

SECTION II CONSTRUCTION SERVICES - GENERAL CONDITIONS

1. DEFINITIONS

Wherever used in the Project Manual, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. For additional definitions refer to Section I Instructions to Bidders, Defined Terms.

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

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

1.3 **Application for Payment** - The form accepted by CEI which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

1.4 **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.

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

1.6 **Bidder** - The individual or entity who submits a Bid directly to the Town.

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

1.8 **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.

1.9 **Bonds** - Bid, Performance and Payment Bonds and other instruments of security.

1.10 **Change Order** - A document recommended by Contractor, CEI, or the Town which is signed by Contractor, CEI and the Town and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Contract.

1.11 **Claim** - A demand or assertion by the Town 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.

1.12 **Contract** - The written Contract between the Town and Contractor covering the Work to be performed including other Contract Documents that are attached to the Contract or made a part thereof.

1.13 **Contract Administrator** - The Town's Contract Administrator shall mean the individual appointed by the Mayor who shall be the Town's authorized representative to coordinate, direct, and review all matters related to the Project on behalf of the Town.

1.14 **Contract Documents** - The Contract Documents consist of the Drawings, Engineering Drawings and Specifications, Bid Form, Contractor's Bid, including documentation accompanying Bid and post Bid documentation submitted prior to the Notice of Award, Qualifications Statement, Contract, Addenda, and Notice of Award, Notice to Proceed, Payment and Performance Bonds, the Construction Services General Conditions, Supplementary Conditions, any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements issued on or after the effective date of the contract.

1.15 **Contract Price** - The moneys payable by the Town to Contractor under the Contract Documents as stated in the Contract (subject to the provisions of the Contract in the case of Unit Price Work).

1.16 **Contract Time** - The date stated in the Contract for the completion of the Work.

1.17 **Contractor** - The person, firm or corporation with whom the Town has entered into the Contract.

1.18 **Construction Engineering and Inspection Services Company (CEI)** - The person, firm or corporation designated by the Town as its representative to ensure that the project is completed in accordance with the Drawings and Technical Specifications; including material testing and review as required.

1.19 **Cost of Work** - Means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the work.

1.20 **Days** - The term "days" shall mean calendar days unless otherwise specified.

1.21 **Defective** - An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to EOR's recommendation of final payment.

1.22 **Drawings** - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by EOR and are referred to in the Contract Documents.

1.23 **Effective Date** - The date stated in the Notice to Proceed fixing the date on which the Contract Time will commence.

1.24 **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.

1.25 **Engineer of Record (EOR)** - A Florida professional Architect or Engineer of record who is in responsible charge of the preparation, signing, dating, sealing, and issuing of the drawings, plans, technical specifications, and/or engineering documents for the project.

1.26 **Field Order** - A written order issued by EOR which orders minor changes in the Work but which
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does not involve a change in the Contract Price or the Contract Time.

1.27 **General Requirements** - Sections of Division 1 of the Specifications.

1.28 **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.

1.29 **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.

1.30 **Law 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.

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

1.32 **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.

1.33 **Notice of Award** - The written notice by the Town to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified the Town will sign and deliver the Contract.

1.34 **Notice to Proceed** - A written notice given by the Town to Contractor (with a copy to CEI) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents. This written notice will also state the dates of substantial and final completion of the project.

1.35 **Owner** - The Town of Medley which is the individual or entity with whom Contractor has entered into the Contract and for whom the Work is to be performed.

1.36 **Petroleum** - Petroleum, including crude oil or any fraction thereof which is liquid as standard conditions or 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.

1.37 **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.

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

1.39 **Project Manual** - The bound documentary information prepared for bidding and constructing the Work. This shall include the Contract Documents, Drawings, Technical Specifications, and any other set of documents required for completion of the Work. A full listing of the contents of the Project Manual, which may be

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bound in one or more volumes, is contained in the tables(s) of contents.

1.40 **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.

1.41 **Resident Project Representative** - The authorized representative of the Town (Owner's Representative) who may be assigned to the Site or any part thereof.

1.42 **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.

1.43 **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.

1.44 **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.

1.45 **Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.

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

1.47 **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and Workmanship as applied to the Work and certain administrative details applicable thereto.

1.48 **Sub-Contractor** - An individual, firm or corporation having a direct Contract with Contractor or with any other Sub-Contractor for the performance of a part of the Work at the site.

1.49 **Substantial Completion** - Refers to the date certified by the CEI to when all conditions and requirements of permits and regulatory agencies have been satisfied, and when the Work has progressed to the point where in the opinion of the CEI, as evidenced by the Certificate of Substantial Completion/Notice of Completion as applicable, it is sufficiently complete, in accordance with the Contract Documents, so that the Work is available for beneficial occupancy and can be utilized for the purposes for which it is intended; or if there be no such certificate issued when final payment is due. A temporary Certificate of Occupancy or Certificate of Occupancy must be issued for Substantial Completion to be achieved; however, the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy of the date thereof are not to be determinative of the achievement or date of Substantial Completion. The terms "Substantially Complete" and "substantially completed" can be used interchangeably as applied to any work refer to as "substantial completion" thereof.

1.50 **Successful Bidder** - The Bidder submitting a responsive Bid to whom the Town makes an award.

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

1.52 **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.53 **The Town** - The Town of Medley, Florida with whom Contractor has entered into the Contract and for whom the Work is to be provided.

1.54 **Town Council** – The Council of the Town of Medley, FL. The Council is composed of the Town’s Mayor and four councilmember all of whom have one vote in all matters before the Town Council.

1.55 **Town Engineer** - The engineer employed by the Town who shall represent the Town during the construction process.

1.56 **Underground Facilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television sewage and drainage removal, traffic or other control systems or water, and all irrigation systems on or contiguous to the worksite.

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

1.58 **Work** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.59 **Work Directive Change** - A written directive to Contractor, issued on or after the Effective Date of the Contract and signed by the Town and recommended by the CEI and approved by the EOR and the Town Engineer ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in Section V, Paragraph 2 and 3 of the General Conditions or to emergencies under Section VI, Paragraph 13 of the General Conditions. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change 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 Time as provided in Section XI.

1.60 **Written Amendment** - A written Amendment of the Contract Documents, signed by the Town and Contractor on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical aspects rather than strictly work related aspects of the Contract Documents.

2. ACRONYMS

Wherever in these Contract Documents and the Project Manual references are made to standards, specifications, or other published data of the various national, regional, or local organizations, such organizations may be referred to by their acronyms or abbreviation only. As a guide to the user, the following acronyms and

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abbreviations shall have the meanings indicated herein.

- 2.1 **AASHTO** - American Association of the State Highway and Transportation Officials
- 2.2 **ACI** - American Concrete Institute
- 2.3 **ANSI** - American National Standards Institute, Inc.
- 2.4 **ASCE** - American Society of Civil Engineers
- 2.5 **ASTM** - American Society for Testing and Materials
- 2.6 **AWWA** - American Water Works Association
- 2.7 **CEI** - Construction Engineering and Inspection Services Company
- 2.8 **EOR** - Engineer of Record
- 2.9 **FDOT** - Florida Department of Transportation
- 2.10 **ISO** - International Organization for Standardization
- 2.11 **MUTCD** - Manual of Uniform Traffic Control Devices
- 2.12 **NWWA** - National Water Well Association
- 2.13 **OSHA** - Occupational Safety and Health Administration
- 2.14 **PERA** - Miami-Dade Department of Permitting, Environment, and Regulatory Affairs
- 2.15 **PCBs** - Polychlorinated biphenyls
- 2.16 **SSPWC** - Standard Specifications of Public Works Construction
- 2.17 **UBC** - Uniform Building Code
- 2.18 **WASD** - Water and Sewer Department

SECTION III PRELIMINARY MATTERS

1. DELIVERY OF BONDS AND INSURANCE

Prior to award of the Contract by the Town, Contractor shall deliver to the Town copies of the certificate(s) of insurance evidencing the coverages required hereunder and specifically providing that the Town of Medley is an additional named insured or additional insured. Payment and Performance Bonds which Contractor is required to furnish in accordance with this Contract must be provided to the Town within fifteen (15) days after issuance of Notice of Award.

2. COMMENCEMENT OF CONTRACT TIME; EFFECTIVE DATE; NOTICE TO PROCEED

2.1 The Work shall commence subsequent to the execution of this Contract by all parties and upon a written Notice to Proceed from the Town setting forth the Effective Date of the Contract upon which date the Work shall commence. No Work shall be done at the site prior to the date on which the Contract Time commences to run.

2.2 The Town shall furnish to Contractor up to three (3) copies of the Contract Documents. Additional copies will be furnished upon request, at the cost of reproduction.

3. PRECONSTRUCTION CONFERENCE

Within twenty (20) days after the Effective Date of the Contract, but before Contractor starts the Work at the site, a conference attended by Contractor, EOR, CEI and others as appropriate will be held to discuss the schedules referred to in Paragraph 4 below, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

4. FINALIZING SCHEDULES

At least ten (10) days before submission of the first Application for Payment a conference attended by Contractor, CEI and others as appropriate will be held to finalize the schedules and procedures to establish a working understanding among the parties. The finalized progress schedule will be acceptable to CEI as providing an orderly progress on of the Work to completion within the Contract time, but such acceptance will neither impose on CEI's responsibility for the progress or scheduling of the Work nor relieve Contractor from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be acceptable to EOR as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to CEI as to form and substance.

SECTION IV CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

1. ENTIRE CONTRACT

The Contract Documents comprise the entire Contract between the Town and Contractor concerning the Work. The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Florida.

2. INTENT

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 work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids,

except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Town, Contractor, CEI or EOR, or any of their consultants, agents or employees from those set forth in the Contract Documents.

3. CONFLICT, ERROR OR DISCREPANCY

If during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to CEI in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from CEI.

4. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

4.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- A. A Change Order; or
- B. A formal written Amendment.

5. SUPPLEMENTS, MINOR VARIATIONS OR DEVIATIONS

5.1 In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized in one or more of the following ways:

- A. EOR's approval of a Shop Drawing or sample;
- B. EOR's written interpretation or clarification; or
- C. A field order.

6. REUSE OF DOCUMENTS

Neither Contractor nor any Sub-Contractors or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect Contract with the Town shall have or acquire any title to or Township rights in any of the Drawings, Specifications or other Documents (or copies of any thereof) prepared by or bearing the seal of the EOR; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the Town.

SECTION V AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

1. AVAILABILITY OF LANDS

The Town shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor. Contractor shall provide at Contractor's own expense and without liability to the Town any and all additional lands and access thereto that may be required for temporary construction facilities or storage of

materials and equipment. Contractor shall furnish to the Town copies of written permission that is obtained from the Town of such facilities. It is the responsibility of the Contractor to leave the additional lands in the same condition as prior to Work startup. Any damages caused by Contractor will be remedied at Contractors expense.

2. PHYSICAL CONDITIONS

2.1 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 the Town or EOR by the Town of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- A. The Town and/or EOR shall not be responsible for the accuracy or completeness of any such information or data; and
- B. Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the Town of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the costs of all of which will be considered as having been included in the Contract Price.

2.2 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which Contractor could not reasonably have been expected to be aware of, Contractor shall, promptly after becoming aware thereof and before performing any work affected thereby, except in an emergency as permitted by Section VI, Paragraph 13 of the General Conditions, identify the Town of such Underground Facility and give written notice thereof to the Town and EOR. EOR will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility. Contractor shall be allowed an extension of the Contract Time to the extent that any delay is attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and of which existence Contractor could not reasonably have been expected to be aware. If the parties are unable to agree as to the appropriate length of delay, Contractor may make a claim therefore as provided in this Contract.

3. REFERENCE POINTS

The Town shall provide engineering surveys to establish reference points for construction which in EOR's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work to protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the Town Contractor shall report to CEI whenever any reference point 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 by professionally qualified personnel.

4. HAZARDOUS ENVIRONMENTAL CONDITIONS

4.1 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:

- A. Secure or otherwise isolate such condition.
- B. Stop all Work in connection with such condition and in any area affected thereby; and
- C. Notify the Town and the CEI (and promptly thereafter confirm such notice in writing).

The Town shall promptly consult with CEI concerning the necessity for the Town to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with CEI, the Town shall take such actions as are necessary to permit the Town to timely obtain required permits to continue work the area where the hazardous environmental conditions were observed.

4.2 Contractor shall not be required to resume Work in connection with such condition or in any affected area until after the Town has obtained any required permits related thereto and delivered written notice to Contractor:

- A. Specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or
- B. Specifying any special conditions under which such Work may be resumed safely.

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

SECTION VI CONTRACTOR'S RESPONSIBILITIES

1. SUPERVISION AND SUPERINTENDENCE

Contractor shall supervise 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 be responsible to see that the finished Work complies accurately with the Contract Documents.

2. RESIDENT SUPERINTENDENT

Contractor shall keep on the worksite at all times during its progress a competent resident superintendent capable of communicating in English and any necessary assistants who shall not be replaced without written notice to the Town and CEI unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of DMRF Improvement

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Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

3. LABOR, MATERIALS AND EQUIPMENT

3.1 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. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all work at the site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without the Town's written consent given after prior written notice to CEI.

3.2 Unless otherwise specified in the Bid Documents, Contractor shall furnish and assume full responsibility for all 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 furnishing, performance, testing, start-up and completion of the Work.

3.3 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by EOR, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to EOR, or any of EOR's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Section IX and X of these General Conditions.

3.4 Within 10 days after the signing of the Contract, Contractor shall submit to the Town and the CEI a preliminary Progress Schedule indicating the times(number of days or dates) for starting and completing the various stages of the Work, including any milestones specified on the Project Manual. During the performance of the Work, Contractor shall adhere to the Progress Schedule which shall provide an orderly progression of the Work to completion within the Contract Times. The Progress Schedule may be adjusted from time to time as provided below.

- A. Contractor shall submit to the CEI for acceptance the proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions described in this Project Manual.
- B. Proposed adjustments in the Progress Schedule that will change the Contract Times may only be made by Change Order. Any claim for an adjustment in Contract Times shall be based on written notice submitted by the party making the Claim to the CEI and the other party to the Contract.

4. SUBSTITUTES OR "OR EQUAL" ITEMS

4.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is

permitted, materials or equipment of other Suppliers maybe accepted by EOR if sufficient information is submitted by Contractor to allow EOR to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by EOR from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to EOR for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application must state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct Contract with the Town for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by EOR in evaluating the proposed substitute. EOR may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

4.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to EOR, if Contractor submits sufficient information to allow EOR to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by EOR will be similar to that provided in Paragraph 4.1 as applied by EOR and as maybe supplemented in the Contract Documents.

4.3 EOR will be allowed a reasonable time within which to evaluate each proposed substitute. EOR will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without EOR's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The Town may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

5. CONCERNING SUB-CONTRACTORS, SUPPLIERS AND OTHERS

5.1 Contractor shall be fully responsible to the Town and EOR for all acts and omissions of the Subcontractors, Suppliers and other persons directly or indirectly employed by its Subcontractors, Suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with Contractor to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by him/her. Nothing in the Contract Documents shall create any Contractual relationship between the Town or EOR and any such Sub-Contractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Town or EOR to pay or to see to the payment of any moneys due any such Sub-Contractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.

5.2 All work performed for Contractor by a Sub-Contractor will be pursuant to an appropriate

Contract between Contractor and the Sub-Contractor which specifically binds the Sub-Contractor to the applicable terms and conditions of the Contract Documents for the benefit of the Town and EOR.

6. PATENT FEES AND ROYALTIES

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.

7. PERMITS

Contractor shall obtain and pay for all permits and licenses. Contractor shall pay all government charges and inspection fees as required by the Town. The Town reserves the right to waive as it deems appropriate all municipal permit and inspection fees related to this contract. However, the Town shall require that Contractor to pay all fees relative to re-inspections, as they may be required from time to time.

8. LAWS AND REGULATIONS

8.1 Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work. Neither the Town nor CEI shall be responsible for monitoring Contractor's compliance with any laws and regulations.

8.2 If Contractor observes that the Specifications or Drawings are at variance with any laws or regulations, Contractor shall give EOR prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Section IX, Paragraph 6 of the General Conditions. If Contractor performs any Work knowing or having reason to know that it is contrary to such laws or regulations, and without such notice to EOR, Contractor shall bear all costs arising there from.

9. TAXES

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 State of Florida and its political subdivisions which are applicable during the performance of the Work.

10. USE OF PREMISES

10.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of Workers to the Project site and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements and shall not unreasonably encumber the premises 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 Town or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Town or EOR by any such party or occupant because of the performance of the Work, Contractor shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of Contractor's use of the premises.

10.2 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the Town. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

10.3 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.

11. RECORD DOCUMENTS

Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. Each document shall be labeled "PROJECT RECORD" and information shall be recorded concurrently with construction progress. These Record Documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to CEI for reference. Upon completion of the Work, these Record Documents, samples and Shop Drawings will be delivered to CEI for the Town.

12. SAFETY AND PROTECTION

12.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the worksite and other persons and organizations who may be affected thereby; all the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, irrigation systems, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

12.2 Contractor shall furnish watchmen, flagmen, warning signs, cones, barricades, flashing lights and other necessary safeguards in sufficient numbers and at appropriate locations to protect and divert vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new work. Such watchmen and flagmen shall be furnished on a twenty-four (24) hour basis when conditions require. Contractor and all Subcontractors shall take all necessary precautions to guard against and eliminate all possible fire hazards and prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private, particularly when gas or arc welding and cutting is taking place. Open flames including the use of flambeaux are strictly prohibited. No additional payment will be made for signs, barricades, lights, flags, watchmen, flagmen, required fire extinguishing apparatus and personnel, and other protective devices. Contractor shall not use explosives on the site, nor allow explosives of any type or nature to be brought upon the site of the construction, without the express written approval of the Town and CEI. When the use of explosives is authorized by the Town and CEI, Contractor shall exercise the utmost care in handling and usage of such explosives for the protection of life and property. All explosives shall be stored in a safe manner and storage places shall be clearly marked "DANGEROUS -EXPLOSIVES" and placed in the care of competent watchmen. When such use of explosives becomes necessary, Contractor shall furnish to the Town, proof of insurance coverage, adequately providing public liability and property damage insurance as a rider attached to

Contractor's policies unless otherwise included.

12.3 Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify the Town of Underground Facilities and utility when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused directly or indirectly by workers employed by and of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and CEI has issued a notice to the Town and Contractor in accordance with Section XIV, Paragraph 7 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

12.4 Contractor shall designate a responsible representative at the worksite whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the Town.

13. EMERGENCIES

13.1 In emergencies affecting the safety or protection of persons or the Work or property at the worksite or adjacent thereto, Contractor, without special instruction or authorization from CEI to the Town, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give EOR prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If EOR determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order will be issued or an Amendment made through proper procedures to document the consequences of the changes or variations.

13.2 Contractor shall be required to remove all materials from the job site and provide safe storage for the same that may be blown about or become a hazard during a hurricane or windstorm. Contractor shall also take necessary precautions to remove bulkheads, dams or other structures blocking drains in the event of the threat of flooding condition. No extra pay will be allowed for this work.

13.3 Shop Drawings and Samples

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the Project Specifications or Engineering Drawings, Contractor shall submit to CEI for review and approval in accordance with the accepted schedule of Shop Drawing submissions or for other appropriate action if so indicated, five (5) copies of all Shop Drawings, which will bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as EOR may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CEI to review the information as required.
- B. Contractor shall also submit to CEI for review and approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been

checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

- C. Before submission of each Shop Drawing or sample Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- D. At the time of each submission, Contractor shall give CEI specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to CEI for review and approval of each such variation. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract Documents.

14. CONTINUING THE WORK

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Town. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or as Contractor and the Town may otherwise agree in writing.

15. INDEMNIFICATION

15.1 General Indemnification: The parties agree that one percent (1%) of the total compensation paid to Contractor for the Work of the Contract shall constitute specific consideration to Contractor for the indemnification to be provided under the Contract. To the fullest extent permitted by laws and regulations, Contractor shall indemnify, save and hold harmless the Town, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of Engineer, architects, attorney's consultants and other professionals and court and arbitration costs arising out of or resulting from the performance of the Work excluding the sole negligence of the Town. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from:

- A. Any and all bodily injuries, sickness, death, disease;
- B. Injury to or destruction of tangible personal property, including the loss of use resulting there from;
- C. Other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this project including the warranty period;
- D. The use of any improper materials;

- E. Any construction defect including patent defects;
- F. Any act or omission of Contractor or its Sub-Contractors, agents, servants or employees;
- G. The violation of any federal, state, county or the Town laws, by-laws, ordinances or regulations by Contractor, its Sub-Contractors, agents, servants or employees; and
- H. The breach or alleged breach by Contractor of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

15.2 Patent and Copyright Indemnification: Contractor agrees to indemnify, save and hold harmless the Town, its officers, agents and employees, from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the Town, its officers, agents and employees, on account of any claims, fines, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the Town, its officers, agents and employees for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

15.3 Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of the Town, in connection with the foregoing indemnifications, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of the Town when applicable.

15.4 The Town reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of Contractor under the indemnification. Such indemnification shall not be limited to the amount of comprehensive general liability insurance which Contractor is required to obtain under the Contract. Nothing contained herein is intended nor shall it be construed to waive the Town's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph 15 and its subparts.

16. LIABILITY FOR USE OF WORK FOR INTENDED PURPOSES

As an inducement for the Town's Council to enter into this Contract, Contractor has represented an expertise in the construction of and completion of like projects as described in these bid documents. In reliance upon those representations, the Town hired Contractor for specified construction services and documents. Contractor understands and agrees that the Town intends to utilize said Engineering Drawings for the stated purposes and therefore Contractor shall be liable for any defective or negligent design, whether patent or latent, as such maybe found by a court of competent jurisdiction.

SECTION VII OTHER WORK

1. RELATED WORK AT SITE

The Town may perform other work related to the Project at the site by the Town's own forces, have other work performed by utility or let other direct Contracts therefore which shall contain General Conditions similar to

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these. Written notice thereof will be given to Contractor prior to starting any such other work not previously noticed to Contractor; and, if Contractor believes that performance of work other than that already noticed will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim therefore as provided in this Contract.

SECTION VIII THE TOWN'S RESPONSIBILITIES

1. The Town shall issue all communications to Contractor through the CEI or the Town Engineer.
2. The Town shall furnish the data required of the Town under the Contract Documents promptly and shall make payments to Contractor promptly after they are due.
3. The Town's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Section V, Paragraph 3 of this document.
4. The Town is obligated to execute Change Orders as indicated in Section X, Section XI and Section XII.
5. The Town shall have such other responsibilities and rights as are expressed in the Contract Documents.

SECTION IX CEI'S STATUS DURING CONSTRUCTION

1. THE TOWN'S REPRESENTATIVE

CEI will be the Town's representative during the construction period and until final payment is due. The duties and responsibilities and the limitations of authority of CEI as the Town's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the Town and EOR.

2. VISITS TO SITE

CEI will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. CEI's efforts will be directed toward providing for the Town a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site inspections, CEI shall keep the Town and EOR informed of the progress of the Work and shall endeavor to guard the Town against defects and deficiencies in the Work.

3. TECHNICAL CLARIFICATIONS AND INTERPRETATIONS

EOR will issue with reasonable promptness such written clarifications or interpretations of the technical requirements of the Contract Documents as EOR may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefore as provided in this Contract. Should Contractor fail to request interpretation of questionable items in the Contract Documents neither the Town nor EOR will thereafter entertain any excuse for failure to execute the Work in a satisfactory manner.

4. AUTHORIZED VARIATIONS IN WORK

CEI may authorize minor variations in the Work from the technical requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on the Town, and also on Contractor who shall perform the Work involved promptly. If Contractor believes that a field order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefore as provided elsewhere in this Contract.

5. REJECTING DEFECTIVE WORK

CEI will have the authority to disapprove or reject work which CEI believes to be defective, and will also have authority to require special inspection or testing of the work whether or not the work is fabricated, installed or completed.

6. DECISIONS ON DISPUTES

CEI will be the initial interpreter of the technical requirements of the Contract Documents and the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Section X, Section XI and Section XII in respect of changes in the Contract Price or Contract Time will be referred initially to EOR in writing with a request for a formal decision in accordance with this Paragraph, which EOR will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to the Town promptly, but in no event later than three (3) days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to EOR and the Town within seven (7) days after such occurrence unless EOR allows an additional period of time to ascertain more accurate data in support of the claim. The rendering of a decision by EOR with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Section XIV, Paragraph 9) will be a condition precedent to any exercise by the Town or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

7. CHANGE ORDERS

7.1 The Town and Contractor shall execute appropriate Change Orders recommended by the CEI covering:

7.2 Changes in the Work which are:

- A. ordered by the Town which do not invalidate the Contract and without notice to any surety.
- B. required because of acceptance of defective Work as describes in Section XIII or the Town's correction of defective Work, or
- C. agreed to by the parties.

7.3 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.

7.4 Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by EOR; 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.

8. DETERMINATIONS FOR UNIT PRICE WORK

CEI will determine the actual quantities and classification of Unit Price Work performed on such matters before rendering a written decision thereon (by recommendation of a Application for Payment or otherwise). CEI's written decision thereon will be final and binding (except as modified by CEI to reflect changed factual conditions or more accurate data) upon the Town and Contractor.

9. DECISION ON REQUIREMENTS OF CONTRACT DOCUMENTS AN ACCEPTABILITY OF WORK

9.1 CEI will be the initial interpreter of the requirements of the Project Manual and judge of the acceptability of the Work thereunder. All matters in question and other matters between the Town and Contractor arising prior to the date final payment is due relating to acceptability of the Work, and the interpretation of the requirements of the Project Manual pertaining to the performance of the Work, will be referred initially to the CEI in writing within 30 days of the event giving rise to the question.

9.2 CEI will, with reasonable promptness, render a written decision on the issued referred. If the Town or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a claim may be made. The date of CEI's decision shall be the date of the event giving rise to the issues referenced.

9.3 CEI's written decision on the issue referred will be final and binding on the Town and Contractor.

9.4 When functioning as interpreter and judge, CEI will not show partially to the Town or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

10. LIMITATIONS ON CEI'S RESPONSIBILITIES

10.1 Neither CEI's authority to act under this Paragraph 7 or elsewhere in the Contract Documents nor any decision made by CEI in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CEI or Contractor, any Sub-Contractor, any supplier, or any other person or organization performing any of the Work, or to any surety for any of them except as such duties and responsibilities are included within the Contract Documents.

10.2 CEI will not be responsible for the acts or omissions of Contractor or of any Sub-Contractor, any supplier, or of any other person or organization performing or furnishing any of the Work. CEI shall not be responsible for safety measures on the Project. This is the responsibility of the Contractor.

SECTION X CHANGES IN THE WORK

1. The Town, without invalidating the Contract, may order changes in the Work which do not materially alter the scope and character of the Work of the Contract or the completion date. All such changes in the Work shall be authorized by a Change Order. Any individual Change Order which decreases the cost of the Work to the Town or increases the cost of the Work by an amount not in excess of Twenty Five Thousand Dollars (\$25,000.00) must be authorized and approved by the Town prior to their issuance. Any individual Change Order which increases the cost of the Work to the Town by an amount which exceeds Twenty Five Thousand Dollars (\$25,000.00) must be formally authorized and approved by the Town Council prior to their issuance and before Work may begin. No claim against the Town for extra work in furtherance of such Change Order shall be allowed unless prior approval has been obtained.

2. If the Town and Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in Section X or Section XI.

3. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented except in the ease of an emergency and except in the case of uncovering work as those situations are addressed herein.

4. The Town and Contractor shall execute appropriate Change Orders or written Amendments covering:

4.1 Changes in the Work which are ordered by the Town pursuant to this Section, and are required to correct defective work or are agreed to by the parties; and

4.2 Changes in the Contract Price or Contract Time which are agreed to by the parties. 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. Proposed Change Orders shall be prepared by Contractor on forms approved by the Town. When submitted for approval to the Town they shall early the signature of the applicable Contract Administrator, Town Engineer, and Contractor.

5. 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 Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be Contractor's sole responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

SECTION XI CHANGE OF CONTRACT PRICE

1. GENERAL

1.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price,

1.2 The Contract Price may only be changed by a Change Order or by a written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered to CEI promptly (but in no event later than three (3) days after the occurrence of the event giving rise to the amount of the claim with supporting data to be delivered within seven (7) days and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. No resolution of a claim for adjustment in the Contract Price shall be effective until approved by the Town in writing. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Paragraph.

1.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- A. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
- B. By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any Sub-Contractor fees) which shall not exceed twenty-five percent (25%) of the original Contract Price as defined herein or Contract Price as modified by an acceptable Change Order or written Amendment executed by all parties.
- C. On the basis of the Cost of the Work determined as provided in Paragraph 4 below plus a Contractor's Fee for overhead and profit determined as provided in Paragraph 6 below.

2. COST OF THE WORK

2.1 The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Town 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 this Section.

- A. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by the Town and Contractor. 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, Worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays, shall not be included in the above unless authorized in writing by the Town.
- B. 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, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the Town, and Contractor shall make provisions so that they may be obtained.

C. Supplemental costs including the following:

- a. 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 brokers, which are consumed in the performance of the Work.
- b. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others in accordance with rental Contracts approved by the Town with the advice of CEI, and the costs, of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental Contracts. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work
- c. Sales, consumer, use or similar taxes related to the Work and for which Contractor is liable, imposed by laws and regulations.
- d. Royalty payments and fees for permits and licenses.
- e. The cost of utilities, fuel and sanitary facilities at the site.
- f. Minor expenses such as Internet services, cell phone service, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- g. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

3. NOT INCLUDED IN THE COST OF THE WORK

3.1 The term Cost of the Work shall NOT include any of the following:

- A. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general 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 a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 6 below, all of which are to be considered administrative costs covered by Contractor's fee.
- B. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
- C. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- D. Costs due to the negligence of Contractor, any Sub-Contractor, 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.

- E. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 6 below.

4. CONTRACTOR'S FEE

4.1 Contractor's fee allowed to Contractor for overhead and profit shall be determined as a mutually acceptable negotiated fee:

- A. For costs incurred under this Section shall not exceed ten percent (10%).
- B. No fee shall be payable on the basis of costs itemized under Paragraphs 4.1 (C.)(a-g), 5 and 6 of this Section XI.
- C. The amount of credit to be allowed by Contractor to the Town for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Contractor's fee by an amount equal to ten percent (10%) for the net decrease.
- D. When both additions and credits are involved in any one change the combined overhead and profit shall be figured on the basis of net increase if any, however, profit will not be paid on any Work not performed.

5. COST BREAKDOWN REQUIRED

Whenever the cost of any work is to be determined pursuant to Section XI, Paragraphs 4, 5 and 6 Contractor will submit in a form acceptable to CEI an itemized cost breakdown together with supporting data.

SECTION XII CONTRACT TIME

1. COMMENCEMENT

- 1.1 The Date of Commencement of the Work is the date established in the Notice to Proceed.
- 1.2 Time of Substantial Completion:
 - A. The date of Substantial Completion of the Work or designated portion thereof is the date certified by CEI when construction is sufficiently complete, in accordance with the Contract Documents, so the Town can occupy or utilize the Work or designated portion thereof for the purposes for which it is intended.

2. CHANGE OF CONTRACT TIME

2.1 All time limits stated in the Contract Documents are of the essence of the Contract. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR

ASSERTED AGAINST THE TOWN BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the Town or its agents. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at the National Weather Service Miami-South Florida Forecast Office.

2.2 No recovery for early completion. If the Contractor submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the Town shall not be liable to the Contractor for any costs incurred because of delay or hindrance should the Contractor be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the Town to the Contractor shall be consistent with and applicable only to the completion of the Work and completion dates set forth in these Construction Services General Conditions.

2.3 The Contract Time may only be changed by a Change Order or a written Amendment. Any claim for extension of time shall be made in writing to CEI not more than three (3) days after the detection or beginning of the occurrence of the event giving rise to the delay and stating the general nature of the claim; otherwise, it shall be waived. In the case of a continuing delay only one (1) claim is necessary. Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

3. LIQUIDATED DAMAGES

Upon failure of Contractor to complete the Work within the time specified for Final Completion, (plus approved extensions if any) Contractor shall pay to the Town the sum of Five Hundred Dollars (\$500.00) for each day that the Substantial Completion of the Work is delayed beyond the time specified in the Contract for Substantial Completion, as fixed and agreed liquidated damages and not as a penalty. After Substantial Completion, if Contractor neglects, fails or refuses to complete the remainder of the Work within the Contract Time or any approved extension thereof, Contractor shall pay to the Town the sum of Five Hundred Dollars (\$500.00) for each calendar day (plus approved extensions if any) after the time specified in the Contract for Final Completion and readiness for final payment as fixed and agreed liquidated damages and not as a penalty. Liquidated-damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the Town as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the Contract on time. Regardless of whether or not a single Contract is involved, the above-stated liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. The Town shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to Contractor, the amount of such liquidated damages and if the amount retained by the Town is insufficient to pay in full such liquidated damages, the Contractor shall pay in full

such liquidated damages. Contractor shall be responsible for reimbursing the Town, in addition to liquidated damages or other per day damages for delay, for all costs of engineering, architectural fees, and inspection and other costs incurred in administering the construction of the project beyond the completion date specified or beyond an approved extension of time granted to Contractor whichever is later.

SECTION XIII WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

1. WARRANTY AND GUARANTEE

Contractor warrants and guarantees to the Town and CEI that all work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted. Contractor warrants to the Town that the consummation of the Work provided for in the Contract Documents will not result in the breach of any term or provisions of, or constitute a default under any indenture, mortgage, Contract, or Agreement to which Contractor is a party. Contractor warrants that there has been no violation of copyrights or patent rights in connection with the Work of the Contract.

2. ACCESS TO WORK

CEI and other representatives of the Town, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

3. TESTS AND INSPECTION

3.1 Contractor shall give CEI and Contract Administrator Inspector timely notice of readiness of the Work for all required inspections, tests or approvals.

3.2 Contractor shall assume full responsibility, pay all costs in connection therewith and furnish CEI the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

3.3 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of CEI, it must, if requested by CEI, be uncovered for examination and properly restored at Contractor's expense. Such uncovering shall be at Contractor's expense unless Contractor has given CEI timely notice of Contractor's intention to cover the same and CEI has not acted with reasonable promptness in response to such notice.

3.4 Neither observations by CEI nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

4. UNCOVERING THE WORK

4.1 If any work is covered contrary to the written request of CEI, it must, if requested by CEI or Town Representative, be uncovered for CEI's observation and replaced at Contractor's expense.

4.2 If CEI or Town Representative considers it necessary or advisable that covered work be observed by CEI or inspected or tested by others, Contractor, at CEI's request, shall uncover, expose or otherwise make available for observation, inspection or testing as CEI may require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of engineers, architects, attorneys and other professional(s), and the Town shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in the Contract Documents. If, however, such work is found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the contract time, or both, directly attributable to such uncovering and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefore as provided in the Contract Documents.

5. THE TOWN MAY STOP THE WORK

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

6. CORRECTION OR REMOVAL OF DEFECTIVE WORK

If required by CEI or Town Representative, Contractor shall promptly, as directed, either correct all defective work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CEI, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

7. ONE YEAR CORRECTION PERIOD

If within one (1) year after the date of completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to the Town and in accordance with the Town's written instructions, either correct such defective Work, or, if it has been rejected by the Town, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Town may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. 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 or by written Amendment.

SECTION XIV PAYMENTS TO CONTRACTOR AND COMPLETION

1. SCHEDULE OF VALUES

The schedule established as provided in the Contract Documents will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CEI.

2. APPLICATION FOR PROGRESS PAYMENT

At least ten (10) days before each progress payment is scheduled (but not more often than once a month), Contractor shall submit to CEI 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 the Town 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 and other arrangements to protect the Town's interest therein, all of which will be satisfactory to the Town. The amount of retainage with respect to progress payments will be as stipulated in the Contract.

3. CONTRACTOR'S WARRANTY OF TITLE

Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Town no later than the time of final payment free and clear of all Liens.

4. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENTS

CEI will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment, or return the Application to Contractor indicating in writing CEI's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. The Town shall make payment to Contractor within thirty (30) days after approval by the CEI of Contractor's requisition for payment.

5. GROUND FOR REFUSAL

5.1 CEI may refuse to recommend the whole or any part of any payment if, in his/her opinion, it would be incorrect to make such representation to the Town. CEI may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CEI's opinion to protect the Town 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 written Amendment or Change Order.

C. Of CEI's actual knowledge of the occurrence of any of the events outlined elsewhere in the Contract Documents that represent grounds for refusal of payment in whole or part the Town may refuse to make payment of the full amount recommended by CEI because claims have been made by the Town on account of Contractor's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling the Town to a set-off against the amount recommended, but the Town must give Contractor written notice stating the reasons for such action within a reasonable time from receipt of CEI's recommendation for payment on that matter.

D. Final Inspection:

Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, CEI will make a final inspection with the Town 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 remedy such deficiencies.

6. FINAL APPLICATION FOR PAYMENT

After Contractor has completed all such corrections to the satisfaction of CEI and the Town and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up Record Documents and other Documents, all as required by the Contract Documents, and after CEI has indicated that the Work is acceptable, Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the Town) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the Town, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the Town or the Town's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Sub-Contractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to the Town to indemnify the Town against any lien. In addition, Contractor shall also submit with the final application for payment, the completed set of "As-Built" prints for review and approval. Final payment to Contractor shall not be made until said prints have been reviewed and approved by CEI. Prior to approval, if necessary, the prints may be returned to Contractor for changes or modifications and if in the opinion of CEI they do not represent correct or accurate "AS-BUILTS".

7. FINAL PAYMENT AND ACCEPTANCE

7.1 If, on the basis of CEI's observation of the Work during construction and final inspection, and CEI's review of the Final Application for Payment and accompanying documentation all as required by the Contract Documents, CEI is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, CEI will, within ten (10) days after receipt of the Final Application for Payment, indicate in writing CEI's recommendation of payment and present the Application to the Town for payment. Thereupon CEI will give written notice to the Town and Contractor that the Work is acceptable. Otherwise, CEI will return the Application to Contractor, indicating in writing the reasons for refusing to

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recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to the Town of the Application and accompanying documentation, in appropriate form and substance, and with CEI's recommendation and notice of acceptability, the amount recommended by CEI will become due and will be paid by the Town to Contractor.

7.2 If, through no fault of Contractor, Final Completion of the Work is significantly delayed and if CEI so confirms, the Town shall, upon receipt of Contractor's Final Application for Payment and recommendation of CEI, 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 the Town for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if Bonds have been furnished as required, 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 CEI 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.

7.3 Any moneys not paid by the Town when claimed to be due to Contractor under this Contract shall not be subject to interest, including but not limited to pre-judgment interest.

8. CONTRACTOR'S CONTINUING OBLIGATION

Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by CEI, nor any payment by the Town to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the Town, nor any act of acceptance by the Town nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by CEI, nor any correction of defective Work by the Town will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

9. WAIVER OF CLAIMS

The acceptance of final payment shall constitute a waiver of all claims by Contractor against the Town other than those previously made in writing and still unsettled as of the date of final payment.

10. THE TOWN MAY SUSPEND WORK

The Town may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor and CEI which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if Contractor makes an approved claim therefore as provided in the Contract Documents.

11. THE TOWN MAY TERMINATE

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

- A. If Contractor commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or

otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

- B. If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
- C. If Contractor makes a general assignment for the benefit of creditors.
- D. If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors.
- E. If Contractor admits in writing an inability to pay its debts generally as they become due.
- F. If Contractor persistently fails 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 as same maybe revised from time to time.
- G. If Contractor disregards laws or regulations of any public body having jurisdiction.
- H. If Contractor disregards the authority of CEI.
- I. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents, the Town may, after giving Contractor and the surety seven (7) days written notice and to the extent permitted by laws and regulations, terminate the services of Contractor, 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 full extent they could be used by Contractor without liability to Contractor for trespass or conversion, incorporate in the Work all materials and equipment stored at the site or for which the Town has paid Contractor but which are stored elsewhere, and finish the Work as the Town may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work, including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs, such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to the Town. Such costs incurred by the Town will be approved as to reasonableness by CEI and incorporated in a Change Order, but when exercising any rights or remedies under this Paragraph the Town shall not be required to obtain the lowest price for the Work performed.
- J. Where Contractor's services have been so terminated by the Town, the termination will not affect any rights or remedies of the Town against Contractor then existing or which may thereafter accrue any retention or payment of moneys due Contractor by the Town will not release Contractor from liability.

12. TERMINATION FOR CONVENIENCE OF THE TOWN

Upon seven (7) days written notice delivered by certified mail to Contractor, the Town may, without cause and without prejudice to any other right or remedy, terminate the Contract for the Town's convenience whenever the Town determines that such termination is in the best interests of the Town. Where the Contract is terminated for the convenience of the Town, the notice of termination to Contractor must state that the Contract is being terminated for the convenience of the Town under the termination clause, the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, Contractor shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract, and refrain from placing further orders and subcontracts, except as they may be necessary, and complete any continued portions of the Work.

13. TERMINATION BY CONTRACTOR

If the Work should be stopped under an order of any court of other public authority for a period of more than ninety (90) days through no act or fault of Contractor or of anyone employed by him/her, or if CEI fails to review and approve or state in writing reasons for non-approval of any application for payment within thirty (30) days after it is submitted or if the Town fails to pay Contractor within thirty (30) days after presentation by CEI of any sum determined to be due, then Contractor (after written notice to the Town and an opportunity to cure provided to the Town) may, upon ten (10) days written notice to the Town and CEI stop Work or terminate this Contract and recover from the Town, payment for all Work executed and any expense sustained. The provisions of this Paragraph shall not relieve Contractor of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the Town.

SECTION XV NOTICES & COMPUTATION OF TIME

1. GIVING NOTICE

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

Contractor:

The business address of Contractor is: *as stated in the Contract with the Town*

The business address of the Town is:

Town of Medley
7777 N.W. 72 Avenue
Medley, FL 33166

2. COMPUTATION OF TIME

When any period of time is referred to in the Contract Documents by days it will such calendar days and it will be computed to exclude the first and include the last day of such period. If the last day of the final amended contract

time 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. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

SECTION XVI MISCELLANEOUS

1. Should the Town or Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this Paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

2. The duties and obligations imposed by these Construction Services General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon Contractor and all of the rights and remedies available to the Town and CEI thereunder, 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 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, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Contract.

3. Contractor shall not assign or transfer the Contract or its rights, title or interests therein without the Town's prior written approval. The obligations undertaken by Contractor pursuant to the Contract shall not be delegated or assigned to any other person or firm unless the Town shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by Contractor and the Town may, at its discretion, cancel the Contract and all rights, title and interest of Contractor shall thereupon cease and terminate.

SECTION XVII BONDS AND INSURANCE

1. CONSTRUCTION, PAYMENT AND PERFORMANCE BONDS

1.1 Within fifteen (15) days after issuance of Notice of Award, but in any event prior to commencing Work, Contractor shall execute and furnish to the Town a Performance Bond and a Payment Bond, each written by a corporate surety authorized to do business in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised July 1, 1997 (31 DFR, Section 223.10, Section 223,11). Further, the surety company shall provide the Town with evidence satisfactory to the Town, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858:

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1.2 Financial Stability A

1.3 Financial Size VIII

1.4 Two (2) separate Bonds are required and both must be approved by the Town. The penal sum stated in each Bond shall be the amount equal to the total amount payable under the Contract. The Performance Bond shall be conditioned that Contractor perform the Contract in the time and manner prescribed in the Contract. The Payment Bond shall be conditioned that Contractor promptly make payments to all persons who supply Contractor with labor, materials and supplies used directly or indirectly by Contractor in the prosecution of the Work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such Bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save and hold harmless the Town to the extent of any and all payments in connection with the carrying out of said Contract which the Town maybe required to make under the law.

2. BONDS, REDUCTION AFTER FINAL PAYMENT

Such Bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said Bonds reduced after final payment to an amount equal to twenty-five percent (25%) of the Contract Price, or an additional Bond shall be conditioned that Contractor shall correct any defective or faulty Work or material which appears within one (1) year after Final Completion of the Contract, upon notification by the Town except in Contracts which are concerned solely with demolition work, in which case the twenty-five percent (25%) shall not be applicable.

3. DUTY TO SUBSTITUTE SURETY

If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, Contractor shall within five (5) days thereafter substitute another Bond and surety, both of which must be acceptable to the Town.

4. INSURANCE

See Instructions to Bidders, Section I, Paragraph 12 for details.

5. THE TOWN'S LIABILITY AND INSURANCE

The Town shall not be responsible for purchasing and maintaining any insurance to protect the interests of Contractor, Sub-Contractors or others on the Work. The Town specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute 768.28 and Florida Statute 95.11.