed to dwell for 15 minutes before scrubbing.
- BR will use high pressure, high temperature scrubbing machines to clean the tile & grout and extract the soiled mixture, leaving a clean damp floor which will air dry within about 15 minutes.
- Floor will be ready for foot traffic 30 minutes after cleaning.

**City Hall Ceramic Tile Restrooms: \$245.00 + \$00.00 sales tax (Lake County Exempt) = \$245.00
per clean**

**Fire/EMS Ceramic Tile Restrooms: \$95.00 + \$00.00 sales tax (Lake County Exempt) = \$95.00
per clean**

Vets Park Ceramic Tile: \$135.00 + \$00.00 sales tax (Lake County Exempt) = \$135.00 per clean

**Cales Rec Park Ceramic Tile: \$135.00 + \$00.00 sales tax (Lake County Exempt) = \$135.00 per
clean**

Laminate Floor Cleaning

- BR will move mats or other portable items prior to cleaning floor and then restore them to their original position after cleaning.
- Customer staff will be responsible for removing all papers, boxes, medical instruments and obstructions prior to cleaning the floors.
- BR will use a low moisture laminate floor cleaning solutions to clean floors.
- BR will use a white polishing pad to lightly scrub the floor to remove dirt.
- Floor will be ready for foot traffic 30 minutes after cleaning.

Fire/EMS Laminate: \$125.00 + \$00.00 sales tax (Lake County Exempt) = \$125.00 per clean

By:



Elizabeth E. Casteneda
President
Blue Ribbon Cleaning Company, Inc.

Bid for the City of Fruitland Park

Cleaning

From: Cronin's Cleaning services (Angella Cronin)

Cronin's Cleaning services (Angella Cronin)

I have 15 years experience, I currently clean approx 13 weekly, biweekly, and monthly residential homes. I also have two commercial dental offices that I have done for several years. You are welcome to check with Jennifer Tyler the office manager at either or both dental offices. Hertiage Dental (352) 750-4111 Dentistry on the Square (352) 775-4515

I have also provided cleanings for a local real estate agent Betty Salas(352)516-2156 doing move in and move out deep cleans on her listings.

Bid for the City of Fruitland Park (cleaning estimate)

Daily cleanings: City Hall, Library, and Police Dept.

Details as follows.....

City Hall: vacuum, mop, dust, clean all glass, replace all paper goods in bathrooms and all work areas. (cleanings everyday)

Library: vacuum, dust, mop, clean all glass, wipe down all surfaces such as checkout area and all tables, dusting of all hanging lights, shelves, and all pictures on the walls, all bathrooms, replacing all paper goods, trash removal throughout building including can on porch area. i was also asked to blow off porch area. (cleanings everyday)

Police Dept: paper goods all replaced, remove all trash, dump shredder, kitchen area, dust offices as needed, vacuum all carpet , mop all hard floor, bathrooms. (cleanings everyday)

Fire Dept: main livingroom area vacuum and mop, wipe down kitchen and fronts of cabinets, remove all trash, replace paper goods throughout, cleaning of both bathrooms, dusting of desk areas. (cleanings 2 days a week)

Recreation office: replace all paper goods, bathroom, dust, vacuum and mop , dusting blinds as needed. (cleaning once a week)

Water tower bathrooms: (cleanings Tuesdays and Fridays) , replacing paper goods, normal cleaning, vacuum , mop, and trash.

Veterans Park bathrooms: replace all paper goods, normal cleaning, vacuum, mop, and trash. (I was told I would be given a schedule on how often they need to be cleaned)

I will provide all cleaning supplies, including equipment such as vacuums, mops, cleaning buckets, and rags.

I am asking the city to provide all paper goods such as: paper towels, toilet paper, and trash bags.

Weekly cost \$ 750.00

Annual cost \$ 37,500.00

Services will be provided daily @ : City Hall , Library, and the Police Dept

Services will be provided twice a week@ : Fire Dept

Services will be provided weekly @ : Recreation office

Services will be provided Tuesdays and Fridays of each week @ : Water tower bathrooms

Services will be provided as needed @ : Veterans Park

OFFICE CLEANING SERVICES PROPOSAL

Proposal	Date: 10/23/17
Lake County Janitorial Services, Inc.	Prospective Client Name: City of Fruitland Park
705 Cindy Avenue	506 W. Berckman St.
Fruitland Park, FL 34731	Fruitland Park, FL 34731
Phone: (352)348-3896	Phone: (352)360-6795
Email: malang4d@aol.com	Email: dboglefruitlandpark@comcast.net
Prepared By: David Langford	Contact Name: A. Dale Bogle

Dear Mr. Bogle,

We hereby submit estimates for the following Cleaning Services of your offices located at the aforementioned address.

The Services we will provide are as follows: Basic Janitorial Services

Daily Services Include

- Front doors inside and out
- Dust computer screens
- Sweep all areas
- Vacuum all carpets
- Collect all trash
- Wipe and disinfect all counter tops
- Break room
- Restrooms
- Wet mop all tile areas

As Needed

- Fill paper and soaps
- Replace can liners

Weekly

- Dust window sills
- Side vents to front doors

Monthly

- Dust ceiling vents

No	Service Description	Amount Payable Per Week
1	City Hall Complex	\$250.00
2	Fire Department	\$75.00
3	Public Library	\$200.00
4	Parks and Recreation Office	\$20.00
5	Cale's Restrooms	\$60.00
6	Veterans Park Restroom	\$60.00
7	Public Works Restrooms	\$60.00
TOTAL		\$725.00

We are available to start services upon request.

\$7500 per month



"We Do What Others Promise To Do"

AUGUST 3, 2017

P.O. Box 1327
Lady Lake, FL 32158
(352) 753-8653

CITY OF FRUITLAND PARK
506 W. BERCKMAN STREET
FRUITLAND PARK, FL. 34731

DALE BOGLE
PUBLIC WORKS DIRECTOR

DALE:

We certainly appreciate the opportunity to bid on the janitorial services for the City of Fruitland Park.

Ultimate Contract Cleaning, Inc. has been in business 27 years and currently provides services for The Villages, City of Tavares and City of Leesburg.

Our services would include all labor, insurances, equipment, chemicals, materials and all transportation related cost.

Customer responsible for all liners, paper material, deodorizers and hand soap.

Areas of service include; City Hall, Library, bathrooms at Park and Water tower, Recreation office. Service would be provided five days per week for each facility.

Services include daily detail cleaning, along with weekly and monthly duties; to include trash, disinfect/deodorizes bathrooms, fill supplies, clean entry glass/mirrors, vacuum, sweep/mop hard flooring, fill drain traps, general dusting high/low, etc.

Open areas of desk are included only and no personal effects touched.

A checklist for each facility will be development and implemented as services begin and followed consistently. Communication logs provided.

We will provide quality, trained, uniformed personal. Employees are drug free and background checks can be provided.

Services provided at additional cost are: floor care, carpet cleaning, window cleaning, Pressure- washing, emergency cleaning and sanitizing offices/bathrooms.

Cost of service is \$ 3,332.95 per month. No sales tax applied.

Cost based on estimated 40 hours of labor per week. 3 employees required for proper coverage.

Yearly cost is \$ 39,995.40 (no sales tax applied)

We appreciate your consideration. This proposal is flexible, as well as our services. Please call to discuss any questions.

Thank you,
Dan Germeroth, President



**AGENDA ITEM
NUMBER**
5e

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	ITB 2017-001 New Public Library Facility Construction Bids Presentation - Contract Award			
For the Meeting of:	November 9, 2017			
Submitted by:	City Manager/Community Development Director			
Date Submitted:	November 3, 2017			
Are Funds Required:		Yes	X	No
Account Number:	N/A			
Amount Required:	N/A			
Balance Remaining:	N/A			
Attachments:	Yes (Additional Documents Forthcoming)			
Description of Item: Construction contractors' presentation.				
Action to be Taken: Award the construction contract.				
Staff's Recommendation: Approval				
Additional Comments: October 13, 2017 - An invitation to bid pre-bid meeting was held; November 6, 2017 – Bids were due, opened, and announced, and November 7, 2017 – selection committee reviewed and ranked the bids.				

Reviewed by: _____
City Manager

Authorized to be placed on the Regular Consent agenda: _____
Mayor

**CONTRACT BETWEEN
CITY OF FRUITLAND PARK, FLORIDA AND
[CONTRACTOR NAME]**

THIS CONTRACT is dated as of the _____ day of _____ in the year 2017 by and between the **CITY OF FRUITLAND PARK**, Florida, a municipal corporation, 506 W. Berckman Street, Fruitland Park, Florida 34731, hereinafter called the **CITY**, and [CONTRACTOR NAME], [CONTRACTOR ADDRESS], Florida [ZIP CODE] hereinafter called the **CONTRACTOR**.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the CITY and CONTRACTOR and PROFESSIONAL are:

CITY:

Representative: Charlie Rector
Mailing Address: 506 W Berckman Street, Fruitland Park, FL 34731
Physical Address: 506 W Berckman Street
City, State, Zip: Fruitland Park, FL 34731
Office: 352-360-6727
Fax: 352-360-6652
E-mail: crector@fruitlandpark.org

CONTRACTOR:

Representative:
Mailing Address:
Physical Address:
City, State, Zip:
Office:
Fax:
E-mail:
License #:

PROFESSIONAL (Architect) (Designated Professional):

Representative: Jamie Senatore
Mailing Address: 1317 Sumter Street, Leesburg, FL 34748
Physical Address: 1317 Sumter Street, Leesburg, FL 34748
City, State, Zip: Leesburg, FL 34748
Office: 352-787-1121
Fax: 352-728-8292
E-mail: senatoreinc@gmail.com
License #:AR0006808

PROFESSIONAL (Engineer):

Representative: Duane Booth, BESH
Mailing Address: 902 N Sinclair Avenue, Tavares, FL 32778
Physical Address: 902 N Sinclair Avenue
City, State, Zip: Tavares, FL 32778
Office: 352-343-8481
Fax: 352-343-8495
E-mail: duanebooth@besandh.com
License #: 44631

RECITALS

WHEREAS, CITY intends to construct the Work and is engaging the General CONTRACTOR to perform certain labor, supervision and services and provide certain equipment, goods and materials for the Work.

WHEREAS, the CITY and CONTRACTOR each acknowledge that it will act in good faith in carrying out its duties and obligations.

WHEREAS, CONTRACTOR was chosen as CONTRACTOR pursuant to sealed bid under Section 287.057, Florida Statutes, following the guidelines set forth under such statute.

WHEREAS, CONTRACTOR was found to be most responsive, responsible, low bidder to provide construction services for the Work, [Bid 017-001].

WHEREAS, the CONTRACTOR desires to perform such construction services subject to the terms of this Agreement.

WHEREAS, the CITY'S engagement of the CONTRACTOR is based on CONTRACTOR'S representations to the CITY that it (i) is experienced in the type of labor and services the CITY is engaging CONTRACTOR to perform, (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform general construction services for the Work; and (iv) has the expertise and ability to provide general construction service which will meet the CITY'S objectives and requirements, and which will comply with the requirements of all governmental, public authorities and agencies having or asserting jurisdiction over the Work.

WHEREAS, CITY and CONTRACTOR each acknowledges that it has reviewed and familiarized itself with this Contract, including the documents enumerated in Article 21 and agrees to be bound by the terms and conditions contained therein.

WHEREAS, CITY has engaged one or more Professionals to perform architectural and/or engineering services for the Work, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE 1
WORK**

- 1.1 CONTRACTOR shall furnish or cause to be furnished, and pay for out of the Construction Price, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of the Work (or Scope of Services) in accordance with all the terms and conditions of the Contract Documents. The Work is generally described as follows:

**CITY OF FRUITLAND PARK LIBRARY
BID NO. 2017-001
CITY OF FRUITLAND PARK
LAKE COUNTY, FLORIDA**

Build New Library Facility as per plans and specifications

**ARTICLE 2
MANNER OF PERFORMING WORK AND REQUIRED SERVICES**

- 2.1 On the terms and conditions set forth in this Agreement, CITY hereby engages CONTRACTOR to perform and complete all Work in a professional and workmanship like manner, and shall conform to the industry standards in Central Florida for construction of a public library. All materials being utilized in the construction and all workmanship shall be completed to the satisfaction of the CITY. CONTRACTOR shall perform and complete its obligations under this Contract using its best skill and attention, and covenants with CITY to furnish management, supervision, coordination, labor and services which (i) expeditiously, economically and properly completes the Work in the manner most consistent with CITY'S interests and objectives, (ii) complies with the Construction Documents and this Contract; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

2.2 **General project services:**

2.2.1 CONTRACTOR agrees to provide all service required to professionally complete its WORK in an expeditious and economical manner consistent with this Contract and the best interests of CITY.

2.2.2 CONTRACTORS shall, in consultation with CITY, PROFESSIONALS and the subcontractors, endeavor to development, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objections of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all parties.

2.2.3 CITY'S designated PROFESSIONAL architect will represent the CITY in dealing with the CONTRACTOR on all design and technical matters, and will administer this Contract. Unless otherwise directed by the CITY, CITY and CONTRACTOR shall communicate with each other in the first instance through the PROFESSIONAL architect. The CITY'S instructions to the CONTRACTOR will be issued through the PROFESSIONAL architect.

2.2.4 CONTRACTOR understands and acknowledges the CITY'S intent that the Project will be complete by the Date of Substantial Completion. CONTRACTOR shall timely prepare and submit the CPM Schedule from the date of Notice to Proceed through the Final Completion date for the CITY'S review and approval. This schedule is to be updated monthly. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received.

2.3 **Construction Services:**

2.3.1 CONTRACTOR shall supervise and direct its scope of the Work. At a minimum, CONTRACTOR shall:

- i. Provide an on-site job superintendent who shall speak, read and write English, and who shall supervise all trades and direct all construction activities, establish and maintain construction schedules and submit to CITY daily progress reports. The superintendent shall not be a hands-on tradesman. CITY shall retain the authority to remove the superintendent with cause with ten calendar days written notice. The superintendent shall stay on the job through 100% of construction and final punch-list items. The superintendent shall additionally be responsible to coordinate the safety program at the job site. Any person employed by the CONTRACTOR or a subcontractor who is found to be conducting themselves in a detrimental manner shall be removed from the job site immediately upon notification to the superintendent.
- ii. Coordinate trade CONTRACTORS and suppliers, and supervise all construction services.
- iii. Be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract.
- iv. Check and approve shop drawings and materials delivered to the site, regularly inspect the Work to determine its compliance with the Construction Documents and this Contract, periodically confer with CITY to assure acceptable levels or quality.
- v. Prepare and maintain Project records, process documents, and staff the site field office.

- 2.3.2 CONTRACTOR shall insure that the Work is in compliance with the Construction Documents and complies with any applicable law, statute, building code, rule or regulation of any public authority or agency having jurisdiction over the Project.
- 2.3.3 CONTRACTOR shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. CONTRACTOR shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with all applicable schedules to insure timely completion of the Work. If at any time the Project is delayed, CONTRACTOR shall notify CITY as to the probable causes for the delay and possible alternatives, and make recommendations to minimize expense to CITY.
- 2.3.4 The PROFESSIONAL architect will visit the Project Site at intervals appropriate to the state of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The PROFESSIONAL architect's interpretations and decisions shall be final regarding the Construction Documents and the Work.
- 2.4 On-Site Facilities. Commencing on the Date of Commencement and terminating on the Date of Final Completion, the CONTRACTOR shall:
- 2.4.1 Provide an office trailer at the site for the duration of the Contract.
- 2.4.2 Maintain in the office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.
- 2.4.3 Provide temporary toilets at the Site for all workers for the duration of the construction period.
- 2.4.4 Provide a temporary account for water supply for the duration of this Contract, and shall remove it upon completion of the Work.
- 2.4.5 Provide electrical service for the duration of this Contract, and shall provide temporary wiring and shall be responsible for removing such temporary facilities at the completion of the Work.
- 2.5 CONTRACTOR shall, prior to the execution of this Contract, prepare and attach as Appendix A the Contractor's Personnel Chart which lists by name, job category and responsibility the CONTRACTOR'S primary employees who will work on the Project. CONTRACTOR shall promptly inform CITY in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). CITY shall have the right to reject any proposed replacement.

- 2.6 CONTRACTOR (i) shall within ten (10) days of the Notice to Proceed, prepare and provide CITY the Contractor's Subcontractors and Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by CONTRACTOR to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which CITY raises a reasonable, timely objection with full compensation to be paid CONTRACTOR, with mark-up, for any premium costs in changing Subcontractors or Suppliers at CITY'S direction; and (iii) shall promptly inform CITY in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). CITY shall have the right to reject any proposed replacement with full compensation to be paid the CONTRACTOR, with mark-up, for any premium costs in changing subcontractors or suppliers at CITY'S direction.
- 2.7 CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:
- A. All persons employed by CONTRACTOR during the term of this Contract to perform employment duties within Lake County; and
 - B. All persons, including subcontractors, assigned by the CONTRACTOR to perform work pursuant to the contract.
- 2.8 CONTRACTOR acknowledges and agrees that, in accordance with Section 255.099, Florida Statutes, since this Project is being supported in whole or in part by State funding the CONTRACTOR shall give preference to the employment of state residents in the performance of the Work on the Project if state residents have substantially equal qualifications to those of non-residents. CONTRACTOR is required to employ state residents, CONTRACTOR shall contact the Department of Economic Opportunity to post the employment needs in the State's job bank system. However, in work involving the expenditure of federal aid funds, this section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.
- 2.9 CONTRACTOR acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the CITY and PROFESSIONAL architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents, and variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.10 Schedule Requirements.
- 2.10.1 The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

- 2.10.1.1 Unless otherwise directed and approved by CITY, the CONTRACTOR shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.
- 2.10.1.2 The Construction Schedule shall include (i) the date of the Notice to Proceed, (ii) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (iii) any guideline and milestone dates required by CITY; (iv) any applicable subcontractor and supplier subschedules; (v) a submittal schedule which allows sufficient time for review of documents and submittals; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vii) required decision dates.
- 2.10.1.3 By reviewing the Construction Schedule, CITY and PROFESSIONAL do not assume any of CONTRACTOR'S responsibility.
- 2.10.1.4 CONTRACTOR shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. If the actual status is behind when compared against the Construction Schedule, then the CONTRACTOR shall immediately discuss the status of the Work with the PROFESSIONAL so that proper overall management may be provided.
- 2.10.1.5 CONTRACTOR shall periodically and in all instances when CONTRACTOR anticipates performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare an updated Construction Schedule. The updated Construction Schedule shall be accompanied by a narrative report explaining in detail any modifications of the critical path schedule, reasons for modifications, reports corrective action taken or proposed and any other pertinent information to explain how to avoid delay in delivering the work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by CITY.

2.10.2 Delay in Performance.

- 2.10.2.1 CONTRACTOR expressly agrees to complete the Work within the time specified.
- 2.10.2.2 CONTRACTOR shall determine and promptly notify CONTRACTOR and PROFESSIONAL in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by CITY, if

any, are necessary, but no such adjustments shall be effective unless approved in writing by CITY and PROFESSIONAL. CITY may, but is not required to, accept the CONTRACTOR'S adjustments.

2.11 **Subcontractor / Supplier Contracts.** CONTRACTOR shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract. It is the intent of CITY and CONTRACTOR that the obligations of Contractor's subcontractors and suppliers inure to the benefit of CITY and CONTRACTOR, and that CITY be a third-party beneficiary of CONTRACTOR'S agreements with its subcontractors and suppliers.

2.11.1 CONTRACTOR shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

2.11.2 CONTRACTOR shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract that are included by reference in its written contract with CONTRACTOR, and that it will abide by those terms, conditions and requirements.

2.11.3 CONTRACTOR'S written contracts with its subcontractors and suppliers shall preserve and protect the rights of CITY and include the acknowledgment and agreement of each subcontractor or supplier that CITY is a third-party beneficiary of the contract. CONTRACTOR'S agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract, and upon request of CITY, CONTRACTOR'S subcontractors and suppliers will perform services for CITY.

ARTICLE 3 CONTRACT TIME/DAMAGES FOR DELAY

3.1 Time for Performance.

3.1.1 Commencement of Construction. CONTRACTOR shall commence construction of its scope of the Work within ten (10) calendar days of receipt of the Notice to Proceed, hereinafter the "Commencement Date".

3.1.2 Substantial Completion. CONTRACTOR shall accomplish Substantial Completion of its scope of the Work on or before 270 calendar days (the "required date of Substantial Completion") from the issuance of the Notice to Proceed.

- 3.1.3 Final Completion. CONTRACTOR shall accomplish Final Completion of its scope of the Work on or before 300 calendar days from the issuance of the Notice to Proceed, hereinafter the “required date of Final Completion”.
- 3.2 Construction Schedule. CONTRACTOR shall no later than ten (10) calendar days after issuance of the Notice to Proceed prepare and submit a preliminary Construction Schedule to CITY and PROFESSIONAL architect for their review and acceptance.
- 3.3 CONTRACTOR recognizes that time is of the essence of this Agreement and that CITY will suffer financial loss if the Work is not completed within the times specified in above, plus any extensions thereof approved in an addendum to this Agreement and signed by CITY. CONTRACTOR acknowledges that proving the actual loss and damages suffered by CITY if the Work is not completed on time is impracticable and not susceptible to exact calculation. Accordingly, instead of requiring any such proof, CONTRACTOR agrees that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY Two Hundred Fifty Dollars (\$250.00) for each calendar day that expires beyond the time specified in paragraph 3.1 above for Substantial Completion. \$5,000 of the Contract Price shall be consideration for inclusion of this Liquidated Damages provision. Liquidated damages are the sole remedy for delays caused by CONTRACTOR.
- 3.4 In addition to the liquidated damages, there shall be additional incidental damages paid by the CONTRACTOR to the CITY for failure to timely complete the work. These may include, but not be limited to, delay damage settlements or awards owed by CITY to others, inspection and engineering services, interest and bond expense, delay penalties, fines or penalties imposed by regulatory agencies, contract damages, and professional fees (including attorneys' fees) incurred by CITY in connection with CONTRACTOR’S failure to timely complete the work.

**ARTICLE 4
CONTRACT PRICE**

- 4.1 CITY shall pay and CONTRACTOR shall accept, as full and complete payment for the CONTRACTOR’S timely and complete performance of the Work in accordance with the Contract Documents the fixed price of [INSERT CONTRACT PRICE] DOLLARS AND 00/100 (\$_____ .00) Base Bid
- (\$_____ .00) Fire Suppression Bid
- (\$_____ .00) Total Bid
- 4.2 The CONTRACTOR agrees that the Contract Price is a fixed price and agrees to perform all of the WORK as described in the CONTRACT DOCUMENTS, subject to additions and deductions by Change Order. The CITY shall pay the CONTRACTOR only for the Contract Price.
- 4.3 Prior to execution of this Contract, CONTRACTOR shall prepare and present to CITY and PROFESSIONAL architect the Contractor’s Compensation Schedule which includes, the Schedule of Values for payment of the Contract Price on a lump sum basis for each of

the major [insert number] divisions of construction. The Schedule of Values must reflect total Contract Price. The Compensation Schedule, once approved, shall be attached hereto and incorporated herein as Appendix B.

ARTICLE 5 PAYMENT PROCEDURES

- 5.1 On the 1st day of each month, CONTRACTOR shall submit applications for payment to PROFESSIONAL architect at [insert e-mail address] who will process for payment for Work completed and in duplicate to CITY c/o Treasurer, 506 West Berckman Street, Fruitland Park, FL 34731. Each application shall contain the designation “**Fruitland Park Library**” and shall signify the percentage complete. Attachments to the applications for payment shall identify critical, descriptive data, which reflects all construction activities completed to date for review of the PROFESSIONAL architect and CITY. The CONTRACTOR shall be required to submit an updated Critical Path Method (CPM) schedule with the monthly applications for payment. The CPM is a requirement for payment. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received.
- 5.2 The CITY shall make payment on all invoices in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes. All requests for payment of retainage shall be in accordance with the Florida Prompt Payment Act.
- 5.3 Progress payments will be made in an amount equal to 90% of the Work completed (with the balance being retainage), but, in each case, less the aggregate of payments previously made and less such amounts as PROFESSIONAL architect may determine or CITY may withhold, including but not limited to liquidated damages. The date on which payment is due shall be referred to as the “Payment Date”. Prior to final payment the CONTRACTOR shall provide all contract close out documents including but not limited to as-builts, operating and maintenance manuals, and warranties. Additional, the CONTRACTOR must complete all punch-list items prior to final payment.
 - 5.3.1 CONTRACTOR shall prepared a list of items to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching Substantial Completion. Failure of the CONTRACTOR to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the CONTRACTOR to complete all construction services set forth herein. Upon completion of all items on the list, the CONTRACTOR may submit a payment request with its next monthly invoice for all remaining retainage withheld by CITY. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Contract for Construction, CITY may continue to withhold an amount not to exceed one hundred fifty percent (150%) of the total costs to complete the remaining items. The CONTRACTOR’S project representative shall be required to review these estimates with CITY and sign the estimate in agreement.

- 5.4 Other than as set forth in this Contract, the CONTRACTOR shall not be entitled to payment for any expenses, fees, or other costs it may incur at any time and in connection with its performance hereunder. The CONTRACTOR hereby agrees that the Contract Price is fully loaded and includes all overhead common expenses, travel expenses, administrative and technical support expenses and computer expenses, and administrative expenses, including but not limited to:
- 5.4.1 costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by CONTRACTOR at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by CONTRACTOR. Cost for items used by CONTRACTOR shall mean fair market value;
 - 5.4.2 costs incurred to provide site safety (excluding subcontractor safety costs);
 - 5.4.3 costs of removal of debris from the site;
 - 5.4.4 costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
 - 5.4.5 that portion of the reasonable expenses of CONTRACTOR'S personnel Incurred while travelling in discharge of duties directly connected with the Work;
 - 5.4.6 sales, use or similar taxes imposed by a governmental authority and paid by the General CONTRACTOR; and directly related to the Work.
 - 5.4.7 data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs;
 - 5.4.8 expenses incurred in accordance with CONTRACTOR'S standard personnel policy for relocation and temporary living allowances of personnel required for the Work;
 - 5.4.9 the cost of obtaining and using all temporary utility services required for the Work;
 - 5.4.10 all reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services.
 - 5.4.11 rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers;

- 5.4.12 wages, salaries, bonuses and incentive compensation of CONTRACTOR'S supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses; and
- 5.4.13 cost of fringe benefits, constructions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to CONTRACTOR'S employees.
- 5.4.14 PROFESSIONAL may withhold all or part of an application for payment to the extent reasonably necessary to protect CITY. If PROFESSIONAL is unable to certify payment in the amount of the application, PROFESSIONAL shall notify CONTRACTOR and CITY as provided for herein. If CONTRACTOR and PROFESSIONAL cannot agree on a revised amount, PROFESSIONAL shall promptly authorize payment for the amount which PROFESSIONAL is able to make such representations to CITY. PROFESSIONAL may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in PROFESSIONAL'S opinion to protect CITY from loss for which CONTRACTOR is responsible, including loss resulting from its acts and omissions, because of
- (i) defective Work not remedied;
 - (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to CITY is provided by CONTRACTOR;
 - (iii) failure of CONTRACTOR to make payments properly to subcontractors for labor, materials or equipment;
 - (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - (v) damage to CITY or other contractor;
 - (vi) reasonable evidence that the Work will not be completed within dates established in the Construction Schedule, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or
 - (vii) persistent failure to carry out the Work in accordance with this Contract.

5.5 **Right to Refuse Payment.** PROFESSIONAL'S approval of CONTRACTOR'S invoice shall not preclude CITY from exercising any of its remedies under this Contract. In the

event of a dispute, payment shall be made in accordance with Part VII, Chapter 218, Florida Statutes, for amounts not in dispute, subject to any setoffs claimed by CITY. CITY, to the extent permitted by Part VII, Chapter 281, Florida Statutes, shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to CONTRACTOR due to:

- (i) CONTRACTOR'S failure to perform the Work in compliance with the requirements of this Contract or any other agreement between the parties;
- (ii) CONTRACTOR'S failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) CONTRACTOR'S performance of the Work at a rate or in a manner that, in CITY'S opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) Contractor's failure to use funds previously paid CONTRACTOR by CITY, to pay CONTRACTOR'S Project-related obligations including, but not limited to, CONTRACTOR'S subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against CITY or its property;
- (vi) loss caused by CONTRACTOR or CONTRACTOR'S subcontractors, or suppliers, or
- (vii) CONTRACTOR'S failure or refusal to perform any of its obligations to CITY.

5.6 **Compensation of Contractor's Subcontractors and Suppliers.** Upon receipt of payment from CITY, Contractor shall pay each of its subcontractors and suppliers out of the amount received by Contractor on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to Contractor on account of such entity's portion of the Work. CITY shall have no obligation to pay, and shall not be responsible for payments to, Contractor's subcontractors suppliers.

5.7 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor must achieve Final Completion. CITY shall, subject to its rights set forth in this Contract, make final payment of all sums due Contractor in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 6 CITY RESPONSIBILITIES

6.1 CITY, through its PROFESSIONAL, shall promptly review the deliverables and other materials submitted by CONTRACTOR and provide direction to CONTRACTOR as needed.

- 6.2 CITY shall pay CONTRACTOR, in accordance with the provisions of this Contract for required services timely submitted and approved and accepted by CITY in accordance with the terms of this Contract and the Contract Documents.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

In order to induce CITY to enter into this Agreement CONTRACTOR make the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- 7.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect costs, progress, and performance of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 7.4 CONTRACTOR has carefully studied the engineer's drawings, and is aware of the nature of the Work to be performed.
- 7.5 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.6 CONTRACTOR has given PROFESSIONAL architect written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the CONTRACTOR Documents, and the written resolution thereof by PROFESSIONAL architect is acceptable to CONTRACTOR
- 7.7 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CONTRACTOR acknowledges and represents it has not relied, and does not and will not rely, upon any representations or warranties by CITY concerning Contract Documents, as no such representations or warranties have been or are hereby made.
- 7.8 CONTRACTOR understands and agrees that the requirements established by the Construction Documents shall be considered as the minimum which will be accepted.

ARTICLE 8 CHANGE ORDERS AND CHANGES TO THE WORK

- 8.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules after execution of this Contract, and without invalidating this Contract. Unless otherwise specified herein, the

PROFESSIONAL architect shall prepare the change orders and construction change directives. All Change Order requests shall be in writing and approved prior to the work which is the subject of the Change Order being completed, unless otherwise state herein.

- 8.1.1 With respect to such requests for changes by the CONTRACTOR, CONTRACTOR shall prepare and submit written change order requests to the designated PROFESSIONAL architect and CITY.
 - 8.1.2 With respect to requests for changes by parties other than the CONTRACTOR, CONTRACTOR shall promptly review and respond in writing to change order requests submitted by a PROFESSIONAL.
 - 8.1.3 When requested to do so, CONTRACTOR shall prepare and submit to a PROFESSIONAL drawings, specifications or other data in support of a change order request.
 - 8.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 8.2 **CITY-Directed Changes.** CITY may unilaterally direct CONTRACTOR to implement changes in the Work so long as the Work CITY is requiring is not outside of the general scope of this Contract, and CONTRACTOR, upon written direction from CITY, shall proceed with such change.
- 8.3 **Professional-Directed Changes.** A Professional, without the CITY'S prior approval, may authorize or direct CONTRACTOR to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and CONTRACTOR shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the CONTRACTOR.
- 8.4 **Administration of Changes.** The PROFESSIONAL architect and CITY will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 8.5 **Compensation for Changes.** With respect to all change order requests involving credit to the CITY or additional compensation to CONTRACTOR, CONTRACTOR shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare and itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated PROFESSIONAL.
- 8.5.1 If price quotations for change order requests are determined by the PROFESSIONAL architect to be unreasonable, CONTRACTOR shall, in writing,

justify said quotations or provide additional back-up materials. If after review of the additional information the PROFESSIONAL determines the quotation is unreasonable, the CITY may require that the subject Work be performed on a time and material basis.

8.5.2 CONTRACTOR and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract, and shall not be entitled to additional reimbursement for home-office, other non-job site or indirect overhead expenses, or tools necessary for construction.

8.5.3 It is the responsibility of CONTRACTOR to review and approve all pricing of additional work required of its subcontractors and suppliers.

8.5.4 Additional work which is not part of the Contract Documents and which does not impact the critical path shall require an executed change order and is not entitled to an extension of time but CONTRACTOR shall be reimbursed the actual incurred costs and expenses paid to subcontractors and suppliers plus a markup of five percent (5%) to cover General Conditions, Management Fee and overhead and profit.

8.5.4.1 The above conditions apply to CONTRACTOR'S subcontractor and sub-subcontractor.

8.5.5 Additional work which is not part of the Contract Documents and which does impact the critical path shall require a change order and CONTRACTOR is entitled to an extension of time and the actual incurred costs and expenses paid to subcontractors and suppliers plus a markup of ten percent (10%) to cover General Conditions, Management Fee and overhead and profit.

8.5.5.1 The above conditions apply to CONTRACTOR'S subcontractor and sub-subcontractor.

8.6 **Performance of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

8.7 **Disputes Regarding Changes.**

8.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (ii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the CITY issues a Construction Change Directive. No claim shall be prejudiced by performance of the Work so long as the CITY is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the CITY recites the reasons for its dispute in the written

notice. Failure to notify the CITY in writing shall constitute a waiver of any claim resulting from the change.

- 8.7.2 In the event a change order request is approved by the CITY in the absence of an agreement as to cost, time, or both, the appropriate PROFESSIONAL will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the CITY'S behalf; (iii) take such other action as may be reasonably necessary or as the CITY may request; and (iv) make a written recommendation to the CITY concerning any appropriate adjustment in the Construction Price or time.
- 8.7.3 A Construction Change Directive is a written order prepared by the PROFESSIONAL and signed by the CITY and the PROFESSIONAL, directing a change in the Work prior to the agreement on any change in the contract price, time or both. The issuance of a Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the contract price, the adjustment shall be based on one of the following:
- (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (ii) unit prices stated in the Contract Documents or subsequently agreed upon;
 - (iii) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - (iv) as set forth below.
- 8.7.4 CONTRACTOR shall promptly proceed with the Work upon receipt of a Construction Change Directive, and shall immediately advise the PROFESSIONAL of any disagreement with the method of compensation set forth in the Directive.
- 8.7.5 CONTRACTOR shall sign the Construction Change Directive if CONTRACTOR agrees with the adjustment in the time or contract price. Upon signature, the Change Order Directive shall be effective as a Change Order.
- 8.7.6 If CONTRACTOR does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the PROFESSIONAL on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, and shall include a reasonable allowance for overhead and profit. In such case, CONTRACTOR shall keep and present to the PROFESSIONAL an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:
- (i) costs of labor, including social security, unemployment insurance, fringe

benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;

- (ii) costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;
- (iii) rental costs of machinery and equipment, exclusive of hand tools, whether rented from CONTRACTOR or others directly attributable to the change;
- (iv) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to change; and
- (v) additional costs of supervision and field office personnel directly attributable to the change.

8.7.7 The amount of credit to be allowed by CONTRACTOR to the CITY for a deletion or change which results in a net decrease in the contract price shall be the actual net cost as confirmed by the PROFESSIONAL architect. When there are both increases and decreases in the Work, the allowance for overhead and profit shall be figured on the basis of net increase, if any, of the change.

8.7.8 Pending final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by the Change Order. For costs in dispute, the PROFESSIONAL architect shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

8.8 **Necessity for Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the CITY, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. CONTRACTOR understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 9 CITY'S PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

9.1 **CITY'S Designated Professional Representative.** Unless otherwise directed by CITY, one designated PROFESSIONAL shall act as CITY'S design representative from the effective date of this Contract until one (1) year from the date of achievement of Substantial Completion.

9.1.1 The PROFESSIONAL so designated will be CITY'S design representative during performance of the Work and will consult with and advise CITY on all design and

technical matters.

9.1.2 The designated PROFESSIONAL will act as initial interpreter of the requirements of this Contract and as CITY'S advisor on claims.

9.2 **Professional Site Visits.** The PROFESSIONAL(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

9.3 **Professional Rejection of Work.** The PROFESSIONAL(s) may disapprove or reject Work which does not comply with (i) this Contract including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

9.4 **Professional Evaluations.**

9.4.1 The PROFESSIONAL(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract and by any governmental entity having or asserting jurisdiction over the Project. The PROFESSIONAL(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the PROFESSIONAL(s). The PROFESSIONAL(s) will promptly reject Work which does not conform to any comply with testing requirements.

9.4.2 The PROFESSIONAL(s) may require inspection or testing of any Work in addition to that required by this Contract or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The PROFESSIONAL(s) will take appropriated action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the PROFESSIONAL(s).

9.5 **Professional Submittal Activities.** The PROFESSIONAL(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract; and (iii) Contract Price. PROFESSIONAL'S review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. CONTRACTOR remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for

selecting fabrication processes, for techniques or assembly, and for performance of the Work.

- 9.6 **Professional Interpretations.** A PROFESSIONAL will, when requested to do so in writing by CONTRACTOR, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the property execution of the Work. PROFESSIONAL'S interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract.
- 9.7 **Professional Change Order Activities.** The PROFESSIONAL(s) will consult with and advise CITY concerning, and will administer and manage, all change order requests and change orders on behalf of CITY.
- 9.8 **Professional Pay Application Activities.** The appropriate PROFESSIONAL will review applications for payment, including such accompanying data, information and schedules as the PROFESSIONAL requires, to determine the amounts due to CONTRACTOR and shall authorize payment by CITY to CONTRACTOR in writing. After the Work is determined to be finally complete and the PROFESSIONAL determines that CONTRACTOR has completed the Work, the PROFESSIONAL will determine whether CONTRACTOR is entitled to final payment, and if so will so certify to CITY in writing.
- 9.9 **Professional Relationship to Contractor.** The duties, obligations and responsibilities of CONTRACTOR under this Contract shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any PROFESSIONAL. CONTRACTOR shall not be a third-party beneficiary of any agreement by and between CITY and any PROFESSIONAL. The duties of CONTRACTOR to CITY shall be independent of, and shall not be diminished by, any duties or obligations of any PROFESSIONAL to CITY.

ARTICLE 10 CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 10.1 **Rejection and Correction of Work in Progress.** During the course of the Project, CONTRACTOR shall inspect and promptly, whether at the direction of PROFESSIONAL, CITY, or CONTRACTOR itself, reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 10.1.1 CONTRACTOR shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.
- 10.1.1.1 CONTRACTOR shall bear all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses necessitated by such corrections for Work that does

not conform to the Construction Documents.

10.1.1.2 CONTRACTOR shall be compensated for all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses, including but not limited to general conditions for extended time, necessitated by such correction for Work installed per the Construction Documents that is later determined by others to not comply with any applicable law, statute, building code, rule or regulation of any governmental, public or quasi-public authority or agency having jurisdiction over the project. CONTRACTOR is not responsible for conformance of the Construction Documents with any applicable laws, codes, statutes, rules or regulations.

10.1.2 CONTRACTOR shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of CITY or other trade contractors or subcontractors caused by CONTRACTOR'S correction or removal of rejected Work, due to lack of conformance to the Construction Documents. If CONTRACTOR fails to correct any destroyed or damaged work, CITY may take such steps as are necessary to repair or replace the destroyed or damaged work and deduct the cost thereof from this contract.

10.2 **Covered or Concealed Work.** If a portion of the Work has been covered, CONTRACTOR shall, if notified to do so by CITY or PROFESSIONAL, uncover the designated portion for observation and then replace it.

10.2.1 If the designated portion of the Work was covered contrary to the request of CITY or PROFESSIONAL, or to requirements specifically expressed in the Construction Documents, CONTRACTOR shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

10.2.2 If the designated portion of the Work was covered prior to a specific request by CITY or PROFESSIONAL that it remain uncovered, CONTRACTOR shall receive additional compensation for the costs of uncovering and replacement or modification of the construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

10.3 **Acceptance of Non-conforming Work.** If CITY prefers to accept Work which is not in accordance with the requirements of the Contract Documents, CITY may do so instead of requiring its removal and correction, in which case the Construction Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 11
CITY'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

- 11.1 If CONTRACTOR fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with this Contract, CITY may, by written notice, order the CONTRACTOR to cease and desist in performing the Work or any portion of the Work until the cause of the order has been eliminated to the satisfaction of the CITY. Upon receipt of such instruction, CONTRACTOR shall immediately cease and desist as instructed by CITY and shall not proceed further until the cause of the CITY'S order has been corrected, no longer exists, or the CITY instructs that the Work may resume.
- 11.1.1 CONTRACTOR shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause if such stoppages are determined to be the fault of the CONTRACTOR.
- 11.1.2 If CONTRACTOR fails or refuses within seven (7) calendar days to provide adequate assurance to CITY that the cause of such instructions will be eliminated or corrected, then the CITY shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another general contractor, and CONTRACTOR shall be responsible for the cost of performing such Work by CITY.
- 11.1.3 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the CITY may have against CONTRACTOR.
- 11.2 If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect within seven (7) calendar days after receipt of the written notice from CITY to do so with diligence and promptness, CITY may after such seven-day period give CONTRACTOR a second written notice to correct such deficiencies. The second written notice shall require CONTRACTOR to correct such default or neglect within three (3) calendar days of receipt of the written notice. If CONTRACTOR fails to correct such deficiencies CITY may, without prejudice to other remedies available to CITY, correct the deficiencies and issue a Change Order deducting from the Contract Price the reasonable cost of correcting such deficiencies, including CITY'S expenses and compensation for the PROFESSIONAL'S additional services made necessary by the default, neglect or failure. Such action by CITY and amounts charged to CONTRACTOR are both subject to prior approval of PROFESSIONAL. If payment then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the difference to CITY.

ARTICLE 12
INSPECTION, CORRECTION OF WORK,
AND PROJECT CLOSE OUT

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection and the required Substantial Completion documentation and items have been produced.
- 12.1.1 When CONTRACTOR believes that the Work is substantially complete, it shall notify CITY and the appropriate PROFESSIONAL that its Work is ready for a Substantial Completion Inspection.
- 12.1.2 At or prior to the Substantial Completion inspection, CONTRACTOR will prepare and furnish to PROFESSIONAL a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between CITY and CONTRACTOR responsibility for security, utilities, damage to the Work and insurance;
 - (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
 - (iii) contain signature lines for CITY, CONTRACTOR and PROFESSIONAL.
- 12.1.3 Upon receipt of notification from CONTRACTOR the appropriate PROFESSIONAL will coordinate with CITY and CONTRACTOR a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.1.4 At inspection(s) to determine whether the Work is substantially complete, the PROFESSIONAL will:
- (i) inspect the Work;
 - (ii) list additional items to be completed or corrected; and
 - (iii) determine, in consultation with CITY, whether Substantial Completion of the Work has occurred.
- 12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to CITY until the Work is determined to be substantially complete.

- 12.1.6 On or prior to the required date of Substantial Completion, CONTRACTOR shall deliver to the appropriate PROFESSIONAL keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for CITY'S occupancy and use of the Work for its intended purpose. The PROFESSIONAL will obtain and review Substantial Completion documentation and items, and will inform CONTRACTOR of and deficiencies.
- 12.1.7 When CITY, CONTRACTOR and the appropriate PROFESSIONAL agree that the Work has passed the Substantial Completion inspection and CONTRACTOR has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of CONTRACTOR to include an item on the list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with this Contract.
- 12.1.8 CONTRACTOR shall promptly correct the Work properly rejected by the PROFESSIONAL or failing to conform to the requirements of this Contract, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work, including additional testing and inspections and compensation for the PROFESSIONAL'S services and expenses made necessary thereby, shall be at CONTRACTOR'S expense.
- 12.1.9 Substantial Completion must be accompanied by a Certificate of Occupancy, unless the Certificate of Occupancy is unattainable outside of CONTRACTOR'S control.
- 12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that CONTRACTOR has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due CONTRACTOR or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to CITY by CONTRACTOR.
- 12.2.1 When CONTRACTOR believes the Work is finally complete, CONTRACTOR shall notify CITY and the appropriate PROFESSIONAL that the Work is ready for Final Completion inspection.
- 12.2.2 Upon receipt of such notification from CONTRACTOR, the PROFESSIONAL will coordinate with CITY and CONTRACTOR a date for inspection of the Work to determine whether the Work is finally complete.
- 12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the PROFESSIONAL will:

- (i) inspect the Work;
- (ii) determine whether all items on the list, included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
- (iii) determine whether the Work complies with (a) this Contract; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards.
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with CITY, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, CONTRACTOR shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to CITY, until the Work is finally complete.

12.2.5 On or prior to the date of Final Completion, CONTRACTOR shall deliver to the appropriate PROFESSIONAL the following Final Completion close-out documentation and items:

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;
- (iii) certification and affidavit that all insurance required of CONTRACTOR beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to CITY;
- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of CONTRACTOR'S trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against CITY or CITY'S property;
- (vi) full, final and unconditional certification and affidavit that all of CONTRACTOR'S obligations to contractors, subcontractors, suppliers

and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;

- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery;
- (x) spare parts and attic stock, if any; and
- (xi) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The appropriate PROFESSIONAL will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by CONTRACTOR, and will immediately inform CONTRACTOR about any deficiencies and omissions.

ARTICLE 13 LICENSES, APPROVALS AND PERMITS

13.1 CONTRACTOR shall obtain all licenses, permits or approvals required for the Work at CONTRACTOR'S expense as part of the Contract Price.

ARTICLE 14 GOODS, PRODUCTS AND MATERIALS

14.1 **Quality of Materials.** CONTRACTOR shall furnish goods, products, materials, equipment and systems which:

- (i) comply with this Contract;
- (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
- (iii) are new (unless otherwise specified or permitted) and without apparent damage;
- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;

(vi) are free from defects; and

(viii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

- 14.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case CONTRACTOR shall so inform CITY and PROFESSIONAL and shall proceed as directed by PROFESSIONAL, unless otherwise directed by CITY. CONTRACTOR shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 14.3 **Unsuitable Materials.** CONTRACTOR shall inform CITY of goods, products, materials, equipment or systems which Contractor knows are unsuitable or unavailable. Approval by CITY and PROFESSIONAL of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by CITY and PROFESSIONAL if such items should be defective or not as previously represented.
- 14.4 **Brand Name or Alternate.** Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of service that will be acceptable. However, if CONTRACTOR proposes to furnish an alternate product or service after this Contract has been fully executed, CONTRACTOR shall receive the written authorization from the PROFESSIONAL and CITY prior to incorporating such alternate product or service into the Work. An alternate to the product/material specified will only be considered if the product/material is not readily available to meet the construction schedule. Also, such alternate will require cost comparison evidence and if found to be less expensive than the specified material, CITY will be entitled to a credit for the cost difference. For purposes of this paragraph, an alternate shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an "or equal" product or material, an equal is defined as a product or material with the same quality or characteristics as that specified, but differing in brand name.
- 14.5 **Defective Materials.** If during or prior to construction operations CITY or PROFESSIONAL rejects any portion of the Work on the grounds that the Work or materials are defective, the CITY or PROFESSIONAL shall give the General Contractor written notice of the defect. CONTRACTOR shall then have seven (7) calendar days from the date the notice is received to correct the defective condition.

- 14.6 **Security for the Project.** CONTRACTOR shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work, whether store on or off site by Contractor, its subcontractors, materialmen or others under its supervision.
- 14.7 **Material Safety Data Sheets.** If any chemicals or materials or products containing toxic substances are to be used at any time during this contract, CONTRACTOR shall keep copies of all material safety data sheets on file with the contract documents located in the field office.
- 14.8 **Payment for Materials.** Unless otherwise provided in this Contract, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by CONTRACTOR with procedures satisfactory to CITY to establish CITY'S title to such materials and equipment or otherwise protect CITY'S interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

ARTICLE 15 PERFORMANCE BOND AND PAYMENT BOND

15.1 Bond Requirements.

15.1.1 CONTRACTOR shall be required to provide payment and performance bonds prior to commencing the Work. The amount of the premiums for such bonds shall be included in the Construction Price. Performance and Payment Bonds shall be 100% of the contract amount and shall be executed on forms approved by CITY. All original Performance and Payment Bonds will be submitted to CITY for recording in the public records of Lake County, Florida, at the cost of CONTRACTOR. The bonds will be acceptable to CITY only if the following conditions are satisfied:

- (i) The Surety is licensed to do business in the State of Florida;
- (ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- (iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the contract is issued;
- (iv) The Surety has a current rating of A or A- as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., if the contract price exceeds \$500,000, pursuant to Section 287.0935, Florida Statutes;
- (v) The Surety is otherwise in compliance with the Florida Insurance Code;

and

- (vi) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. ss9304.

If the Surety for any bond furnished by CONTRACTOR is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by this Agreement, CONTRACTOR shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to CITY'S approval.

15.1.2 The General CONTRACTOR shall not be required to provide a maintenance bond.

ARTICLE 16 INSURANCE

16.1 CONTRACTOR shall obtain and maintain, at CONTRACTOR'S expense, from a company or companies authorized to do business in the State of Florida and which are acceptable to CITY, insurance containing the following selected types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract by the CONTRACTOR or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. CONTRACTOR shall provide CITY proof of insurance prior to Work commencing. CONTRACTOR shall assure that its sub-contractors provide the same types of coverage and minimum limits of liability as required of CONTRACTOR and it is in effect at all times during this Contract.

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

- (ii) Automobile liability insurance, including owned, non-owned, and hire autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
-----------------------	-------------

- (iii) Worker's compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes,

and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the CITY responsible for any payment or compensation.

(iv) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employer	\$1,000,000
Disease-Policy Limit	\$1,000,000

(v) Builders Risk Insurance with all-risk perils for 100% of the contract amount.

(vi) City of Fruitland Park, a Florida municipality, shall be named as additional insured as their interest may appear on all applicable policies.

(vii) Certificate(s) of Insurance shall provide for a minimum of thirty (30) days prior written notice to CITY of any change, cancellation, or nonrenewal of the required insurance.

(viii) Certificate(s) of Insurance shall identify the contract number in the Description of Operations section of the Certificate.

(ix) Certificate of Insurance shall evidence a waiver of subrogation in favor of CITY, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the CITY.

(x) Certificate holder shall be CITY OF FRUITLAND PARK

(xi) All self-insured retentions shall appear on the certificate(s) and shall be subject to the approval of CITY. At the option of the CITY, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

(xii) The CITY shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.

(xiii) CONTRACTOR shall be responsible for subcontractors and their Insurance. Subcontractors are to provide Certificates of Insurance to CITY evidencing coverage and terms in accordance with the CONTRACTOR'S requirements.

(xiv) Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the CITY of any insurance supplied by CONTRACTOR or any subcontractor, nor a failure to disapprove that insurance, shall relieve the CONTRACTOR of full responsibility of liability, damages, and accidents as set forth herein.

- (xvi) If it is not possible for the CONTRACTOR to certify compliance, on the certificate of insurance, with all of the above requirements, then the CONTRACTOR is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

ARTICLE 17 CONTRACTOR'S WARRANTIES AND GUARANTEES

17.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract, CONTRACTOR, upon request by CITY or PROFESSIONAL, shall promptly correct all failures or defects in the Work for a period of one (1) year after the actual date of Substantial Completion, or the date of acceptance by CITY, whichever is later.

17.1.1 CONTRACTOR shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify CITY and PROFESSIONAL, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

17.1.2 CONTRACTOR shall be responsible for promptly correcting any deficiencies, at no cost to CITY, within five (5) calendar days after CITY notifies CONTRACTOR of such deficiency in writing.

17.1.3 Should CONTRACTOR fail to promptly correct any failure or defect, CITY may take whatever actions it deems necessary to remedy the failure or defect and the CONTRACTOR shall promptly reimburse CITY for any expenses or damages it incurs as a result of the CONTRACTOR'S failure to correct the failure or defect.

17.2 **Express Warranties and Guarantees – Contractor.** In addition to the warranties and guarantees set forth elsewhere herein, CONTRACTOR expressly warrants and guarantees to CITY:

- (i) that the Work complies with the Construction Documents;
- (ii) that all goods, products materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Document's and (c) merchantable;

and

- (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract and shall be and are performed in a workmanlike manner.
- (iv) All work shall be guaranteed for one (1) year after completion and acceptance unless otherwise specified. The guarantees are to be construed as being supplemental in nature and in addition to any and all other remedies available to CITY under the laws of the State of Florida.

17.3 **Express Warranties and Guarantees – Subcontractors and Suppliers.** CONTRACTOR shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to CITY and CONTRACTOR in a form identical to the warranties, guarantees and other undertakings set forth in this Contract, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of CITY as well as CONTRACTOR.

17.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, implied or statutory, and shall survive the CITY'S payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

17.5 **Non-Limitation.** Nothing contained in Paragraph 17.1 shall be construed to establish a period of limitation with respect to CONTRACTOR'S obligations under this Contract. Paragraph 17.1 relates only to CONTRACTOR'S specific obligations with respect to the Work, and has no relationship to the time within which CONTRACTOR'S contractual obligations under this Contract may be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to any contractual obligations pursuant to Paragraph 17.1 or contained elsewhere herein.

17.6 **Commencement of Obligations.** Unless otherwise specified, all of CONTRACTOR'S warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents shall begin on the actual date of Substantial Completion.

ARTICLE 18 TERMINATION OR SUSPENSION OF CONTRACT

18.1 **Termination by City for Cause.**

18.1.1 CITY may terminate this Contract for cause if CONTRACTOR materially breaches this Contract by:

- a. Refusing, failing or being unable to properly manage or perform the Work;

- b. Refusing, failing or being unable to supply sufficient numbers of properly skilled workers or property materials, or maintain applicable schedules;
- c. Refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- d. Disregarding applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority or quasi-public authority having jurisdiction; or
- e. Refusing, failing or being unable to substantially perform in accordance with the terms of any provision of the Contract Documents.

18.1.2 Upon the occurrence of any of the events described in 15.1.1 above, CITY may give written notice to CONTRACTOR setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the CONTRACTOR fails to initiate the cure or if the CONTRACTOR fails to expeditiously continue such until complete, the CITY may give written notice to the CONTRACTOR of immediate termination, and CITY without prejudice to any other rights or remedies, may take any or all of the following actions:

- a. complete all or any part of the Work, including supplying workers, material and equipment which CITY deems expedient to complete the Work;
- b. contract with others to complete all or any part of the work, including supplying workers, material and equipment which CITY deems expedient to complete the Work;
- c. take such other action as is necessary to correct such failure;
- d. take possession of all materials, tools, construction equipment, and machinery on the site owned or leased by CONTRACTOR;
- e. directly pay the CONTRACTOR'S subcontractors and suppliers compensation due to them from CONTRACTOR;
- f. finish the Work by whatever method CITY may deem expedient; and
- g. require CONTRACTOR to assign CONTRACTOR'S right, title and interest in any or all of CONTRACTOR'S subcontracts or orders to CITY.

18.1.3 If CITY terminates this Contract for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth below in paragraph 18.3.

18.2 **Termination Due to Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this Contract, the Contract shall be cancelled and the CONTRACTOR shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the goods or services delivered under the Contract.

18.3 **Termination or Suspension for Convenience.** CITY may at any time give written notice to CONTRACTOR terminating this Contract or suspending the Project, in whole

or in part, for the CITY'S convenience and without cause. If CITY suspends the Project for convenience, CONTRACTOR shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

- 18.4 **Contractor's Compensation When Terminated for Convenience.** If this Contract is (i) terminated by CITY pursuant to 15.3; or (ii) suspended more than three (3) months by CITY pursuant to 15.3, CITY shall pay CONTRACTOR specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. CITY may agree to additional compensation, if any, due CONTRACTOR. Absent agreement on the additional amount due CONTRACTORS, CITY shall pay CONTRACTOR:
- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the CONTRACTOR'S performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); and
 - (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or suppliers orders. These costs shall not include amounts paid in accordance with other provisions in the Contract.
- 18.5 Contractor's Compensation when terminated for cause. If this Contract is terminated by CITY for cause, no further payment shall be made to CONTRACTOR until Final Completion of the Project. At such time, CONTRACTOR shall be paid the remainder of the Construction Price less all costs and damages incurred by CITY as a result of the default of CONTRACTOR, including liquidated damages applicable thereto. CONTRACTOR shall additionally reimburse CITY for any additional costs or expenses incurred.
- 18.6 Irrespective of the reason for termination or the party terminating, the total sum paid to the CONTRACTORS shall not exceed the Contract Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract, and shall in no event include duplication of payment.
- 18.7 Irrespective of the reason for termination or the party terminating, if this Contract is terminated, the CONTRACTOR shall, unless otherwise notified by CITY,
- (i) immediately stop work;
 - (ii) terminate outstanding orders and subcontracts;
 - (iii) settle the liabilities and claims arising out of the termination of subcontractors and orders with amounts paid by CITY; and
 - (iv) transfer title and deliver to CITY such completed or partially completed Work, and, if paid for by CITY, materials, equipment, parts, fixtures, information and such contract rights as the CONTRACTOR has.

- 18.8 The right to terminate or suspend the Work shall not give rise to a duty on the part of either CITY or CONTRACTOR to exercise that right for the benefit of CITY, CONTRACTOR or any other persons or entities.
- 18.9 If CONTRACTOR fails to file a claim within one (1) year from the effective date of termination, CITY shall pay CONTRACTOR only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 19 DISPUTE RESOLUTION

- 19.1 In the case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 19.2 If the parties cannot resolve any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable resolution satisfactory to all parties.
- 19.3 CITY and CONTRACTOR agree that pending the resolution of any dispute, controversy, or question, the CITY and CONTRACTOR shall each continue to perform their respective obligations without interruption or delay, and CONTRACTOR shall not stop or delay the performance of the Work.

ARTICLE 20 DAMAGES AND REMEDIES

- 20.1 CONTRACTORS shall, at its expense, promptly correct, repair or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract, or any other applicable warranty or guarantee.
- 20.2 CONTRACTOR shall promptly reimburse CITY for any expenses or damages incurred by CITY as a result of (i) CONTRACTOR'S failure to substantially perform in accordance with the terms of this Contract; (ii) deficiencies or conflicts in the Construction Documents attributable to CONTRACTOR or of which CONTRACTOR was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract or any other applicable warranty or guarantee; or (iv) other acts or omissions of CONTRACTOR.
- 20.3 To the fullest extent permitted by law CONTRACTOR shall secure, defend, protect, hold harmless, and indemnify CITY, and its employees, agents, officers and commissioners (related parties) free from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including any and all PROFESSIONAL fees, attorneys' fees and expert witnesses and other consultants) by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those

actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damages or destruction, including loss of use and funding, which may be imposed upon, incurred by or asserted against CITY or related parties allegedly or actually arising out of or resulting from CONTRACTOR'S services, including without limitation any breach of contract or negligent act or omission (i) of CONTRACTOR, or (ii) of the CONTRACTOR'S subcontractors or suppliers, or (iii) of the agents, employees or servants of the CONTRACTOR or its subcontractors or suppliers.

- 20.4 CITY'S selection of one or more remedies for breach of this Contract contained herein shall not limit the CITY'S right to invoke any other remedy available to the CITY under this Contract or by law.
- 20.5 CONTRACTOR shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 20.6 Interest shall be calculated in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 21 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CONTRACTOR and CITY concerning the Work are attached to this Agreement, made a part hereof and consist of the following:

- 21.1 This Contract (pages 1 to 42, inclusive), and all attached documents, appendices and addenda.
- 21.2 All drawing and specifications as set forth in the Invitation to Bid for the Project shall be incorporated herein and made a part of this Contract and are attached hereto as Appendix A.
- 21.3 Certificates of Insurance of CONTRACTOR
- 21.4 Invitation to Bid documents including Addenda
- 21.5 Drawings prepared by James P. Senatore, Inc., dated August 31, 2017, and any revisions thereto, if any, (none), as well as Drawings prepared by (none) dated (N/A) and any revisions thereto, if any, dated (N/A).
- 21.6 The following which may be delivered or issued on or after the Effective Date of this Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.

- c. Approved Change Orders
 - d. Performance Bond
 - e. Payment Bond
 - f. Proof of proper license
 - g. Permit(s) if any
- 21.7 The Contract Documents may only be amended, modified or supplemented by an amendment to this Agreement signed by the parties.
- 21.8 Documents not included or expressly contemplated in this Article do not, and shall not, form any part of this Contract.
- 21.9 CITY shall not furnish CONTRACTOR with a copy of the Construction Documents; provided, however, that the CONTRACTOR may obtain copies of the plans and specifications from a reprographic company having the original documents.
- 21.10 Conflicts. In the event of any conflict, discrepancy, or inconsistency among any of the Construction Documents, the following shall control:
- a. As between figures given on plans and scaled measurements, the figures shall govern;
 - b. As between large-scale plans and small-scale plans, the large-scale plans shall govern;
 - c. As between plans and specifications, the requirements of the specifications shall govern;
 - d. Provided, however, that among the plans and specifications provided by CITY, the more stringent requirement, as determined by CITY, shall take precedence over less stringent requirements regardless of which document the more stringent requirement resides.

ARTICLE 22 SPECIAL TERMS AND CONDITIONS

- 22.1 **Indemnity.** CONTRACTOR shall indemnify and hold CITY and its employees, agents, officers, council members and CONTRACTORS free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, PROFESSIONAL fees or other expenses or liabilities to the extent resulting from the negligent act, error or omission of CONTRACTOR, its agents, employees or representatives, in the performance of CONTRACTOR'S duties set forth in this Agreement.
- 22.2 **Independent CONTRACTOR.** CONTRACTOR agrees that it shall be acting as a CONTRACTOR and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of CITY. CONTRACTOR shall have no authority to contract for or bind CITY in any manner and shall not represent itself as an agent of CITY or as otherwise authorized to act for or on behalf of CITY. Additionally, CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or

firm other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

- 22.3 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a CONTRACTOR, supplier, subcontractor, or CONTRACTOR under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- 22.4 **Prohibition against Contingent Fees.** CONTRACTOR warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.
- 22.5 **Public Records.**
- A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the provider for or on behalf of the CITY shall be the property of the CITY and will be turned over to the CITY upon request. In accordance with Florida “Public Records” law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the CITY are public records available for inspection by any person even if the file or paper resides in the CONTRACTOR’S office or facility.
 - B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-360-6790, ecoulson@fruitlandpark.org, 506 West Berckman Street, Fruitland Park, FL 34731.
- 22.6 **Grant Funding.** CONTRACTOR agrees and acknowledges that this Project is funded by State grant monies and other local agency monies. CONTRACTOR shall cooperate with CITY in order to assure compliance with all requirements of the funding entity applicable to use of the monies, including providing access to and the right to examine relative documents related to the Project and as specifically requested by the granting agency, and including receiving no payment until all required forms are completed and submitted.

ARTICLE 23
GENERAL CONDITIONS

- 23.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida, and jurisdiction shall be in the Circuit Court of Lake County, Florida. The parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 23.2 Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.
- 23.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.
- 23.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns. Nothing in this Contract is intended to or shall create a contractual relationship with, or any rights of cause of action in favor of, any third party against either CITY or CONTRACTOR.
- 23.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.
- 23.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.
- 23.7 During the term of this Agreement CONTRACTOR assures CITY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONTRACTOR employees or applicants for employment. CONTRACTOR understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.
- 23.8 CONTRACTOR shall at all times comply with all Federal, State and local laws, rules and regulations.
- 23.9 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof provided the intent of the Agreement remains and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

23.10 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by facsimile; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by facsimile shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

(Signature pages to follow)

IN WITNESS WHEREOF, the parties hereto have signed this Agreement.

CONTRACTOR: [CONTRACTOR'S NAME],

ATTEST:

BY: _____
(Signature)

WITNESSES:

NAME: _____
(Print)

TITLE: _____

DATE: _____

CITY:

CITY OF FRUITLAND PARK, FLORIDA

Mayor Chris Cheshire

DATE: _____

ATTEST:

Esther Coulson, City Clerk

**APPENDIX A
CONTRACTOR'S PERSONNEL CHART**

City of Fruitland Park Staff: Gary La Venia, City Manager

CONTRACTOR:

Project Manager:

QA/QC:

Project Superintendent:

APPENDIX B
COMPENSATION SCHEDULE - SCHEDULE OF VALUES

**APPENDIX C
CONTRACTOR'S SUBCONTRACTORS AND SUPPLIERS CHART**

Sub-contractors:

Suppliers:

APPENDIX D
SCOPE OF WORK AND PLANS AND SPECIFICATIONS



**AGENDA ITEM
NUMBER
5f**

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	ITB 2017-002 Site Development – New Public Library Facility Construction – Contract Award		
For the Meeting of:	November 9, 2017		
Submitted by:	City Manager/Community Development Director		
Date Submitted:	November 3, 2017		
Are Funds Required:		Yes	<input checked="" type="checkbox"/> No
Account Number:	N/A		
Amount Required:	N/A		
Balance Remaining:	N/A		
Attachments:	Yes (Additional Documents Forthcoming)		
Description of Item: Construction contractors' presentation.			
Action to be Taken: Award the construction contract.			
Staff's Recommendation: Approval			
Additional Comments: October 13, 2017 - An invitation to bid pre-bid meeting was held; November 6, 2017 – Bids were due, opened, and announced, and November 7, 2017 – selection committee reviewed and ranked the bids.			

Reviewed by: _____
City Manager

Authorized to be placed on the Regular Consent agenda: _____
Mayor

City of Fruitland Park
Fruitland Park Public Library

CONTRACT DOCUMENTS

prepared for:

City of Fruitland Park

506 W. Berckman Street
Fruitland Park, Florida 34731
Phone (352) 360-6727

prepared by:



902 North Sinclair Avenue — Tavares, Florida 32778 — Lake County
Phone (352) 343-8481 — Fax (352) 343-8495
info@besandh.com — www.besandh.com

BESH #081040.0045

Bid No: 2017-002

TABLE OF CONTENTS
FRUITLAND PARK PUBLIC LIBRARY

CONTRACT DOCUMENTS

- INVITATION TO BID
- INSTRUCTIONS FOR BIDDERS
- COVER SHEET
- PROPOSAL
- SCHEDULE OF UNIT PRICES
- TRENCH SAFETY ACT
- AGREEMENT
- WAIVER AND RELEASE OF LIEN FORM
- FINAL WAIVER OF LIENS AND GENERAL CONTRACTOR'S AFFIDAVIT FORM
- CHANGE IN CONTRACT TIME FORM
- GENERAL CONDITIONS
- SUPPLEMENTARY GENERAL CONDITIONS

CITY OF FRUITLAND PARK
FRUITLAND PARK, FLORIDA
INVITATION TO BID

PROJECT NAME: FRUITLAND PARK PUBLIC LIBRARY
BID NO: 081040.0045
OWNER/BID NO: CITY OF FRUITLAND PARK

LOCATION OF PROJECT:

Northeast corner of intersection of Rose Avenue and W. Berckman Street.

SCOPE OF WORK:

The project generally consists of site grading, utility, drainage and paving work.

DESCRIPTION OF WORK:

The work generally includes the furnishing of all labor, materials, and equipment for the construction of stormwater inlets, utilities, paving, curbing, striping, and earthwork.

RECEIPT OF BIDS:

Sealed bids for the work described herein shall be received until

FRIDAY, SEPTEMBER 29, 2017 @ 10:00 A.M.

at the City of Fruitland Park, 506 W. Berckman Street, Fruitland Park, Florida 34731, at which time and place bids will be publicly opened and read aloud. ALL BIDS MUST BE CLEARLY MARKED "SEALED BIDS" AND WHETHER HAND DELIVERED OR MAILED MUST BE AT CITY OF FRUITLAND PARK CITY HALL, ATTENTION: CHARLIE RECTORCONSIDERED. **Please provide one (1) original and two (2) copies of bid.**

INFORMATION REGARDING BIDDING MATERIAL, ETC:

Complete plans and specifications may be reviewed at the office of City of Fruitland Park City Hall and obtained from said office, with three (3) days notice. **These plans and specifications will be available THURSDAY, AUGUST 31, 2017 @ 1:00 p.m. at City of Fruitland Park City Hall.** For review at the City of Fruitland Park City Hall, contact Charlie Rector, at (352) 360-6727 or e-mail: crector@fruitlandpark.org. All request for further information should also be addressed to Charlie Rector (contact info listed above).

END OF DOCUMENT

INSTRUCTIONS TO BIDDERS

1. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 1.1 The Bidder is required to examine carefully the sites of the work and the Plans and other Contract Documents for the work contemplated, and it will be assumed that the Bidder has investigated and is fully informed of the conditions and materials to be encountered, of the character, quality, and quantities of work to be performed and materials to be furnished, and of the requirements of the Plans and other Contract Documents.
- 1.2 Each Bidder must inform himself fully of the conditions related to construction and labor under which the work will be performed, and will have inspected the site of the work and will have read and be thoroughly familiar with the plans, specifications and other Contract Documents. Failure to do so will not relieve the successful Bidder of his obligations to furnish all labor, material, and equipment necessary to carry out the provisions of the Contract Documents and to complete the contemplated work for the consideration set forth in this bid. There is no expressed or implied agreement that the character of the materials have been correctly indicated and Bidders should take into account the possibility that conditions affecting the work to be done may differ from those indicated.
- 1.3 Any estimate or estimates of quantities of work or materials shown on the Plans or in the Specifications, or based on borings, test excavations, and other subsurface investigations or otherwise are in no way warranted to indicate the true quantities or distribution of quantities or character and quality of materials involved. The CONTRACTOR agrees that he will make no claims against the OWNER if the actual character, quality, quantity or quantities of such work or materials do not conform to the estimated character, quality, quantity or quantities.
- 1.4 It is understood by the Bidder that no additional compensation shall be allowed for extra work, unless requested by the owner, and that the quantities submitted by the contractor in the Schedule of Unit Prices are for purposes of bid comparison and establishing the lump sum cost of the project. Should said quantities increase or decrease from those established by the Schedule of Unit Prices schedule, as a result of changes to the contract, Contractor agrees to accept as compensation for said item the unit prices listed on the Schedule of Unit Prices.
- 1.5 CONTRACTOR understands that the quantities may be increased or diminished as provided in the General Conditions without in any way invalidating any of the unit or lump sum prices bid. OWNER reserves the right to submit Change Orders increasing or decreasing the bid quantities for any item without affecting the unit price for that item, by an amount not to exceed fifty percent (50%).

2. ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any Bidder orally. Every request for such interpretations should be in **WRITING** emailed to Duane K. Booth, P.E., Booth, Ern, Straughan & Hiott, Inc., duanebooth@besandh.com or faxed to: 352-343-8495. Requests must be received **by September 22, 2017 @ 5:00 p.m.** Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the specifications which, if issued, will

be provided to all contractors via email, **no later than September 25th @ 5:00 p.m.** Any addenda or interpretation requested by the Bidder to be express mailed, will only be done at the Bidder's expense. Failure of any Bidder to receive any such addendum or interpretation shall not relieve such Bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

3. PREPARATION OF BIDS

3.1 Bids must be submitted on the attached Proposal and Schedule of Unit Prices. All applicable blank spaces to the project being bid in the Proposal and Bid Form must be filled in legibly and correctly in ink. If there are items that the Contractor feels are omitted from the Bid Form, the Contractor shall provide in writing as described per Section 2 above, to the Engineer of Record for clarification. Per Paragraph 3.5 below, the Bidder shall specify the quantity and price per unit of measure and the extended total, or the lump sum bid price if such is called for, for each scheduled item of work as well as the Total Price for the entire work under the Contract. Each bid must be submitted in a sealed opaque envelope bearing on the outside the name of the Bidder, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the Schedule of Unit prices. Bids shall be on a lump sum basis. In addition to the lump sum amount the City will also consider the experience of the firms submitting bids in completing similar projects.

3.2 All Bidders who will be performing work will submit, with their bids, proof of adequate insurance coverage and copy of current license.

3.3 All prospective Bidders are advised that this project is subject to the Florida Sales Tax. Bidders shall include in their bids any sales or use taxes which they are required by law to pay.

3.4 The Bidder shall include with his bid, a list of similar, successfully completed projects which include, at the minimum, the following information: (a) Name of Job, (b) Brief Description of Work, (c) Total Dollar Amount of Work, (d) Owner's Information (including contact name, title, address and phone number), (e) Design Engineer's Information (including contact name, title, address and phone number).

3.5 The bid shall be submitted with the Bid Cover Sheet filled in completely and all bid forms and requested items in 3.1 - 3.4 attached in the same order as listed above.

4. RECEIPT AND OPENING OF BIDS

- 4.1 The OWNER may consider informal any bid not prepared and submitted in accordance with these provisions and may waive any informalities or reject any and all bids.
- 4.2 Attention is called to the fact that Bidders not only offer to assume the obligations and liabilities imposed upon the Contract in the form of Contract, but expressly make certain of the representations and warranties made therein. No effort is made to emphasize any particular provision of the Contract, but Bidders must familiarize themselves with every provision and its effect.
- 4.3 Bids will be considered irregular and may be rejected if they show omissions, alterations of form, additions not called for, conditions, limitations, unauthorized alternate bids or other irregularities of any kind.
- 4.4 The OWNER reserves the right to waive any informalities or irregularities of bids, or to reject any or all bids.
- 4.5 Any of the following causes may be considered as sufficient for the disqualification of a Bidder and the rejection of his bid:
- (a) Submission of more than one bid for the same work by an individual, partnership, or corporation under the same or different names;
 - (b) Evidence of collusion among Bidders;
 - (c) Submission of an unbalanced bid in which the prices bid for some items are out of proportion to the prices bid for other items;
 - (d) Lack of competency of Bidder (the Contract will be awarded only to a Bidder rated by the ENGINEER as capable of performing the work as specified; the ENGINEER may declare any Bidder ineligible at any time during the process of receiving proposals or awarding the Contract where developments arise which, in the opinion of the ENGINEER, adversely affect the Bidder's responsibility; however, the Bidder will be given an opportunity by the ENGINEER to present additional evidence before final action is taken);
 - (e) Lack of responsibility as shown by past work judged from the standpoints of workmanship, progress, compliance with requirements of Contract Documents or other appropriate concern.

5. ACCEPTANCE OF BID AND AWARD OF CONTRACT

- 5.1 The correct summation of the correct products, obtained by multiplying the quantities submitted by the Contractor on the Schedule of Unit prices by the unit bid prices entered therein, together with lump sum prices if any, will be considered as

the Total Bid Price. In the event of a discrepancy between a unit bid price and an extension, the unit bid price will govern.

- 5.2 If the lowest base bid submitted by a responsible Bidder does not exceed the amount of funds then estimated by the OWNER as available to finance the contract, the contract will be awarded on the base bid only. If such bid exceeds such amount, the OWNER may reject all bids or may negotiate the contract with the Bidder with the lowest bid so as to produce a net amount which is within the available funds. If low bid is less than the amount of funds, the OWNER may elect to increase the scope of work based on the unit pricing so as to maximize work based on funding.
- 5.3 An award of the contract will not be made until the necessary investigations of the responsibility of the low Bidders has been made. Unless all bids are rejected, the Contract will be awarded to the lowest and best responsible qualified Bidder whose bid appears to be in the best interest of the OWNER. Such award will be made, or all bids rejected, within one hundred twenty (120) calendar days after the opening of bids.
- 5.4 When the Contract has been executed on the part of the OWNER, it shall be forwarded to the CONTRACTOR together with a notice from the ENGINEER to commence work. The notice to proceed will include the time for completion.
- 5.5 Contractor agrees to begin work within thirty (30) calendar days from date of written Notice to Proceed.
- 5.6 Time is of the essence with this contract. Contractor shall be evaluated based upon both price, as well as upon time to complete the project as indicated by the Bidder on the Proposal.

6. SECURITY FOR FAITHFUL PERFORMANCE AND PAYMENT

- 6.1 Simultaneously with his delivery of the executed Contract, the successful Bidder will be required to deliver to the OWNER, an executed performance and payment bond in the amount of 110% of the accepted bid as security for faithful performance of his Contract and for payment of all persons performing labor or furnishing materials in connection therewith, prepared on standard forms, and having as surety a company authorized to do business in Florida, and which is listed by the U.S. Treasury Department as approved for writing bonds in the amount not less than 110% of the contract price.

7. LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

8. WARRANTY

The Contractor warrants the subject premises for a period of one year subsequent to acceptance of the improvements. The Contractor will provide the Owner with all warranties pursuant to the terms of the general conditions. In the event that the Contractor must return to perform warranty work, the Contractor must thereafter provide for an extended

warranty period of at least six (6) months for parts, materials or workmanship replaced or the equivalent of a new replacement part warranty, which ever is greater. Prior to issuance of final payment, the Contractor shall submit to the Owner a Maintenance Bond for one (1) year valued at 10% of the contract total.

9. **APPLICATION FOR PROGRESS PAYMENT**

Applications for Payment shall be as outlined in the Contract Documents submitted less ten (10%) percent retainage.

10. **TIME OF COMPLETION**

The work shall be completed as outlined in the Agreement.

11. **FLORIDA TRENCH SAFETY ACT**

The Bidder's attention is directed to the enactment of the Florida Trench Safety Act which incorporates OSHA Standards 29CFR s 1926.650 Subpart P, as the state's trench excavation safety standards. The Bidder shall list separately in the Proposal the cost of compliance with these standards on a lineal footage basis and the method of compliance. The Bidder shall determine if special shoring requirements are needed. Special shoring shall be identified and priced on a square footage basis in the proposal. The successful Bidder is fully responsible for the design of the trench safety system and the compliance with the applicable standards for the project.

COVER SHEET

PROJECT NAME: FRUITLAND PARK PUBLIC LIBRARY

BID NO:

OWNER: CITY OF FRUITLAND PARK

NAME OF CONTRACTOR: _____

BID TOTAL \$ _____

CONTACT INFORMATION:

NAME: _____

ADDRESS: _____

PHONE NO: _____

EMAIL: _____

PROPOSAL

TO: CITY OF FRUITLAND PARK
506 W. BERCKMAN STREET
FRUITLAND PARK, FL 34731

PROJECT NAME: FRUITLAND PARK PUBLIC LIBRARY

BID NUMBER:

The undersigned CONTRACTOR hereby declares that the only person or persons interested in the bid as principal or principals are or are named herein, and that no other person than herein mentioned has any interest in this bid or in the contract to be entered into, that his bid is made without connection with any other person, company, or parties making a bid or proposal, and that it is in all respects fair and in good faith without collusion or fraud.

The CONTRACTOR further declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done and that he has examined the plans and specifications for the work and contractual documents relative thereto, and has read all special provisions furnished prior to the submission of bids, and that he has satisfied himself relative to the work to be performed.

The CONTRACTOR proposes and agrees, if this bid is accepted, to contract with the OWNER as listed above, in the form of a contract specified for the construction of the above referenced project located in Lake County, Florida, in full and complete accordance with the shown, noted, described, and reasonably intended requirements of the plans, specifications, and contract documents, to the full and entire satisfaction of the OWNER or his representative for the **TOTAL PRICE of:**

_____ Dollars and _____ Cents
(\$_____) based upon the undersigned's own estimate of quantities and costs and including sales, consumer use, and other taxes, and overhead and profit.

The CONTRACTOR further proposes and agrees, upon written acceptance of this bid, to commence work under this contract within thirty (30) consecutive calendar days after the date contained in the written notice to proceed, and to fully complete all work under this contract in accordance with the following schedule:

Substantial Completion - _____ days
Final Completion - _____ days
For a total contract time of _____ days

NAME _____ OF _____ CONTRACTOR _____
_____ ADDRESS _____
_____ PHONE _____
_____ BY _____ TITLE _____ DATE _____

CITY OF FRUITLAND PARK PUBLIC LIBRARY

	Description	Quantity	Unit	Unit Price	Amount
1	MOBILIZATION		LS		\$ -
2	DEMOLITION		LS		\$ -
3	SILT FENCE		LF		\$ -
4	CONSTRUCTION ENTRANCE		EA		\$ -
5	EARTHWORK		LS		\$ -
6	WEIR AND SKIMMER		LS		\$ -
7	SOD BAHIA		SY		\$ -
8	SEED AND MULCH		SY		\$ -
9	12" STABILIZATION		SY		\$ -
10	8" LIMEROCK BASE		SY		\$ -
11	2" Type III ASPHALT		SY		\$ -
12	MODIFIED TYPE "D" CURB		LF		\$ -
13	SIDEWALK		SY		\$ -
14	STRIPING		LS		\$ -
15	SIGNAGE		LS		\$ -
16	DETECTABLE WARNING MATS		LS		\$ -
17	DUMPSTER ENCLOSURE		LS		\$ -
18	OPEN CUT EXISTING ROSE AVE.		SY		\$ -
19	18" RCP		LF		\$ -
20	24" RCP		LF		\$ -
21	30" RCP		LF		\$ -
22	TYPE 6 MOD. INLET 0' - 6'		EA		\$ -
23	TYPE 6 MOD. INLET 6' - 8'		EA		\$ -
24	STORM MANHOLE 0' - 6'		EA		\$ -
25	STORM MANHOLE 6' - 8'		EA		\$ -
26	STORM MANHOLE 8' - 10'		EA		\$ -
27	STORM MANHOLE 10' - 12'		EA		\$ -
28	TYPE "C" INLET 0' - 6'		EA		\$ -
29	30" MES W/ENERGY DISSIPATORS		EA		\$ -
30	8" WATER MAIN		LF		\$ -
31	FH ASSEMBLY		EA		\$ -
32	2" POLY SERVICE		LF		\$ -
33	WATER MAIN FITTINGS / APPURTENANCES		LS		\$ -
34	4" SANITARY SEWER SERVICE		LS		\$ -
35	REPAIR EXISTING		LS		\$ -
36	MAINTENANCE OF TRAFFIC		LS		\$ -
37	CONSTRUCTION STAKING		LS		\$ -
38	TESTING		LS		\$ -
39	AS-BUILTS		LS		\$ -
40	PAYMENT AND PERFORMANCE BOND		LS		\$ -
41	MAINTENANCE BOND		LS		\$ -
	TOTAL				\$ -

The Contractor's attention is directed to the enactment of the Florida Trench Safety Act which incorporates OSHA standards 29CFRs 1926.650, Subpart P, as the state's trench excavation safety standards. The Contractor shall list separately the cost of compliance with these standards on a lineal footage basis and the method of compliance. The Contractor shall determine if special shoring requirements are needed. Special shoring shall be identified and priced on a square footage basis. The successful Contractor is fully responsible for the design of the trench safety system and the compliance with the applicable standards for the project.

The following costs are for information purposes only and no separate payment will be made for compliance with the Florida Trench Safety Act.

1. Trench Safety System - OSHA Compliance

_____ LF \$ _____ (UNIT PRICE) _____ (METHOD) \$ _____ (TOTAL PRICE)

2. Trench Safety Special Shoring Requirements (system & sq. ft. quantity to be identified by Contractor)

_____ SF \$ _____ (UNIT PRICE) _____ (METHOD) \$ _____ (TOTAL PRICE)

System to be used: _____

EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2017, by and between **City of Fruitland Park** (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work generally includes the furnishing of all labor, materials, and equipment for the construction of a roadside drainage system including a ditch bottom inlet, concrete collar, perforated pipe, roadway repair, and alternate pricing for resurfacing 20' road section.

Article 2. ENGINEER.

Engineer: **BOOTH, ERN, STRAUGHAN & HIOTT, INC.**
 902 North Sinclair Avenue
 Tavares, Florida 32778

Article 3. CONTRACT TIMES.

- 3.1 The Work will be substantially completed and finally completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before the following dates:

Substantial Completion - ____ calendar days after the issuance of the Notice to Proceed.

Final Completion - ____ calendar days after the substantial completion date.

For a total contract time of ____ days.

3.2 *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Two Hundred, Fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER Two Hundred, Fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of the item as indicated on the Bid Form.

TOTAL OF ALL UNIT PRICES:

(use words)

\$ _____ (dollars).

As provided in paragraph 11.9 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9.2 of the General Conditions.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 8 of the Supplementary General Conditions. Applications for Payment will be processed by ENGINEER as provided in the Supplementary General Conditions.

5.1 *Progress Payments; Retainage.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 30th day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2. below. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

90 % of Work completed (with the balance being retainage).

90 % (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions).

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90 % of the Contract Price (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13

Article 6. INTEREST.

All money not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the bidding Documents including "technical data."
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at our contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination of the extent of the "technical data" contained in such reports and drawing upon which

CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examination, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient of indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.8 Contractor acknowledges the presence of a shared work site and agrees to coordinate work schedules with other contractor in order to ensure the timely and successful completion of the work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages **1** to **6**, inclusive).
- 8.2 Exhibits to this Agreement (pages N/A to _____, inclusive).
- 8.3 Performance, Payment, and other Bonds.
- 8.4 Notice to Proceed.
- 8.7 General Conditions (pages **1** to **40**, inclusive).

- 8.8 Supplementary Conditions (pages **1** to **15**, inclusive).
- 8.9 Supplementary Conditions Construction FDEP (pages **1** to **25**, inclusive).
- 8.10 Drawings consisting of a cover sheet and sheets numbered **1** through **10**, inclusive with each sheet bearing the following general title: **Fruitland Park Public Library.**
- 8.11 Addenda numbers _____ to _____, inclusive.
- 8.12 CONTRACTOR'S Bid (pages) **Schedule of Unit Prices**, inclusive).
- 8.13 Documentation submitted by CONTRACTOR prior to Notice of Award (pages **N/A**, inclusive).
- 8.14 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (Except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 9. Miscellaneous.

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partner, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents

shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 OTHER PROVISIONS.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER or their behalf.

This Agreement will be effective on _____, 2016 (which is the Effective Date of the Agreement).

OWNER CITY OF FRUITLAND PARK

ADDRESS FOR GIVING NOTICES:

NAME/TITLE: _____

506 W. Berckman Street
Fruitland Park, FL 34731

BY: _____

_____ {CORPORATE SEAL}

ATTEST: _____

CONTRACTOR _____

ADDRESS FOR GIVING NOTICES:

NAME/TITLE: _____

_____ BY: _____

_____ {CORPORATE SEAL}

ATTEST: _____

LICENSE NO. _____

WAIVER AND RELEASE OF LIEN

___PARTIAL RELEASE
___FINAL RELEASE

PROJECT: **FRUITLAND PARK PUBLIC LIBRARY**

MATERIAL SUPPLIER/SUBCONTRACTOR: _____

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED IN CONSIDERATION OF PAYMENT IN THE SUM OF \$_____ RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, AND OTHER VALUABLE CONSIDERATIONS AND BENEFITS TO THE UNDERSIGNED ACCRUING, DO HEREBY WAIVE, RELEASE AND QUIT CLAIM ALL LIENS, LIEN RIGHTS, CLAIMS OR DEMANDS OF EVERY KIND WHATSOEVER WHICH THE UNDERSIGNED NOW HAS, OR MAY HEREAFTER HAVE, AGAINST THAT CERTAIN REAL ESTATE AND THE IMPROVEMENTS THEREON, LEGALLY DESCRIBED AS:

FRUITLAND PARK PUBLIC LIBRARY

ON ACCOUNT OF WORK AND LABOR PERFORMED, AND/OR MATERIALS FURNISHED IN, TO , OR ABOUT THE CONSTRUCTION OF ANY BUILDING OR BUILDINGS SITUATED THEREON, OR IN IMPROVING SAID PROPERTY ABOVE DESCRIBED, OR ANY PART THEREOF.

IT BEING THE UNDERSTANDING OF THE UNDERSIGNED THAT THIS IS A WAIVER AND RELEASE OF LIEN WHICH THE UNDERSIGNED HAS AGAINST THE PREMISES DESCRIBED HEREIN, ONLY TO THE EXTENT OF THE PAYMENTS SPECIFIED AND ONLY FOR MATERIALS FURNISHED OR WORK DONE UP UNTIL_____ THE UNDERSIGNED WARRANTS THAT NO ASSIGNMENT OF SAID LIENS OR CLAIMS, NOR THE RIGHT TO PERFECT A LIEN AGAINST SAID REAL ESTATE, BY VIRTUE OF THE UNDERSIGNED HAS THE RIGHT TO EXECUTE THIS WAIVER AND RELEASE, AND THAT ALL LABORERS EMPLOYED BY THE UNDERSIGNED, AND ALL BILLS FOR MATERIALS AND SUPPLIES FURNISHED BY OTHERS TO THE UNDERSIGNED IN CONNECTION WITH THE CONSTRUCTION OF IMPROVEMENTS UPON THE AFORESAID PREMISES, TO THE EXTENT OF THE PAYMENT HEREIN REFERRED TO, HAVE BEEN FULLY PAID.

IN WITNESS WHEREOF I/WE HAVE EXECUTED THIS INSTRUMENT UNDER SEAL THIS _____ DAY OF _____, 2017.

(SEAL)

COMPANY
BY: _____
SIGNATURE

PRINT NAME AND TITLE

STATE OF FLORIDA
COUNTY OF _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2017, BY _____ OF _____ HE/SHE IS PERSONALLY KNOWN TO ME OR PROVIDED _____ AS IDENTIFICATION AND DID NOT TAKE AN OATH.

SIGNATURE OF NOTARY

SERIAL/COMMISSION NUMBER

PRINTED NAME OF NOTARY

EXPIRATION DATE

FINAL WAIVER OF LIENS AND
GENERAL CONTRACTORS AFFIDAVIT

BID NO:
PROJECT: **FRUITLAND PARK PUBLIC LIBRARY**
CONTRACTOR: _____

SECTION I
AFFIDAVIT

I _____, after being duly sworn, depose and say: That the persons, firms and corporations who have executed the final waiver of liens attached hereto are all of the persons, firms and corporations who have furnished services, labor or materials in the construction or repair to improvements on the real estate described in the waiver below and, as of the date of this affidavit, such work has been fully completed and accepted by the owner of said property.

SIGNATURE

SECTION II
WAIVER OF LIEN

The undersigned is the general contractor in the construction or repair of improvement upon the realty of **FRUITLAND PARK PUBLIC LIBRARY** in Lake County, Florida, described as:

CITY OF MASCOTTE PALMWOOD AVENUE AND LAUREL STREET

For value received, the undersigned does hereby waive, release and quit-claim in favor of the owner and each and every person making a loan on or purchasing said realty, as improved, and their successors and assigns, all right that the undersigned may now or hereafter have to a lien upon the land and improvements thereon by virtue of the laws of the State of Florida; and further warrant that the undersigned has the right to execute this waiver and that we have not and will not assign our claims of payment nor our right to perfect a lien on the said realty.

The subscribers hereto, warrants that all laborers employed by them have been fully paid and have no claims or liens against said premises, and that no conditional bill of sale, retain title contract or chattel mortgage has been given to anyone, for or in connection with any materials, fixtures, furnishings and appliances or machinery placed upon or installed in the said premises by any of us, except: (if none, write "None") _____

GENERAL CONTRACTOR

COMPANY
BY: _____
SIGNATURE

NAME AND TITLE

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, _____, BY _____ OF _____

HE/SHE IS PERSONALLY KNOWN TO ME OR PROVIDED _____ AS IDENTIFICATION AND DID NOT TAKE AN OATH.

SIGNATURE OF NOTARY

SERIAL/COMMISSION NUMBER

PRINTED NAME OF NOTARY

EXPIRATION DATE

CHANGE IN CONTRACT TIME

PROJECT: **FRUITLAND PARK PUBLIC LIBRARY**

BID NO:

CONTRACTOR: _____

DATE: _____

The undersigned has determined this date that a delay has occurred in proceeding with the controlling operation due to weather, as defined and limited by the Contract General Conditions, on the following date(s)_____.

Detailed description of operation delayed: _____

Extension of the contract time in the amount of _____ days is requested.

Contractor's Signature

Extension of the contract time in the amount of _____ days is approved, thereby changing the Substantial Completion date to _____ and the Final Completion date to _____.

Owner's Signature

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

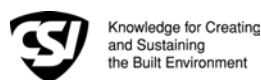
AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by



The Associated General Contractors of America



Construction Specifications Institute

Copyright ©2002

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

TABLE OF CONTENTS

Page

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	6
1.01 <i>Defined Terms</i>	6
1.02 <i>Terminology</i>	8
ARTICLE 2 - PRELIMINARY MATTERS	9
2.01 <i>Delivery of Bonds and Evidence of Insurance</i>	9
2.02 <i>Copies of Documents</i>	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9
2.04 <i>Starting the Work</i>	9
2.05 <i>Before Starting Construction</i>	9
2.06 <i>Preconstruction Conference</i>	9
2.07 <i>Initial Acceptance of Schedules</i>	9
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 <i>Intent</i>	10
3.02 <i>Reference Standards</i>	10
3.03 <i>Reporting and Resolving Discrepancies</i>	10
3.04 <i>Amending and Supplementing Contract Documents</i>	11
3.05 <i>Reuse of Documents</i>	11
3.06 <i>Electronic Data</i>	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS	11
4.01 <i>Availability of Lands</i>	11
4.02 <i>Subsurface and Physical Conditions</i>	12
4.03 <i>Differing Subsurface or Physical Conditions</i>	12
4.04 <i>Underground Facilities</i>	13
4.05 <i>Reference Points</i>	13
4.06 <i>Hazardous Environmental Condition at Site</i>	13
ARTICLE 5 - BONDS AND INSURANCE	14
5.01 <i>Performance, Payment, and Other Bonds</i>	14
5.02 <i>Licensed Sureties and Insurers</i>	15
5.03 <i>Certificates of Insurance</i>	15
5.04 <i>Contractor's Liability Insurance</i>	15
5.05 <i>Owner's Liability Insurance</i>	16
5.06 <i>Property Insurance</i>	16
5.07 <i>Waiver of Rights</i>	17
5.08 <i>Receipt and Application of Insurance Proceeds</i>	17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	17
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	18
6.01 <i>Supervision and Superintendence</i>	18
6.02 <i>Labor; Working Hours</i>	18
6.03 <i>Services, Materials, and Equipment</i>	18
6.04 <i>Progress Schedule</i>	18
6.05 <i>Substitutes and "Or-Equals"</i>	19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	20
6.07 <i>Patent Fees and Royalties</i>	21
6.08 <i>Permits</i>	21
6.09 <i>Laws and Regulations</i>	21
6.10 <i>Taxes</i>	22
6.11 <i>Use of Site and Other Areas</i>	22
6.12 <i>Record Documents</i>	22
6.13 <i>Safety and Protection</i>	22
6.14 <i>Safety Representative</i>	23
6.15 <i>Hazard Communication Programs</i>	23

6.16	<i>Emergencies</i>	23
6.17	<i>Shop Drawings and Samples</i>	23
6.18	<i>Continuing the Work</i>	24
6.19	<i>Contractor's General Warranty and Guarantee</i>	24
6.20	<i>Indemnification</i>	24
6.21	<i>Delegation of Professional Design Services</i>	25
ARTICLE 7 - OTHER WORK AT THE SITE		25
7.01	<i>Related Work at Site</i>	25
7.02	<i>Coordination</i>	26
7.03	<i>Legal Relationships</i>	26
ARTICLE 8 - OWNER'S RESPONSIBILITIES		26
8.01	<i>Communications to Contractor</i>	26
8.02	<i>Replacement of Engineer</i>	26
8.03	<i>Furnish Data</i>	26
8.04	<i>Pay When Due</i>	26
8.05	<i>Lands and Easements; Reports and Tests</i>	26
8.06	<i>Insurance</i>	26
8.07	<i>Change Orders</i>	26
8.08	<i>Inspections, Tests, and Approvals</i>	26
8.09	<i>Limitations on Owner's Responsibilities</i>	27
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	27
8.11	<i>Evidence of Financial Arrangements</i>	27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION.....		27
9.01	<i>Owner's Representative</i>	27
9.02	<i>Visits to Site</i>	27
9.03	<i>Project Representative</i>	27
9.04	<i>Authorized Variations in Work</i>	27
9.05	<i>Rejecting Defective Work</i>	27
9.06	<i>Shop Drawings, Change Orders and Payments</i>	28
9.07	<i>Determinations for Unit Price Work</i>	28
9.08	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	28
9.09	<i>Limitations on Engineer's Authority and Responsibilities</i>	28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		28
10.01	<i>Authorized Changes in the Work</i>	28
10.02	<i>Unauthorized Changes in the Work</i>	29
10.03	<i>Execution of Change Orders</i>	29
10.04	<i>Notification to Surety</i>	29
10.05	<i>Claims</i>	29
ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK.....		30
11.01	<i>Cost of the Work</i>	30
11.02	<i>Allowances</i>	31
11.03	<i>Unit Price Work</i>	31
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		32
12.01	<i>Change of Contract Price</i>	32
12.02	<i>Change of Contract Times</i>	33
12.03	<i>Delays</i>	33
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....		33
13.01	<i>Notice of Defects</i>	33
13.02	<i>Access to Work</i>	33
13.03	<i>Tests and Inspections</i>	33
13.04	<i>Uncovering Work</i>	34
13.05	<i>Owner May Stop the Work</i>	34
13.06	<i>Correction or Removal of Defective Work</i>	34
13.07	<i>Correction Period</i>	34
13.08	<i>Acceptance of Defective Work</i>	35
13.09	<i>Owner May Correct Defective Work</i>	35
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		36
14.01	<i>Schedule of Values</i>	36
14.02	<i>Progress Payments</i>	36
14.03	<i>Contractor's Warranty of Title</i>	37
14.04	<i>Substantial Completion</i>	37

14.05	<i>Partial Utilization</i>	38
14.06	<i>Final Inspection</i>	38
14.07	<i>Final Payment</i>	38
14.08	<i>Final Completion Delayed</i>	39
14.09	<i>Waiver of Claims</i>	39
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION.....		39
15.01	<i>Owner May Suspend Work</i>	39
15.02	<i>Owner May Terminate for Cause</i>	39
15.03	<i>Owner May Terminate For Convenience</i>	40
15.04	<i>Contractor May Stop Work or Terminate</i>	40
ARTICLE 16 - DISPUTE RESOLUTION		41
16.01	<i>Methods and Procedures</i>	41
ARTICLE 17 - MISCELLANEOUS		41
17.01	<i>Giving Notice</i>	41
17.02	<i>Computation of Times</i>	41
17.03	<i>Cumulative Remedies</i>	41
17.04	<i>Survival of Obligations</i>	41
17.05	<i>Controlling Law</i>	41
17.06	<i>Headings</i>	41

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ~~ten~~ printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement

or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefore.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* 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 provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. Notice: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by

Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. Engineer's Review: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but

not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change

Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefore as provided in Paragraph 10.05.

4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefore as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, and then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by

Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the

Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. 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.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

*2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning,

extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within

the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

*E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds hereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project

or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the

start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct 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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

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

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by

using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named

and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute

item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor,

Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcon-

tractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

6.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the

operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop

Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

*3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or, 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 fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. Contractor shall 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 the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

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

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have

specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees or via other direct contracts therefore, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall 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 Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer 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 so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer 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, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer 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, or for any

failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or

performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer 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, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be 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.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. Costs Included: The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories,

surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally

accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover

Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall 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.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the 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 Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to

Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way

that the completed Work will conform to the Contract Documents, 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 Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefore.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss

or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective

Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, 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, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 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; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefore as provided in Paragraph 10.05. 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.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the

results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may

be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount

wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefore.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefore. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall

immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled,

Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefore as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be

governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. Elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. Agrees with the other party to submit the Claim to another dispute resolution process, or

3. Gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. Delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

A. 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 or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

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

**SUPPLEMENTARY GENERAL CONDITIONS
TABLE OF CONTENTS**

Article Number	Title	Page
1	APPLICABILITY	2
2	PROVISIONS REQUIRED BY LAW DEEMED INSERTED	2
3	CONTRACTOR'S UNDERSTANDING	2
4	CONTRACTOR'S RESPONSIBILITY FOR THE WORK	2
5	STAKING	3
6	TESTING	3
7	PRESERVATION OF PROPERTY, RESPONSIBILITY FOR DAMAGE	3
8	PARTIAL PAYMENT	3
9	FINAL PAYMENT	4
10	FAILURE TO COMPLETE WORK ON TIME	5
11	TIME OF COMPLETION	5
12	LIQUIDATED DAMAGES	5
13	INSURANCE REQUIREMENTS	7
14	COORDINATION OF UTILITY SERVICE	9
15	INDEMNIFICATION	10
16	AUTHORITY AND DUTIES OF INSPECTOR	11
17	SALVAGED EQUIPMENT AND MATERIALS	11
18	SAFETY REGULATIONS	11
19	PUBLIC SAFETY AND CONVENIENCE	12
20	RECORD DATA AND AS-BUILTS	12
21	BARRICADES, WARNING AND DETOUR SIGNS	12
22	WORK WITHIN ROAD RIGHTS-OF-WAY	13
23	RIGHT TO WORK AND TERMINATION DUE TO WORK STOPPAGE	13
24	DISPUTE RESOLUTION	13
25	PRECONSTRUCTION CONFERENCE.....	14
26	STORAGE OF PETROLEUM PRODUCTS OR HAZARDOUS SUBSTANCES	14
27	SUBCONTRACTORS AND SUPPLIERS	14
28	SHOP DRAWINGS	14
29	CLEAN UP AND COMPLETION	15
30	WARRANTY.....	15

SUPPLEMENTARY GENERAL CONDITIONS

1. APPLICABILITY

- 1.1 The Supplementary General Conditions are intended to be complimentary to the General Conditions. They are intended to outline additional details and further explain the General Conditions. Should a conflict or discrepancy arise between the General Conditions and the Supplementary General Conditions, the Supplementary General Conditions shall govern.

2. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

3. CONTRACTOR'S UNDERSTANDING

- 3.1 If the CONTRACTOR, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any error or omissions in the drawings or in the layout as given by points and instructions, or discovers unforeseen underground or aboveground conditions or any other unexpected conditions requiring additional work by the CONTRACTOR, it shall be his duty to immediately inform the ENGINEER, in writing, and the ENGINEER shall promptly check the accuracy of the information. Any work done after such discovery, until any necessary changes are authorized, will be done at the CONTRACTOR'S risk.
- 3.2 Notwithstanding the above, the CONTRACTOR acknowledges that the work performed under the Contract (other than Change Orders requested by the OWNER) shall be under the terms of a Lump Sum Contract. The Contract Documents will require the successful bidder to completed the entire work under the contract for the **TOTAL PRICE**. No adjustment to the **TOTAL PRICE** will be made for variations in the actual number of items, distances, quantities, etc. from those presented in the Plans and other Contract Documents unless initiated by a Change Order submitted by the OWNER.
- 3.3 All additional work performed by the CONTRACTOR pursuant to Change Orders submitted by the OWNER, shall be completed at the unit prices set for in the Plans and other Contract Documents, in addition to the **TOTAL PRICE**. If the OWNER submits a Change Order decreasing the scope of the work required under the Plans and other Contract Documents, the **TOTAL PRICE** shall be reduced at the rates set forth under the unit pricing. The CONTRACTOR understands that the quantities may be increased or diminished as provided in the General Conditions without in any way invalidating any of the unit or lump sum prices bid. The OWNER reserves the right to submit Change Orders increasing or decreasing the bid quantities for any item without affecting the unit price for that item, by an amount not to exceed one hundred percent (100%).

4. CONTRACTOR'S RESPONSIBILITY FOR THE WORK

- 4.1 Prior to the completion of the work by the CONTRACTOR and the acceptance thereof by the OWNER, the work shall remain at the risk of the CONTRACTOR and said

CONTRACTOR shall be required to repair, replace, renew, and make good at his own expense all damages caused by force or violence of the elements or any cause whatsoever, provided however, that in such cases the CONTRACTOR shall be entitled to a reasonable extension of time within which to complete said work. If the cause of the delay shall be due to the negligence, fault, or omission of the CONTRACTOR, the CONTRACTOR shall not be entitled to the extension of time mentioned in the said paragraph.

5. STAKING

5.1 The CONTRACTOR shall be responsible for providing all construction staking.

6. TESTING

6.1 Construction testing shall be performed by an independent laboratory and shall be in accordance with the Construction Specifications included herein.

6.2 The selection of the testing laboratory and the costs of the testing shall be the responsibility of the OWNER. Any tests which fail to meet the minimum values specified shall be paid for by the CONTRACTOR. Any additional tests required by the ENGINEER, other than those specified as a minimum, shall be paid for by the OWNER.

6.3 The scheduling of the tests with the testing laboratory shall be the responsibility of the CONTRACTOR. Each unit of work shall be tested and approved by the ENGINEER prior to starting another unit of work. No work shall be done nor materials used without suitable supervision or inspection by the ENGINEER.

7. PRESERVATION OF PROPERTY, RESPONSIBILITY FOR DAMAGE

7.1 The CONTRACTOR shall preserve from damage all property along the line of work, or which is in the vicinity of or is in anywise affected by the work, the removal or destruction of which is not called for by the Plans. This applies to private property, public utilities, trees, shrubs, crops, signs, monuments, fences, pipe and underground structures, public highways (except natural wear and tear of highways resulting from legitimate use thereof by the CONTRACTOR), etc.; and whenever such property is damaged due to the activities of the CONTRACTOR, it shall be immediately restored to a condition similar or equal to that existing before such damage or injury was done by the CONTRACTOR and at his own expense, or it shall be charged against any moneys due.

7.2 The CONTRACTOR shall be responsible for maintenance of the project during construction and shall bear all risk of loss for damage to the project by any cause whatsoever during the term of construction.

7.3 In case of failure on the part of the CONTRACTOR to restore such property, road or street, or make good such damage or injury, the ENGINEER may, upon 48 hours notice, proceed to repair, rebuild or otherwise restore such property, road or street as may be deemed necessary; and the cost thereof will be deducted from any moneys due or which may become due the CONTRACTOR under the Contract.

8. PARTIAL PAYMENT

8.1 The CONTRACTOR will receive partial payments on monthly estimates based on the amount of work done and accepted by the ENGINEER. The partial payments shall be

approximate only, and all partial estimates and payments shall be subject to correction in the final estimate and payment.

- 8.2 The CONTRACTOR shall prepare and submit to the ENGINEER for approval an estimate covering the total quantities under each item of work that has been completed from the start of the job up to and including the last day of the payment period, and the value of the work so completed determined in accordance with the schedule of unit prices for such items, together with supporting evidence as may be required by the OWNER and/or ENGINEER. This estimate shall also include an allowance for the cost of such materials and equipment required in the permanent work as has been delivered to the site and suitably protected but not as yet incorporated in the work. All survey pay requests shall be based on the total work completed and will be prorated to the same percentage as the total work.
- 8.3 All requests for partial payment shall be submitted to the ENGINEER by the fifteenth (15th) day of each month. Requests received after this date shall be deferred to the following month. Payment shall be made to the CONTRACTOR within 30 days of receipt of a complete and valid request for partial payment. CONTRACTOR will be required to provide proof of payment for the performance bond simultaneous with the requests for payment.
- 8.4 The amount of such payments shall be the total value of the work done to the date of the estimate, based on the quantities and the contract unit prices, less an amount retained and less payments previously made. The amount retained shall be 10% of the amount due until final acceptance.
- 8.5 The OWNER may require, as a condition precedent to making any payment, that the CONTRACTOR provide a Contractor's Affidavit and partial or complete Release of Lien, on forms approved by the OWNER. The Contractor's Affidavit shall state that all indebtedness incurred by the CONTRACTOR for labor, equipment, materials and services has been paid by the CONTRACTOR; and for all payments subsequent to the first payment hereunder, as evidence of such payment, CONTRACTOR may be required by OWNER to provide the OWNER with Mechanic's Lien Release or Waivers of Lien from all Subcontractors, Suppliers or Materialmen.

9. FINAL PAYMENT

- 9.1 When final acceptance has been made by the OWNER, the ENGINEER will then review the amount of final request for payment and certify the amount of this approval. The final payment amount shall be the **TOTAL PRICE** plus all sums due to the CONTRACTOR for additional work requested by the OWNER by submitting Changes Orders requesting additional work; less (1) all reductions due to Changes Orders submitted by the OWNER decreasing bid quantities, and (2) all progress payments made to date. The amount of this final payment will be paid to the CONTRACTOR within 30 days after the final estimate has been approved by the ENGINEER, provided that the following requirements have been met:
 - 9.1.1 The CONTRACTOR has agreed in writing to accept the balance due, as determined by the ENGINEER, as full settlement of his account under the Contract, and of all claims in connection therewith.
 - 9.1.2 The CONTRACTOR has furnished affidavits to the effect that all bills are paid and no suits are pending in connection with work done under the Contract, and the CONTRACTOR has otherwise fully complied with the provisions of the Florida Lien Law.

- 9.1.3 Two (2) copies of all test results, as-builts, O & M manuals, etc., have been received by the ENGINEER.
- 9.1.4 Any inspections, etc., required by the local governmental entities having jurisdiction have been made.
- 9.2 The Contract will be considered complete when all work has been finished, the final inspection certified by the ENGINEER, and the project finally accepted in writing by the OWNER. The CONTRACTOR'S responsibility shall then terminate except as otherwise required and set out in these Contract Documents.

10. FAILURE TO COMPLETE WORK ON TIME

- 10.1 Time is of the essence in this Contract, but it will be difficult or impossible to ascertain the exact amount of loss which the OWNER will suffer by reason of delays in the completion of the work. It is, therefore, agreed that for each calendar day that any part of the work remains uncompleted after the expiration of the time stipulated for completion of the entire work, or for a portion of the work for which a time of completion is stipulated, with such extensions of time, if any, as may have been recommended by the ENGINEER and approved by the OWNER, the amount or amounts of money stated in these Supplementary General Conditions shall be deducted as liquidated damages from any money due the CONTRACTOR or, if no money is due the CONTRACTOR, the OWNER shall have the right to recover said amount or amounts from the CONTRACTOR, from the Surety, or from both. This deduction is not a penalty, but constitutes liquidated damages for the loss to the OWNER because of the increase in expenses for administration, engineering, supervision and inspection, and loss of revenue resulting from the delay.
- 10.2 The CONTRACTOR shall take into account all contingent work which has to be done by other parties arising from any cause whatsoever and shall not plead his want of knowledge of said contingent work as an excuse for delay in this work or for its non-performance.
- 10.3 Nothing in this Article shall be construed as limiting the right of the OWNER to annul the Contract, to take over the work, or to claim damages for the failure of the CONTRACTOR to abide by each and every one of the terms of this Contract as set forth and provided for in the Contract Documents.

11. TIME OF COMPLETION

- 11.1 The work to be performed under this Contract must be completed within the time limits set forth in the Agreement.

12. LIQUIDATED DAMAGES

- 12.1 The amount of liquidated damages to be assessed shall be Zero Dollars (\$.00) per project per calendar day for failure to complete the entire Contract.
- 12.2 It is hereby understood and mutually agreed, by and between the CONTRACTOR and the OWNER, that the date of beginning and the time for completion as specified in the Contract of the work to be done here under are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed.

- 12.3 The CONTRACTOR agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time set forth in the Proposal. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- 12.4 If the CONTRACTOR shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the OWNER, then the CONTRACTOR does hereby agree, as a part consideration for the awarding of this Contract, to pay to the OWNER the amount specified in the Contract not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day including Sundays and Holidays that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work.
- 12.5 The said amount is fixed and agreed upon by and between the CONTRACTOR and OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER would in such event sustain, and said amount is agreed to be the amount of damages which the OWNER would sustain and said amount shall be retained from time to time by the OWNER from current periodical estimates or in the final Change Order.
- 12.6 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract, provided that the CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:
- 12.6.1 To any preference, priority or allocation order duly issued by the Government.
- 12.6.2 To unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, acts of God, acts of the public enemy, acts of the OWNER, acts of another contractor in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
- 12.6.3 To any delays of Subcontractor or Suppliers occasioned by any of the causes specified in subsection (1) and (2) of this article: Provided, further, that the CONTRACTOR shall, within ten (10) days from the beginning of such delay, unless the OWNER shall grant a further period of time prior to the date of final settlement of the Contract, notify the OWNER, in writing, of the causes of the delay. The OWNER shall ascertain the facts and extent of the delay and notify the CONTRACTOR within a reasonable time of its decision in the matter.
- 12.7 If the CONTRACTOR finds that he will be unable to complete the work under this Contract within the time period set forth in the Proposal plus any time extensions allowed due to the above causes, he may submit a formal written request to the OWNER through the ENGINEER for a time extension for causes other than those specified heretofore. Such formal request must be submitted by Friday (12:00 Noon) for any cause that has occurred within the previous seven (7) calendar days, and be accompanied by up-to-date report of construction status, or revised detailed construction schedule and any further documentation which the OWNER may require or which the CONTRACTOR may consider pertinent and favorable to his request. The OWNER will consider said request and will

either allow or reject same in writing within a reasonable period of time. Should a time extension be allowed, a Change Order will be prepared by the ENGINEER amending the terms of the Contract accordingly. If rejected, no further action will be taken and the Contract will remain unchanged.

- 12.8 In addition to such liquidated damages, the CONTRACTOR and/or his Surety shall be liable for the amount thereof, from Contract completion date until actual final completion, for all expenses for resident supervision and also for engineering supervision furnished by the OWNER and/or the ENGINEER plus 50% thereof for overhead. These expenses shall be deducted by the OWNER from moneys due the CONTRACTOR.
- 12.9 The date upon which the assessment of liquidated damages, as provided herein, shall cease shall be the date of Substantial Completion which shall be as certified by the ENGINEER. For purposes of determining the amount of the expenses described above, the date of actual Final Completion of the Contract shall be determined by the ENGINEER and shall be the date after which no additional work on the project would be necessary to produce a project completely in accordance with the requirements of the Contract Documents and completely acceptable to the ENGINEER.

13. INSURANCE REQUIREMENTS

13.1 Contractor's and Subcontractor's Insurance

13.1.1 The CONTRACTOR shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the OWNER, nor shall the CONTRACTOR allow any Subcontractor to commence work on his Subcontract until similar insurance required of the Subcontractor has been so obtained and approved. The OWNER shall be notified of cancellation or restrictive amendment at least 30 days prior to the effective date of such cancellation or amendment.

13.2 Workers' Compensation Insurance

13.2.1 The CONTRACTOR shall procure and shall maintain during the life of this Contract, Workers' Compensation Insurance for all of his employees to be engaged in work on the project under this Contract; and, in case any such work is sublet, the CONTRACTOR shall require the Subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the CONTRACTOR'S Workers' Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Contract is not protected under the Workers' Compensation Statute, the CONTRACTOR shall provide and shall cause each Subcontractor to provide employer's General Liability Insurance for the protection of such of his employees not otherwise protected under such provisions.

13.3 Contractor's Public Liability and Property Damage Insurance

13.3.1 The CONTRACTOR shall take out and maintain during the life of this Contract such CONTRACTOR'S Comprehensive Liability and Property Damage Insurance as shall protect him and any Subcontractor performing work covered by this Contract, from claims for damage for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operations be by himself, or by any Subcontractor, or by anyone

directly or indirectly employed by either of them; and the amount of such insurance shall be as follows:

LIMITS OF LIABILITY

Aggregate

Commercial General Liability	\$2,000,000
Automobile Liability	\$2,000,000

13.3.2 The CONTRACTOR shall either (a) require each Subcontractor to procure and maintain during the life of the Subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as in the preceding paragraph, or (b) insure the activities of his Subcontractors in his own policy.

13.3.3 The insurance required in the preceding paragraphs shall also provide adequate protection against the following special hazards:

- 1) Property damage arising out of blasting or explosions.
- 2) Property damage arising out of collapse of, or structural injury to any building, caused by grading, excavating, burrowing, filling or pile driving.
- 3) Property damage below the surface of the ground, including the destruction of wires, conduits, pipe, water mains, sewers and gas mains, by digging or burrowing by any mechanical device.

13.4 Subcontractor's Public Liability and Property Damage Insurance

13.4.1 The CONTRACTOR shall require each of his Subcontractors to procure and to maintain, during the life of his Subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the amount specified for the CONTRACTOR, naming the CONTRACTOR and OWNER as additional insured.

13.5 The CONTRACTOR shall furnish evidence of Workers' Compensation and Public Liability to the OWNER in the form of a Certificate of Insurance naming the OWNER on the certificate prior to commencement of the work.

13.6 In the event any part of the work to be performed hereunder shall require the CONTRACTOR or his Subcontractors to enter, cross or work upon or beneath the property, tracks or right-of-way of a Railroad or Railroads, the CONTRACTOR shall, before commencing any such work, at his expense procure and carry Liability or Protective Insurance coverage in such form and amounts as each Railroad shall require.

13.7 The Original of such policy shall be delivered to the Railroad involved, with copies to the OWNER and the ENGINEER; and the CONTRACTOR shall not be permitted to enter upon or perform any work on the Railroad's property until such insurance has been furnished to the satisfaction of the Railroad. The insurance herein specified is in addition to any other insurance which may be required by the OWNER and shall be kept in effect at all times while work is being performed on or about the property, tracks or right-of-ways of the Railroad.

14. COORDINATION OF UTILITY SERVICE

14.1 Representation of underground utilities is shown from information received from the various Utility Owners. The locations or elevations of utilities are not represented to be exact and are shown for the convenience of the CONTRACTOR. The CONTRACTOR shall contact the Utility Owner concerned for any available additional information and coordinate his construction activities accordingly. Any cost incurred for the protection of and/or damages to existing underground utilities will be considered as part of the applicable Contract price for stage excavation and backfill and no additional compensation will be paid to the CONTRACTOR. If, in the judgement of the ENGINEER, it is impossible to construct a given improvement in the location shown on the drawings as a result of underground utility or utilities, either the Utility Owner will move the existing underground utility or an appropriate Change Order will be executed for the moving by the CONTRACTOR.

14.1.1 City of Groveland - Public Works Department

156 S. Lake Avenue
Groveland, Florida 34736

Phone: (352) 429-2141

14.1.2 Century Link

Mail Code 3022
425 3rd. St.
Leesburg, Florida 34748

Phone: (352) 326-1187

14.1.3 Comcast Cable

8130 CR 44 Leg A
Leesburg, Florida 34748

Phone: (352) 315-6625

14.1.4 SECO

330 South US Highway 301
Sumterville, Florida 33585-0301

Phone: (352) 793-3801

14.2 Prior to initiating any construction work on this project, the CONTRACTOR shall arrange a meeting with representatives of public and private utilities to coordinate and schedule the provision of temporary utility service required during construction and the permanent installation and connection of utilities for the completed construction project.

14.3 The CONTRACTOR shall at all times conduct his operation so as to interfere as little as possible with the existing facilities. The CONTRACTOR shall develop a program in cooperation with the ENGINEER and interested utility officials which shall provide for the construction of, and putting into service the new works in the most orderly manner possible. This program shall be adhered to, except as deviations which must be expressly permitted. All work of connecting with, cutting into, and reconstructing existing facilities shall be planned so as not to interfere with the existing facility.

14.4 The CONTRACTOR shall maintain uninterrupted service at all service connections. The manner in which this is accomplished shall be left to the discretion of the CONTRACTOR, subject to the approval of the ENGINEER.

14.5 The public and private utilities including water, gas, storm drain and sewer lines, electrical conduit, power lines, cables and appurtenant plant and facilities, are and must be kept in continuous operation; and all work hereunder must be so conducted as to avoid interference with or interruption in the operation of same, and shall be started and completed in the shortest practicable time, in order that these additional contemplated

facilities may be available for use without delay. All work hereunder must be so conducted so as to avoid unreasonable interference or interruption in travel of streets, alleys, or individual access ways. In order to secure these results, the order of procedure and methods of conducting work shall at all times be subject to the approval of the ENGINEER without in any way relieving the CONTRACTOR of responsibility for same.

- 14.6 It is to be particularly understood that continuity of utility services, noninterference with operation or other construction, minimum interference with normal travel, and safety of all utility plants and equipment personnel, as well as the safety and well-being of the general public, shall be given prime consideration, and that the decisions of the ENGINEER shall be followed in all matters relating thereto. The CONTRACTOR shall maintain uninterrupted service at all service connections. Should the CONTRACTOR fail to observe such requirements or to provide the necessary and proper safeguards against accidents or damage, the OWNER shall, upon the advice of the ENGINEER and without further notice, have the right to provide same or repair the damage and deduct the cost of same from the Contract, or to suspend work under this Contract until such deficiencies are satisfactorily remedied, or to cancel Contract and complete same with his own forces as he may deem advisable at the CONTRACTOR'S expense.
- 14.7 Reasonable construction water shall be furnished to the CONTRACTOR at no cost. The CONTRACTOR shall record the amount of water used throughout the duration of the project and provide this data to the ENGINEER with each request for partial payment. The CONTRACTOR shall contact the Utility for temporary meters, which shall be used to measure the amount of water used from fire hydrants and temporary service lines. The CONTRACTOR shall estimate all other water uses, such as new water main flushing, new sewer main flushing, bacteriological main clearance sampling, etc.

15. INDEMNIFICATION

- 15.1 The CONTRACTOR shall indemnify and hold harmless the OWNER, ENGINEER, their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of the use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any 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. For ten dollars (\$10.00) acknowledged to be included and paid for in the Contract Price and other good and valuable consideration, the CONTRACTOR agrees to indemnify and hold harmless the OWNER, ENGINEER, their agents and employees in accordance with the provisions of this paragraph.
- 15.2 In any and all claims against OWNER or ENGINEER or any of their agents or employees, by any employee of CONTRACTOR and Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 15.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

16. AUTHORITY AND DUTIES OF INSPECTOR

- 16.1 The ENGINEER shall appoint such Inspectors as are necessary to pass upon the amount, quality and character of the materials to be supplied and to supervise the execution of the work contemplated under this Contract.
- 16.2 Inspectors employed by the OWNER shall also be authorized to inspect all work done and all materials furnished. Such inspection may extend to any or all parts of the work and to the preparation, fabrication or manufacture of the materials to be used.
- 16.3 An Inspector is not authorized to revoke, alter or waive any requirements of the Specifications. He shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the ENGINEER.
- 16.4 If the CONTRACTOR refuses to suspend operations on verbal order, the Inspector shall issue a written order giving the reason for shutting down the work. After placing the order in the hands of the man in charge, the Inspector shall immediately leave the job. Work done during the absence of the Inspector shall not be accepted nor paid for.
- 16.5 The Inspector shall in no case act as foreman or perform other duties for the CONTRACTOR, nor interfere with the management of the work by the latter. Any advice which the Inspector may give the CONTRACTOR in no wise shall be construed as binding to the ENGINEER in any way, or releasing the CONTRACTOR from fulfilling all the terms of the Contract.
- 16.6 The payment of any compensation, whatever may be its character or form, or the giving of any gratuity, or the granting of any valuable favor by the CONTRACTOR to any Inspector, directly or indirectly, is strictly prohibited; and any such act on the part of the CONTRACTOR shall constitute a violation of this Contract.

17. SALVAGED EQUIPMENT AND MATERIALS

- 17.1 All salvaged materials and equipment are the property of the OWNER and shall be stored by the CONTRACTOR at his expense as directed by the ENGINEER, except as otherwise provided in these Specifications. The CONTRACTOR shall remove and clean all reusable items of materials and/or equipment removed from existing structures that are to be demolished or abandoned in the course of the work.

18. SAFETY REGULATIONS

- 18.1 In addition to the requirements of the General Conditions section of these Specifications, the CONTRACTOR'S attention is specifically directed to the published regulations of the Florida Department of Commerce on the "Use of Cranes, Draglines and similar Equipment Near Power Lines", "Excavations and Trenching Operations", "Construction and Use of Scaffolds", and similar regulations of that Department.
- 18.2 The CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER and the ENGINEER.
- 18.3 The CONTRACTOR shall comply with all OSHA (Occupational Safety and Health Administration) requirements.

- 18.4 The CONTRACTOR is required to be familiar with all Federal and State safety rules and regulations. It shall be the sole responsibility of the CONTRACTOR to adhere to and enforce all such safety rules and regulations. The OWNER shall be held harmless to any citations, fines, or suits of law, that may result as a breach of safety rules and regulations by the CONTRACTOR or any and all Subcontractors of the CONTRACTOR.

19. PUBLIC SAFETY AND CONVENIENCE

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

20. RECORD DATA AND AS-BUILTS

- 20.1 The CONTRACTOR shall maintain during the progress of the project accurate records of the location, length and elevation of all pipe lines and piping installed. Promptly after completion of any portion of the work provided, as paid for in the Contract, the CONTRACTOR shall deliver to the ENGINEER or OWNER, two (2) sets of As-built Drawings with accurate notations recorded thereon. Information to be shown for water mains shall include the location of valves, tees and crosses dimensioned to the nearest permanent object or monument. The CONTRACTOR will be held responsible for accuracy of such data and shall bear any cost incurred in finding utilities as a result of incorrect data furnished by the CONTRACTOR.
- 20.2 All record data and as-builts provided shall be signed and sealed by a professional land surveyor registered with the State of Florida, and be provided in both hard and electronic formats.

21. BARRICADES, WARNING AND DETOUR SIGNS

- 21.1 The CONTRACTOR shall, in accordance with the requirements of the Florida Department of Transportation's Manual on Traffic Control & Safe Practices, provide, erect and maintain all necessary barricades, suitable and sufficient red lights, danger signals and signs, provide a sufficient number of flagmen and watchmen, and take all necessary precautions for the protection of the work and the safety of the public. Streets or highways closed to traffic shall be protected by effective barricades on which shall be placed acceptable warning signs. The CONTRACTOR shall provide and maintain acceptable warning and detour signs at all closures, intersections and along the detour routes, directing the traffic around the closed portion or portions of the work so that the temporary detour route or routes shall be indicated clearly throughout its or their entire length. All barricades and obstructions shall be illuminated at night and all lights shall be kept burning from sunset until sunrise. Barricades shall be well built and so designed as not to be blown over by the wind.
- 21.2 Roadways, parkways and other existing work, including sodded or grassed areas, damaged by the CONTRACTOR'S operations shall be repaired at the CONTRACTOR'S expense and left in condition as good as existed before the work was commenced.

22. WORK WITHIN ROAD RIGHTS-OF-WAY

- 22.1 The CONTRACTOR shall notify the City government or County government, as applicable, at least 24 hours prior to commencing work within the road right-of-way, and shall pay for any additional compaction tests that may be required, when requested through the ENGINEER.
- 22.2 Permits for all work within the right-of-way will be obtained by the OWNER. The CONTRACTOR shall, however, verify the existence of the Permit before commencing work within this area.
- 22.3 All work related to highway crossings and within highway right-of-way shall be in full compliance with the terms of the Permit and in accordance with the requirements of the governing authority.
- 22.4 In event of conflict between the requirements of these Specifications and details and those of the governing authority, the requirements of said governing authority shall govern. This precedence shall be applicable only when right-of-way belonging to the State of Florida, the City, or the County is involved. In all other cases the more stringent requirements shall govern.
- 22.5 The costs of any and all items of work required by the governing authority, payment for which is not specifically provided by bid items in the Proposal, shall be included in the prices of bid items to which said items of work are related, incidental, or appurtenant. No additional compensation shall be allowed therefore.

23. RIGHT TO WORK AND TERMINATION DUE TO WORK STOPPAGE

- 23.1 The OWNER strongly believes in the "right to work" and expressly reserves the right to terminate the Agreement or suspend the work upon 24 hours notice upon the occurrence of any work stoppage or "picketing" of the job resulting from the action of any organized labor group. This stipulation shall be contained in any and all Subcontracts entered into for any portions of the work. No additional compensation shall be allowed if so terminated or suspended.

24. DISPUTE RESOLUTION

- 24.1 The venue for the enforcement, construction or interpretation of this agreement shall be the court system of the Fifth Judicial Circuit, depending on the jurisdictional limits, and all parties do hereby specifically waive any "venue privilege" and/or "diversity of citizenship privilege" which it has now, or may have in the future, in connection with this agreement, or its duties, obligations, or responsibilities or rights hereunder.
- 24.2 The prevailing party in any litigation arising out of the enforcement, construction or interpretation of this agreement shall be entitled to recover from the losing party all costs and expenses, including reasonable attorney's fees, both at the trial and at the appellate level.

25. PRECONSTRUCTION CONFERENCE

- 25.1 The ENGINEER shall set the date and time for the Preconstruction Conference and shall determine attendance requirements. At a minimum, representatives of the CONTRACTOR and all major Subcontractors shall be present.
- 25.2 At least 24 hours in advance of the preconstruction conference the CONTRACTOR shall submit the following:
 - 25.2.1 A preliminary construction schedule listing beginning and ending dates or number of days for the completion of each item or work. A bar graph is preferable.
 - 25.2.2 A list of phone numbers for all key personnel and project superintendents or foremen. This list shall include office, mobile, beeper and home phone numbers.

26. STORAGE OF PETROLEUM PRODUCTS OR HAZARDOUS SUBSTANCES

- 26.1 No fuels, oils or any type of petroleum product nor any hazardous substance shall be stored on the project or any other lands owned by the Developer or OWNER.

27. SUBCONTRACTORS AND SUPPLIERS

- 27.1 CONTRACTOR shall complete and submit with his bid the List of Subcontractors and Suppliers attached, as part of the contract documents.

28. SHOP DRAWINGS (NOT REQUIRED FOR THIS PROJECT)

- 28.1 CONTRACTOR shall submit 6 copies of all Shop Drawings. Three copies shall be returned to the CONTRACTOR upon approval.
- 28.2 Review of the first submission and one resubmission of Shop Drawings will be performed by the OWNER and OWNER'S Consultants, as appropriate, at no cost to CONTRACTOR. Subsequent additional resubmissions of the Shop Drawing will be reviewed by the OWNER and OWNER'S Consultants; however, OWNER will document work hours and other expenses required to perform such additional review(s) and CONTRACTOR shall reimburse OWNER for these costs.
- 28.3 Submittals shall include, but not necessarily be limited to, the following:
 - 28.3.1 Water
 - (a) Pipe
 - (b) Fittings, valves and valve boxes
 - (c) Meter box
 - (d) Fire hydrant assembly
 - (e) Backflow preventers
 - 28.3.1 Electrical
 - 28.3.1 Concrete

29. CLEAN-UP AND COMPLETION

- 29.1 This section of the Specifications is intended to cover the furnishing of all labor, materials, equipment and/or incidentals necessary to the completion of all the requirements of the drawings, notes, schedules and these Specifications relating to clean-up.
- 29.2 Throughout the construction period, the CONTRACTOR is to maintain the project in a standard of cleanliness as described in this Section. In addition to the standards described in this Section, the CONTRACTOR will comply with all the requirements for cleaning up in various other sections of these Specifications. The CONTRACTOR will conduct daily inspections, and more if necessary, to verify that requirements of cleanliness are met. In addition to the standards described in this Section, the CONTRACTOR will comply with all pertinent requirements of governmental agencies having jurisdiction, provide all required personnel, equipment and materials needed to maintain the necessary standards of cleanliness, and use only the cleaning materials and equipment which are compatible with the surface being cleaned as recommended by the Manufacturer of the material or as approved by the Representative.
- 29.3 The CONTRACTOR will retain all stored items in an orderly arrangement allowing maximum access, not impeding drainage or traffic, and providing the required protection of materials. The CONTRACTOR is not to allow the accumulation of scrap, debris, waste material and other items not required for the construction of work.
- 29.4 At least twice a month, and more often if necessary, the CONTRACTOR will completely remove all scrap, debris and waste material from the job site and dispose of it off-site in accordance with all Local, State and Federal regulations. Weekly, and more often if necessary, the CONTRACTOR will inspect all arrangements of materials stored on the site, restack, tidy or otherwise service all requirements of this Section. Daily, and more often if necessary, the CONTRACTOR will inspect the site and pick up all scrap, debris and waste material and remove all such items to the place designated for their storage.
- 29.5 The CONTRACTOR is to provide adequate storage for all items awaiting removal from the job site, observing all requirements for fire protection and protection of the ecology, including the Wildlife Habitat Management Plan.
- 29.6 The CONTRACTOR will maintain the site in a neat, orderly condition at all times, to the approval of the OWNER'S representative. In case of failure on the part of the CONTRACTOR to comply with all conditions of this section the OWNER may, upon 24 hour notice, proceed to clean the site as may be deemed necessary by the OWNER. All costs encountered by the OWNER, including dump fees, shall be deducted from the next payment due the CONTRACTOR, which payment shall include a 15% management fee applied to all OWNER expenses.

30. WARRANTY

- 30.1 The CONTRACTOR warrants the subject premises for a period of one year subsequent to acceptance of the improvements. The CONTRACTOR will provide the OWNER with all warranties pursuant to the terms of the General Conditions. In the event that the CONTRACTOR must return to perform warranty work, the CONTRACTOR must thereafter provide for an extended warranty period of at least six (6) months for parts, materials or workmanship replaced or the equivalent of a new replacement part warranty, which ever is greater.

CITY OF FRUITLAND PARK INVITATION TO BID PRE BID MEETING

October 13, 2017

City Hall Commission Chambers

506 W. Berckman Street

Fruitland Park FL 34731

2:00 p.m.

The Invitation to Bid Pre-Bid Meeting was held at 506 W. Berckman Street, Fruitland Park, Florida 34731 on Friday, October 13, 2017 at 2:00 p.m. to review the qualification criteria for the Construction of New Public Library Facility and Site Development for Construction of a New Public Library Facility.

Members Present: City Manager Gary La Venia; CDD Charlie Rector; City Clerk Esther B. Coulson; Public Works Director Dale Bogle; Administrative Assistant Tracy Kelley; City Engineer Representative Brett Tobias; and Architect Jamie Senatore.

CDD Charlie Rector called the meeting to order at 2:00 p.m.

1. IFB Pre-Bid Meeting

CDD Charlie Rector clarified two separate invitations for bid; project involves City funds, Grant Monies, County and State funds. City Commission to award bid at a later date.

2. Project Specifications / Questions

Following introduction direction for any and all questions relating to either bid to be forwarded to attention of Administrative Assistant Tracy Kelley.

3. Comments

Questions and answers were exchanged:

Q: Where will Facility Retention will located

A: Facility Retention is to be off-site located at existing City Park

Q: General building design

A: Conventional building design of block stucco, Hardi-plank and 24 gauge roof

Q: Is there a Bid Bond Required

A: No

Q: Who is to complete the building pad

A: Building pad to be completed by GC; not dirt hauling, all dirt to be provided by City

Q: Is IT included in facility completion

A: IT is separate contract with County to include everything with exception of GC running conduit

Q: When will site work commence

A: Any time after bid awarded

4. Public Comments

No one from the public appeared before City Staff of the Project Committee.

5. Adjournment

The meeting adjourned at 2:28 p.m.

DRAFT



**AGENDA ITEM
NUMBER**
5g

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Ordinance 2017-029 Floodplain Management		
For the Meeting of:	November 9, 2017		
Submitted by:	City Manager/Community Development Director		
Date Submitted:	October 18, 2017		
Are Funds Required:		Yes	X No
Account Number:	N/A		
Amount Required:	N/A		
Balance Remaining:	N/A		
Attachments:	Yes		
Description of Item: Ordinance 2017-029 Floodplain Management (the first reading was held on October 26, 2017).			
Action to be Taken: Enact Ordinance 2017-029 to become effective as provided by law.			
Staff's Recommendation: Approval.			
Additional Comments:			

Reviewed by: _____
City Manager

Authorized to be placed on the Regular Consent agenda: _____
Mayor

ORDINANCE NO. 2017-029

AN ORDINANCE BY THE FRUITLAND PARK CITY COMMISSION AMENDING THE FRUITLAND PARK LAND DEVELOPMENT REGULATIONS CHAPTER 161.090 TO MAKE MODIFICATIONS TO BRING THE REGULATIONS INTO AGREEMENT WITH THE MOST CURRENT FEMA-APPROVED, CODE COMPANION FLOODPLAIN MANAGEMENT ORDINANCE FOR FLORIDA; PROVIDING FOR APPLICABILITY, SEVERABILITY, REPEALER, AND INCLUSION IN THE LAND DEVELOPMENT REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the City of Fruitland Park participates in the National Flood Insurance Program and the City Commission desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, the City Commission determined that it is in the public interest to amend the Fruitland Park Land Development Regulations Chapter 161.090, to make modifications to bring the regulations into agreement with the most current Model Floodplain Management Ordinance approved by FEMA for Florida communities.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Fruitland Park that the Fruitland Park Land Development Regulations Chapter 161.090 is amended as set forth in the following amendments, as shown in strikethrough and underline format in Section 2.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. AMENDMENTS.

The Fruitland Park Land Development Regulations Chapter 161.090, is hereby amended by the following amendments

(A) Section 1. C. 4. is amended to read:

4. Determinations for existing buildings and structures Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of

the building or structure shall be the market value before the damage occurred and before any repairs are made;

2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and this ordinance is required.

(B) Section 1. C. 8. is amended to read:

8. Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:

1. Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section C(4) of this ordinance;
2. Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
3. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;
4. Review required design certifications and documentation of elevations specified by this ordinance and the *Florida Building Code*, ~~and this ordinance~~ to determine that such certifications and documentations are complete; and
5. Notify the Federal Emergency Management Agency when the corporate boundaries of City of Fruitland Park are modified.

(C) Section 1. C. 9. is amended to read:

9. Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the

Florida Building Code. These records shall be available for public inspection at the City of Fruitland Park City Hall, at 506 W. Berckman Street, Fruitland Park, Florida 34731.

(D) Section 1. D. 7. is amended to read:

7. Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

1. The St Johns River Water Management District; section 373.036, F.S.
2. Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
3. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
4. Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
5. Federal permits and approvals.

(E) The following definitions in **Section 2. B.** are amended as follows:

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance ~~or a request for a variance.~~

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building, Chapter 12 Chapter 14* Historic Buildings.

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in section 320.01, F.S. 45C-4.0101, F.A.C.]

Recreational vehicle. A vehicle, including a park trailer, which is: [~~See Defined in~~ section 320.01(b), F.S.)

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction. The date of issuance of permits for new construction and substantial improvements ~~to existing structures,~~ provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of

permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

(F) Section 3. B. 2. is amended to read:

2. Subdivision plats. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

1. Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats ~~and final plats~~;
2. Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 1(E)(2)(1)- of this ordinance; and
3. Compliance with the site improvement and utilities requirements of Section 3(C) of this ordinance.

(G) Section 3. D. 1. is amended to read:

1. General. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance. If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive of the applicable requirements.

(H) Section 3. D. 2. is amended to read:

2. Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the *Florida Building Code Residential* Section R322.2 and this ordinance. Foundations for manufactured homes subject to Section 3(D)(4)(b) of this ordinance are permitted to be reinforced piers or other foundation elements of at least equivalent strength.

(I) Section 3. D. 5. is amended to read:

5. Enclosures. Fully Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code, Residential* Section R322.2 for such enclosed areas.

(J) **Section 3. G. 1.** is amended to read:

-1. General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the *Florida Building Code*, shall:

1. Be located and constructed to minimize flood damage;
2. Meet the limitations of Section 3(C)(4)- of this ordinance if located in a regulated floodway;
3. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
4. Be constructed of flood damage-resistant materials; and
5. Have mechanical, plumbing, and electrical systems above the design flood elevation, or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

SECTION 3. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Fruitland Park. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 4. REPEALER.

Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict.

SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the City Commission that the provisions of this ordinance shall become and be made a part of the City of Fruitland Park Land Development Regulations, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 7. EFFECTIVE DATE.

This ordinance shall take effect immediately upon adoption.

PASSED on first reading October 26, 2017.

PASSED and ADOPTED in regular session, with a quorum present and voting, by the City Commission, upon second and final reading this _____ day of _____, 2017.

Chris Cheshire, Mayor

Attest:

Esther Coulson, City Clerk

Mayor Cheshire _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Vice-Mayor Gunter _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner Lewis _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner Ranize _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner Bell _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)

First Reading October 26, 2017

Second Reading _____

Approved as to form and legality:

Anita Geraci-Carver, City Attorney



**AGENDA ITEM
NUMBER
5h**

SUPPLEMENTAL AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Police Department Vehicle Purchases – Bartow Ford		
For the Meeting of:	November 9, 2017		
Submitted by:	City Manage/Police Chief		
Date Submitted:	October 31, 2017		
Are Funds Required:		Yes	X No
Account Number:	30521-60649		
Amount Required:	\$30,800.22		
Balance Remaining:	N/A		
Attachments:	Yes		
Description of Item: Approve the contract to purchase two vehicles from Bartow Ford.			
Action to be Taken: Approval.			
Staff's Recommendation:			
Additional Comments: Earmarked in the FY 2017-18 budget.			

Reviewed by: _____
City Manager

Authorized to be placed on the Regular agenda: _____
Mayor

FAX NUMBER: 863-533-8485

CITY OF FRUITLAND PARK PURCHASE ORDER REQUISITION (OVER \$500.00)

VENDOR: BARTOW FORD 5932 DATE: 10-23-17 DATE REQUIRED: 10-23-17
ADDRESS 1: 2800 US HWY NORTH REQUISITIONING DEPT: POLICE DEPT
ADDRESS 2: METHOD OF SHIPMENT: DELIVERY
CITY / ST / ZIP: BARTOW, FL 33830 EXPLANATION: 2 NEW PATROL UNITS
PHONE: 813-477-0052
VENDOR TERMS: NET 30 REQUISITION TOTAL: \$61600.44

Table with columns: ORG & OBJECT, ITEM DESCRIPTION, QTY ORD, UNIT PRICE, EXTENDED PRICE, VENDOR #2, VENDOR #3, FUNDS VERIFIED. Rows include: 2017 FORD INTERCEPTOR AWD UTILITY - UNMARKED (QTY 2, PRICE \$29740.22, EXTENDED \$59480.44), ROAD ALERT 40 MESSAGE BOARD (QTY 2, PRICE \$925.00, EXTENDED \$1850.00), DEEP WINDOW TINT DRIVER AND PASSENGER FRONT GLASS (QTY 2, PRICE \$135.00, EXTENDED \$270.00), SEE ATTACHED QUOTE.

PROVIDE QUOTES FROM (2) OTHER VENDORS IF INDIVIDUAL ITEM PRICE EXCEEDS \$250.00

VENDOR #2 _____ VENDOR #3 _____

Signature of Department Head
DEPARTMENT HEAD

CITY MANAGER

CITY TREASURER

Handwritten notes: 61,490 award SP 10/23/17 BN needed



October 20, 2017

Fruitland Park Police Department
Chief Michael A. Fewless

DESCRIPTION		
K8A	2017 Ford Interceptor Utility	
99R	3.7L V-6 Engine	
44C	6 Speed Automatic Transmission	
86P	Front Headlamp Prep Includes pre-drilled hole for side marker police use, does not include LED installed lights (eliminates need to drill housing assemblies) and pre-molded side warning LED holes with standard sealed capability (does not include LED installed lights)	
86T	Rear Taillight Prep Package Pre-existing holes with standard twist lock sealed capability (does not include LED installed lights) eliminates need to drill housing assemblies	
43D	Dark Car Feature	
60A	Factory Grill, Lamp, Siren & Speaker Wiring	
53M	SYNC Voice Activated Bluetooth	
595	Keyless Entry Fob	
76R	Reverse Sensing	
86L	Auto Headlamp	
21L	Front Warning Auxiliary Light	
16C	1st & 2nd Row Carpet Floor Covering	
17A	Aux Air Conditioning	
65U	Interior Upgrade Package	
64E	18" Painted Aluminum Wheels	
87R	Rear View Camera	
	Factory Invoice	\$34,051.80
	Government Price Concession @ Price Level 715	\$3,273.00
	3.05% Contract Discount	\$1,038.58
	Road Alert 40 Message Board	\$925.00
		\$0.00
	Deep Window Tint Driver & Passenger Front Glass	\$135.00
TOTAL PURCHASE AMOUNT PER UNIT		\$30,800.22

Pricing in accordance with the Charlotte County contract # 2015000418

If you have any questions or need any additional information please feel free contact me anytime.

Sincerely Yours,
 Richard Weissinger
 Direct Line (813) 477-0052



**AGENDA ITEM
NUMBER
5i**

SUPPLEMENTAL AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Police Department Vehicle Equipment Installation – HG2 Emergency Lighting			
For the Meeting of:	November 9, 2017			
Submitted by:	City Manager/Police Chief			
Date Submitted:	November 8, 2017			
Are Funds Required:		Yes	X	No
Account Number:				
Amount Required:				
Balance Remaining:				
Attachments:	Yes			
Description of Item:	Approve the quote to install equipment in the 2017 Ford Interceptor SUV.			
Action to be Taken:	Approval.			
Staff's Recommendation:				
Additional Comments:	Earmarked in the FY 2017-18 budget.			

Reviewed by: _____
City Manager

Authorized to be placed on the Regular agenda: _____
Mayor



HG2 Emergency Lighting
 477 N Semoran Blvd
 Orlando, FL 32807

Quote

Date	Quote No.
11/08/17	2600

407-426-7700
 sales@hg2lighting.com

407-426-7700
 www.hg2lighting.com

Bill To
Fruitland Park Police Dept Chief Mike Fewless 506 W Berckman St Fruitland Park, FL 34731

Ship To
Fruitland Park Police Dept Chief Mike Fewless 506 W Berckman St Fruitland Park, FL 34731

P.O. Number	Terms	REP	Vehicle	Vin#
			2017 Ford Interceptor SUV	

Item	Description	Quantity	Rate	Amount
WHL-LEG-BRW A	Whelen Legacy Lightbar Red/Blue with Full Flood Takedown and Rear Amber Traffic Advisor	1	1,999.00	1,999.00T
CCSRN3	Whelen Cencom Siren 16 Button	1	700.00	700.00T
SA315P	Whelen 100 Watt Speaker	1	0.00	0.00T
HG22PC68BR-I NT	Blue/Red 62" Side Runner Kit Interceptor Bracket	1	599.00	599.00
HG2RWINTSUV -BR-FL	Blue/Red Rear Visor Ford Interceptor SUV with Back Firing Lights & Dome Light	1	699.00	699.00
HG2CROSSFIR E-BR	Blue/Red Crossfire License Plate Light	1	399.00	399.00T
MCRNTB	Whelen Micron Stud Mount Blue in Grill Passenger Side	1	69.00	69.00T
MCRNTR	Whelen Micron Stud Mount Red in Grill Driver Side	1	69.00	69.00T
IONB	Whelen Ion Light Head Blue in Headlight Passenger Side	1	55.00	55.00T
IONR	Whelen Ion Light Head Red in Headlight Driver Side	1	55.00	55.00T
VTX609B	Whelen Vertex Strobe Blue Taillight Passenger Side	1	55.00	55.00T
VTX609R	Whelen Vertex Strobe Red Taillight Driver Side	1	55.00	55.00T
7170-0166	Gamber Johnson Vehicle Kit 2013-2017 Ford Interceptor SUV. Includes Cupholder, Arm Rest, and Mongoose Motion Device	1	485.00	485.00
7160-0250	Gamber Johnson Notepad V Universal Cradle	1	199.00	199.00
TH400	Thor 400 Watt Inverter	1	50.00	50.00
PJ772	Brother Pocket Jet 7 with Bluetooth and USB Cable	1	419.00	419.00T

Thank You For Your Business!	Subtotal	\$14,000.00
	Sales Tax (0.0%)	\$0.00
	Total	



HG2 Emergency Lighting
 477 N Semoran Blvd
 Orlando, FL 32807

407-426-7700
 sales@hg2lighting.com

407-426-7700
 www.hg2lighting.com

Quote

Date	Quote No.
11/08/17	2600

Bill To
Fruitland Park Police Dept Chief Mike Fewless 506 W Berckman St Fruitland Park, FL 34731

Ship To
Fruitland Park Police Dept Chief Mike Fewless 506 W Berckman St Fruitland Park, FL 34731

P.O. Number	Terms	REP	Vehicle	Vin#
			2017 Ford Interceptor SUV	

Item	Description	Quantity	Rate	Amount
7160-0430	Gamber Johnson MCS External Brother Printer Mount Armrest	1	199.00	199.00T
75100	Streamlight Stinger Charger Holder	1	0.00	0.00T
22050	Streamlight Charger Cord Direct Wire	1	25.00	25.00T
GK10301S1USS CAXL	Setina Dual Weapon Partition Mount Gun Rack Standard Shotgun & Standard Rifle	1	429.00	429.00T
PK1126ITU12	Setina 10XL Front Prisoner Partition 2013-2017 Ford Interceptor SUV	1	566.00	566.00T
PK0123ITU122N D	Setina 12VS Expanded Metal Partition For Stock Seat or Setina TPO Seat 2013-2017 Ford Interceptor SUV	1	279.00	279.00T
QK0494ITU12	Setina Full Transport Seat with Center Pull Seatbelts for 2013-2017 Ford Interceptor SUV	1	559.00	559.00T
WK0514ITU12	Setina Steel Window Bars Vertical 2013-2017 Ford Interceptor SUV	1	146.00	146.00T
DK0100ITU12	Setina Door Panels Plastic TPO 2013-2017 Ford Interceptor SUV	1	164.00	164.00T
BK2017ITU12	Setina PB450L Pushbar with Whelen Lights Front Blue/Red	1	519.00	519.00T
Tint-2DR	Window Tint 2 Windows 30%	1	89.00	89.00T
B-SMM511-AX	Intermotive Surveillance Mode Module 2016 Ford PI Utility	1	350.00	350.00T
RR-LE24-1000	RoadRunner Law Enforcement	1	4,800.00	4,800.00T

Thank You For Your Business!	Subtotal	\$14,000.00
	Sales Tax (0.0%)	\$0.00
	Total	



HG2 Emergency Lighting
 477 N Semoran Blvd
 Orlando, FL 32807

Quote

Date	Quote No.
11/08/17	2600

407-426-7700
 sales@hg2lighting.com

407-426-7700
 www.hg2lighting.com

Bill To
Fruitland Park Police Dept Chief Mike Fewless 506 W Berckman St Fruitland Park, FL 34731

Ship To
Fruitland Park Police Dept Chief Mike Fewless 506 W Berckman St Fruitland Park, FL 34731

P.O. Number	Terms	REP	Vehicle	Vin#
			2017 Ford Interceptor SUV	

Item	Description	Quantity	Rate	Amount
RR-ICCA20	Sysstem(RoadRunner Digital Recorder, Rsm Software, Power Cable, 25' Cable Assembly, Removable 1TB HDD, 270x Zoom Camera with Mount, 2.4Ghz Wireless Audio Kit	1	0.00	0.00T
RR-GPS	Camera Cable Assembly, Video, Power & Audio 20'	1	0.00	0.00T
RR-CIR225	GPS Kit, GPS Receiver with ISM Interface	1	0.00	0.00T
Labor	Camera, IR Illumination, Day/Night Color W/ Audio Recording, 2.5mm Lens	1	1,000.00	1,000.00T
Labor	Labor/Installation of Parts Listed Above	1	300.00	300.00T
Graphics-Fruitland	Labor/Installation of Apollo Camera System, Radar and Radio	1	400.00	400.00T
Discount	Graphics Pacakge Fruitland Park with Roof Numbers		-1,732.00	-1,732.00
	Discount			
	2017 Ford Interceptor SUV			

Thank You For Your Business!	Subtotal	\$14,000.00
	Sales Tax (0.0%)	\$0.00
	Total	\$14,000.00



**AGENDA ITEM
NUMBER**
6b

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	City Attorney Report			
For the Meeting of:	November 9, 2017			
Submitted by:	Anita Geraci-Carver, City Attorney			
Date Submitted:	November 7, 2017			
Are Funds Required:		Yes	X	No
Account Number:				
Amount Required:				
Balance Remaining:				
Attachments:				
Description of Item:				
Please find below items to report to the City Commission.				
<p><u>James and Rita Homonai v. Foster, Crenshaw and City of Fruitland Park.</u> – Initial discovery was sent to Plaintiffs and discovery continues to be in process. Attorney Brionez requested Plaintiffs’ counsel to provide their settlement demand as. Plaintiffs provided demands and discovery responses. Attorney Brionez is in the process of scheduling depositions of the Plaintiffs. Plaintiffs are requesting depositions of Officers Crenshaw and Foster, Chief Fewless, and Jen Hutchinson. A more detailed update on the claims, demands, and future recommendations will be provided upon completion of the depositions.</p> <p><u>Green v. City of Fruitland Park, Hunnewell, Isom & Isaacs.</u> – Waiting for the Court to rule on pending motions to dismiss which were heard by the Court at a hearing held September 21, 2017. An update will be provided once the Court entered orders on the motions.</p> <p><u>Notice of Claim – James Hartson:</u> No developments to report.</p> <p><u>Notice of Claim – Larry Odum:</u> No developments to report.</p>				
Action to be Taken:				
Staff’s Recommendation:				
Additional Comments:				

Reviewed by: _____

Authorized to be placed on the Regular Consent agenda: _____
Mayor



AGENDA ITEM NUMBER 7

AGENDA ITEM SUMMARY SHEET

ITEM TITLE:	Public Comments			
For the Meeting of:	November 9, 2017			
Submitted by:	City Clerk			
Date Submitted:	October 18, 2017			
Are Funds Required:		Yes	X	No
Account Number:	N/A			
Amount Required:	N/A			
Balance Remaining:	N/A			
Attachments:	Yes			
Description of Item:				
<p>This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Action may not be taken by the City Commission at this meeting; however, questions may be answered by staff or issues may be referred for appropriate staff action.</p> <p>Note: Pursuant to F.S. 286.0114 and the City of Fruitland Park's Public Participation Policy adopted by Resolution 2013-023, members of the public shall be given a reasonable opportunity to be heard on propositions before the City Commission. Accordingly, comments, questions, and concerns regarding items listed on this agenda shall be received at the time the City Commission addresses such items during this meeting. Pursuant to Resolution 2013-023, public comments are limited to three minutes.</p>				
Action to be Taken: None.				
Staff's Recommendation:				
Additional Comments:				

Reviewed by: _____
City Manager

Authorized to be placed on the agenda: _____
Mayor

RESOLUTION 2013 -023

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, PROVIDING FOR A PUBLIC PARTICIPATION POLICY WITH REGARD TO MEETINGS OF CITY BOARDS AND COMMISSIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission wishes to adopt a public participation policy for meetings of the City's boards and commissions; and

WHEREAS, the City Commission accordingly desires to pass this Resolution 2013-023 to do so.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AS FOLLOWS:

Section 1. The following Public Participation Policy shall apply to meetings of City boards or commissions as provided herein.

Sec. 1. Citizen's Rights

(a) Definition. For the purposes of this section, "board or commission" means a board or commission of the City of Fruitland Park.

(b) Right to be Heard: Members of the public shall be given a reasonable opportunity to be heard on a proposition before a City board or commission except as provided for below. Public input shall be limited to three (3) minutes. This right does not apply to:

1. An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from §286.011; or
4. A meeting during which the Commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

Sec. 2. Suspension and Amendment of these Rules

(a) Suspension of these Rules: Any provision of these rules not governed by the City Charter or City Code may be temporarily suspended by a vote of a majority of the Commission.

(b) Amendment of these Rules: These rules may be amended or new rules adopted by resolution.

- (c) Effect of Variance from Rules: The failure to follow this Public Participation Policy shall not be grounds for invalidating any otherwise lawful act of the City's boards or commissions.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Resolution.

Section 3. This Resolution shall become effective immediately upon passage.

RESOLVED this 26 day of September, 2013, by the City Commission of the City of Fruitland Park, Florida.



Christopher J. Bell, Mayor

ATTEST:


MARIE AZZOLINO, Acting City Clerk

Passed First Reading 9/26/2013

Passed Second Reading N/A

Approved as to form:


SCOTT A. GERKEN, City Attorney