

**CITY OF FERNANDINA BEACH
ITB 21-05
CLARIFIER NO. 1 IMPROVEMENTS –
INSTALLATION OF OWNER-FURNISHED EQUIPMENT AND MATERIALS**

INTRODUCTION

The City of Fernandina Beach, Florida is accepting competitive sealed bids for **CLARIFIER NO. 1 IMPROVEMENTS – INSTALLATION OF OWNER FURNISHED EQUIPMENT AND MATERIALS**.

The City will receive sealed bid submittals at the location stated below not later than **2:00pm (Eastern Time), May 20, 2021**.

A Mandatory Pre-bid meeting will be held at 11.00am (Eastern Time), April 29, 2021 at the City of Fernandina Beach WWTF, 1180 S. 5th Street, Fernandina Beach, FL 32034. Submittals will not be accepted from any firm that is not represented at the Mandatory Pre-bid meeting.

Any submittal received after the above stated time and date will not be considered. It shall be the sole responsibility of the Bidder to have its Bid delivered to the City of Fernandina Beach, by U.S. Mail, hand delivery or any other method available to him/her; however, facsimile, or electronic submittals will not be accepted. Delay in delivery shall be the sole responsibility of the Bidder. Submittals received after the deadline will not be considered. Award of the Bid is subject to authorization and appropriation of funds.

The original bid submittal [**1 original, 4 copies and 1 electronic copy, (CD or thumb drive)**] must be delivered to City Hall in a sealed package, clearly marked on the outside, **ITB #21-05** and addressed to:

City of Fernandina Beach
Attn: City Clerk's Office – **ITB #21-05**
204 Ash Street
Fernandina Beach, FL 32034

Hand delivered Submittal is to be taken to the Clerk's Office at the above address.

The bid shall be submitted on the specified **Contact Sheet/Bid Form**, hereto attached as "**Exhibit A**". The person signing the Bid Response Form shall have the authority to bind the proposer to the Bid. All information on the Bid form shall be provided, or the Bid may not be accepted.

The competitive sealed Bid shall be accompanied by a "**Public Entity Crimes**", herein provided as "**Exhibit B**", "**Drug-Free Workplace Certification**" herein provides as "**Exhibit C**", "**E-Verify Statement**" herein provided as "**Exhibit D**", "**Proposer Acknowledgements and Agreements**", herein provided as "**Exhibit E**", "**Conflict of Interest**", herein provided as, "**Exhibit F**", "**Non-Collusion Affidavit**", herein provided as "**Exhibit G**" and "**Dispute Disclosure**", herein provided as "**Exhibit H**".
Attachment "A", City of Fernandina Beach Sample contract.

In accordance with Item 16, General Terms and Conditions, please provide **proof the Contractor/Vendor is not listed in the Excluded Parties List System**, a federal suspension and debarment listing.

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SCOPE OF WORK

The Work to be bid consists of furnishing all miscellaneous materials, tools, supervision, labor, and equipment for:

-Performing on-site selective demolition, preparatory work, miscellaneous assembly, fabrication, and installation of Owner-furnished equipment and mechanisms to upgrade the existing Clarifier No.1 structure and operations. Included is the receipt of delivery at the project site and unloading of delivered materials by the City's supplier, TSC JACOBS-OVIVO, USA. Specifically, the Contractor is to be responsible for the following:

1. Perform selective demolition of the existing Clarifier equipment consisting of:
 - existing center column, drive mechanisms, skimmer arms, scum trough and piping,
- and all associated components including personnel access walkway that are being replaced as directed by the Owner.
2. Perform dewatering, draining, and cleaning of Clarifier Tank Structure
3. Drain and dispose of all existing lubricants.
4. Assemble and Install center column with flanges and inlet ports.
5. Assemble and Install Rake arms with 2 full radii with spiral rake blades.
6. Assemble and Install Rotating sludge collection drum with CMD Device.
7. Drive platform with aluminum floor plate, handrail, and toe plate.
8. Install new Feedwell system.
9. Install new Energy dissipating inlet.
10. Assemble and Install two new skimmer arms with neoprene wipers and full radius scum trough.
11. Install new Rotating center cage.
12. Assemble and Install new personnel access walkway to replace existing walkway.
13. Install all Electrical controls and components required for operation of new system.
14. Provide and install all necessary lubricants as required.
15. Site clean-up associated with the Contractor's work.

Included in the Scope of Work is the unloading of Owner Furnished equipment and material delivered on site and pre-assembly/fabrication of the individual components as necessary for installation in accordance with City's equipment supplier instructions and guidelines.

Assist City in final inspection of the installation and perform start-up service and testing.

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SAFETY

The Contractor shall provide all necessary barricades and signage and take necessary precautions to protect buildings, general public and Contractor personnel. The Contractor shall at all times guard against damage or loss of City property or the general public and shall be held responsible for replacing or repairing any loss or damage to the satisfaction of The City of Fernandina Beach.

GENERAL CONSTRUCTION GUIDELINES

1. The contractor shall be required to coordinate his work schedule with the A/E and City during the course of the project.
2. Survey Construction staking and testing of materials will be the contractor's responsibility for all aspects of the work including, but not limited to, compaction, proof-rolling, asphalt mix, gradations, and concrete testing. The cost of such testing shall be included in the bid submittal, and no additional compensation will be made.
3. The City does not commit to furnishing full-time inspection or testing of the work in progress or at material sources. Lack of inspection and/or testing by the City or A/E will in no way relieve the Contractor of his responsibility to provide quality workmanship in accordance with the Contract Documents.
4. The Contractor is required to submit shop drawings and material submittals to the A/E for review and approval prior to delivery and installation.
5. Bidder agrees to commence work within ten days after the Notice to Proceed is issued and to complete all work within 120 calendar days from Notice to Proceed.
6. Contractor is solely responsible for all construction means, methods, techniques, sequences, procedures and coordinating all portions of Work under Contract.
7. Contractor is responsible for all acts and omissions of his Subcontractors.
8. Engineer will not establish limits of Work between Contractor and Subcontractors nor will he act as an arbiter in establishing such limits.

CUTTING & PATCHING OF WORK

1. Contractor is responsible for all cutting, fitting, or patching that may be required to complete work or to make its several parts fit together properly.
2. Contractor is responsible for cutting, fitting, or patching provided by Subcontractors.

EXCAVATING & BACKFILLING

1. Contractor is responsible for all excavating, trenching, backfilling or compaction that may be required to complete work or to make its several parts fit together properly.

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2. Contractor is responsible for excavating, backfilling, trenching, or compaction provided by Subcontractors.

SLEEVES & INSERTS

1. Contractor is responsible for sleeves or inserts that may be required to complete work or to make its several parts fit together properly.
2. Contractor is responsible for sleeves or inserts provided by Subcontractors.

AWARD

Award recommendation shall be made to the most responsive and responsible bidder offering the best value. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals. The City also reserves the right to waive minor irregularities or variations to the specifications and in the bidding process.

Successful Bidder is required to have a Business License in the city where their home office is located. If Bidder's business office is located in the City of Fernandina Beach a business tax license is required.

Bid Package

Bid Documents and Specifications are available to download from the City of Fernandina Beach website at www.fbfl.us/bids, and DemandStar at www.demandstar.com. Questions regarding bid package can be directed to Wanda Weaks, Purchasing Agent, wweeks@fbfl.org.

CONTACT

Specification questions during the bid period shall be submitted in writing to City Engineer, Charles George, cgeorge@fbfl.org with a copy to Purchasing Agent, Wanda Weaks, wweeks@fbfl.org.

Bidders are hereby put-on notice that no contact shall be made with any of the City Commission members, other City staff, or others that may be involved in the selection process to discuss this request or to influence the outcome of the selection.

ADDENDA

A written response to bidder questions will be issued via Addendum and posted on the City's website at www.fbfl.us/bids and DemandStar at www.demandstar.com. It is the bidder's responsibility to check the City's website for Addenda prior to submitting their bid. The deadline for questions is **ten** days before bid opening.

If there is an Addendum it becomes part of the original Bid and shall be acknowledged by attaching a copy of the Addendum, signed by an authorized representative of the person or company submitting the bid or proposal. Failure to do so may disqualify the bid or proposal.

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ITB 21-05 SCHEDULE

Advertisement of Bid	April 15, 2021
<u>Mandatory</u> Pre-bid Meeting	11:00am (Eastern Time) April 29, 2021
Deadline for submission of Bids	2:00pm (Eastern Time) May 20, 2021

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CONTRACTOR PERSONNEL

1. CITY reserves the right to reject any CONTRACTOR employee doing business for the awarded CONTRACTOR that has not received the proper safety training or is not performing work in a safe manner. Any costs resulting in a rejection of personnel will be solely at the CONTRACTOR's expense.
2. No sub-contractor shall be employed by CONTRACTOR for the provision of these services without the prior written approval of the CITY.

PERFORMANCE STANDARDS/QUALITY REQUIREMENTS

In addition to those requirements set forth in the Scope of Work, all services (and items incidental thereto) and work provided by CONTRACTOR shall conform to the following:

PROJECT SCHEDULE

CONTRACTOR shall begin no later than ten calendar days from issuance of Notice to Proceed; all work must be completed **within 200 calendar days of startup**.

TIME OF PERFORMANCE

1. CONTRACTOR may, upon approval by City designee, be provided weekends and after-hours access to the site, if necessary or desired, to complete the project, weather permitting. However, no additional sums shall be paid other than that specified in the bid response.
2. CONTRACTOR may set up equipment onto the jobsite without commencing work for a maximum of seven calendar days. Location of equipment storage will be provided by the City designee.
3. CONTRACTOR will, prior to any delay submit notification of delay in writing within five calendar days to City designee.
4. CONTRACTOR shall submit documentation explaining the cause of delay. CITY shall determine the extent of delay and extend the time for completing the work if, in CITY's judgment, the findings justify an extension. Any delay shall not entitle CONTRACTOR to any additional compensation. The sole remedy of CONTRACTOR shall be an extension of time.
5. CONTRACTOR shall arrange with the City designee a sequence of procedure, means of access, space for storage of materials and equipment and use of approaches, corridors, and stairways. CITY shall not be responsible for lost or stolen materials or tools left on the job site.

SITE MAINTENANCE

1. Extreme care shall be taken to safeguard all existing facilities, paved walkways, site amenities, utilities, windows, and vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of CONTRACTOR and shall be repaired and/or replaced in equal or better condition at no additional cost to the CITY. CONTRACTOR shall use all means to protect existing objects, structures and vegetation designated to remain. In the event of damage, immediately make all repairs, replacements, and dressings to damaged materials, to the approval of CITY, at no additional cost to the CITY. In the event of damage to public and/or private property, CONTRACTOR shall immediately contact the CITY's designee and inform them about the location and extent of the damages and will stay on site until his investigation of the damage is concluded.

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2. CONTRACTOR shall place all debris in refuse container and keep the premises free from rubbish at the end of each working day. The CONTRACTOR shall be responsible for supplying, emptying and the removal of waste containers/dumpsters, as necessary.
3. CONTRACTOR shall arrange material storage so as not to interfere with the CITY's operations.
4. CONTRACTOR shall at the completion of the job, remove unused material and rubbish from the site. If CONTRACTOR refuses at any time to remove the debris from the premises, or to keep the working area clean, such cleaning will be completed by the CITY and deducted from the balance due CONTRACTOR.
5. CONTRACTOR shall store all materials to be protected against weather, vandalism, and theft. Any materials found to be damaged or missing shall be replaced by CONTRACTOR at no cost to the CITY.
6. CONTRACTOR shall be responsible for clean up at the site at the conclusion of the project, including excess construction materials, and a thorough cleaning of all areas that were affected by CONTRACTOR or their subcontractors to the satisfaction of the CITY.

SAFETY

1. CONTRACTOR shall be aware that this project is subject to public and private vehicular and pedestrian traffic at all times.
2. CONTRACTOR shall comply with all Federal/County/City laws/ordinances and City Fire codes during the execution of this project.
3. CONTRACTOR shall continuously maintain adequate protection of all work from damage and shall protect public and privately owned property, structures, vehicles, utilities, and work of any kind against damage or interruptions of service, which may result from the operations of the CONTRACTOR.
4. CONTRACTOR shall provide Safety Data Sheets: If any chemicals or materials or products containing toxic substances, as defined by Chapter 442, Florida Statutes, are to be used at any time during this the contract period, CONTRACTOR shall furnish Safety Data Sheets to the City designee prior to commencing this project.
5. CONTRACTOR shall perform all work under supervision of a capable supervisor using skilled employees.
6. CONTRACTOR shall have a person, which is on their payroll and with **the authority to make decisions, on site at all times.**

REQUIRED INSPECTIONS

Prior to the start of any work, CONTRACTOR shall examine all surfaces and report in writing to the City designee any conditions detrimental to work. Failure to observe this injunction constitutes a waiver to any subsequent claims to the contrary.

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CITY'S RIGHTS TO INSPECT, REJECT, AND STOP WORK

1. Right to Inspect Work - CITY will have the right to inspect the work at all times. Such inspection will not relieve CONTRACTOR of any of its obligations to perform the work in strict accordance with the contract documents.
2. Right to Reject Work - CITY will have the right to reject work which does not conform to the contract documents. CITY may require special inspection or testing of the work.
3. Right to Stop Work - If CITY reasonably believes that CONTRACTOR is failing to carry out the work in accordance with the contract documents; CITY may order CONTRACTOR to stop the work, or a portion of the work, until such time as the cause of such stop order has been eliminated.
4. Right to Carry Out Work - If CONTRACTOR fails to perform the work properly or fails to perform any provision of the contract documents, including unauthorized project schedule delays, CITY, after three days written notice to CONTRACTOR without correction, may correct the deficiencies through the CITY's own forces or through others and may deduct the cost thereof from the payment then or thereafter due to the CONTRACTOR.

WARRANTY

1. CONTRACTOR shall provide warranty stating that the Clarifier No. 1 Improvement Project is complete in detail and finish, and free of hazardous conditions. The material warranty and workmanship must have a one-year warranty.
2. If CITY deems it unacceptable to have CONTRACTOR correct the work, which has been incorrectly done, a deduction from the contract price shall be made as determined by CITY. Such a deduction from the contract price shall in no way affect the CONTRACTOR's responsibility for defects, which may occur nor their ability for correcting them, and damage caused by them.
3. Supplies and/or services furnished as a result of this bid shall be covered by the most favorable commercial warranties, expressed or implied, that the bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the CITY by any other clause of this bid. Any applicable written warranty from the product manufacturer and/or representative company shall commence from date of completion and acceptance by the CITY.

LIQUIDATED DAMAGES

Should the awarded CONTRACTOR fail to complete work and make the area available for use within the stipulated period CONTRACTOR may be assessed by the CITY the amount of Five hundred dollars (\$500.00) for each consecutive calendar day that expires after the time specified for completion and ready for final payment until the work is complete. The per diem charge may be invoked at the discretion of the CITY and said sum to be taken as liquidated damages and deducted from the final payment or charged back to CONTRACTOR. This deduction is in addition to other remedies available to the CITY pursuant to Florida Statutes or the terms and conditions of this solicitation.

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INSURANCE REQUIREMENTS

Insurance requirements are outlined in the General Conditions of this Invitation to Bid.

BOND REQUIREMENTS

Bid bonds requirements are outlined in the General Conditions of this Invitation to Bid.

EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

The City is an equal opportunity/affirmative action employer. The City is committed to equal opportunity employment effort and expects firms that do business with the City to have an affirmative action program.

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GENERAL CONDITIONS OF INVITATION TO BID

- 1. PREPARATION OF BID** - INVITATION TO BID shall be prepared in accordance with the following:
 - a. The enclosed Contact Sheet/Bid Form, attached hereto as “Exhibit A”, shall be used when submitting your INVITATION TO BID.
 - b. All information required by the Contact Sheet/Bid Form shall be furnished. The Bidder shall print or type his/her name and manually sign the Form and any continuation sheet on which an entry is made.
 - c. Unit prices shall be shown and where there is an error in extension of price, the unit price shall govern.
 - d. Alternate Bids will not be considered unless authorized by the Invitation to Bid.
 - e. Bidders will **not** include federal taxes nor State of Florida sales, excise, and use taxes in prices, as the City is exempt from payment of such taxes. An exemption certificate will be signed where applicable upon request.
 - f. Bidders shall make all investigations necessary to thoroughly inform themselves about any and all conditions related to the performance of the contract. Plea of ignorance by the Bidder of conditions that exists or may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements provided for in the Purchasing Policy, Purchasing Ordinance and/or State and Federal Statutes. The City’s Purchasing Ordinance is set forth in Chapter 2-420, *et seq.*
 - g. Prices quoted must be FOB City of Fernandina Beach, Florida with all transportation charges prepaid unless otherwise specified in the Invitation to Bid.
 - h. Deliveries are to be FOB Destination unless otherwise specified in the Invitation to bid
 - i. Deliveries are to be made during regular business hours.
 - j. Bids and Bid prices shall be valid for a minimum of ninety (90) days, unless otherwise stated on the INVITATION TO BID.
- 2. SUBMISSION OF BID**
 - a. Bids and changes thereto shall be enclosed in sealed envelopes & addressed as instructed on the Bid Form. The name and address of the Bidder, the date and hour of the Invitation to Bid opening and the material or service shall be placed on the outside of the envelope.
 - b. INVITATION TO BID must be submitted on the forms furnished. Electronic Bids will not be considered.
- 3. REJECTION OF BID**
 - a. The City reserves the right to accept or reject any or all Bids, to waive irregularities and technicalities, and to request resubmission or to re-advertise for the services. The City shall be the sole judge of the submittals. The City's decision shall be final.

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4. WITHDRAWAL OF BID

- a. Bids may not be withdrawn after the time set for the opening for a period of time as specified.
- b. Bids may be withdrawn prior to the time set for the opening. Such request must be in writing.

5. LATE BID

- a. INVITATION TO BID and modifications received after the time set for the opening will not be considered.
- b. Modifications in writing received prior to the time set for the opening will be accepted.

6. LOCAL, STATE, AND FEDERAL COMPLIANCE

- a. Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to the INVITATION TO BID and subsequent contract(s) in accordance with the requirements as stated in CFR 200.321, including but not limited to Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and Occupational Safety and Health Administration (OSHA) as applicable to this contract.
- b. A "Public Entity Crimes Statement", in accordance with Florida Statutes, Section 287.133 (3) (a), on Public Entity Crimes, attached hereto as "Exhibit B", must be received at the time of the bid.
- c. A "Drug Free Workplace Certification" attached hereto as "Exhibit C", must be received at the time of the bid.
- d. The City of Fernandina Beach requires that the Bidder selected will not discriminate under the contract against any person, in accordance with federal, state and local government regulations.
- e. An "E-Verify Statement" attached hereto as "Exhibit D" must be received at the time of the bid.

7. AWARD OF INVITATION TO BID

- a. The INVITATION TO BID will be awarded to the most responsive and responsible bidder offering the best value to the City of Fernandina Beach.
- b. The City reserves the right to accept and award item by item, and/or by group, or in the aggregate.
- c. A written award of acceptance, (Purchase Order), mailed or otherwise furnished to the successful Bidder shall result in a binding contract without further action by either party.
- d. Unless otherwise noted in the specifications, the length of the agreement shall be one year, with 2 one-year renewals possible based on the mutual consent of the parties.
- e. Upon award, for construction projects, the Contractor will be required to complete/execute the City's Contract and General Conditions for Construction Services. An example of the contract can be found on the City's website at www.fbfl.us/bids, Bids and Purchasing web page.

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- f. Agreement may be cancelled with 60-day notice unless otherwise stated in signed contract documents.

8. NOT RESPONSIBLE FOR COSTS

- a. The City shall not be responsible for any cost incurred by a prospective Bidder in responding to this INVITATION TO BID.

9. BONDS

- If Bid is less than \$100,000 no Bid Bond or Payment and Performance Bond required.
- If Bid is greater than \$100,000 and is for material only, a Bid Bond is required but no Payment and Performance Bond is required.
- If Bid is \$100,000 - \$200,000, and is for services, a Bid Bond is required but no Payment and Performance Bond is required.
- If Bid is greater than \$200,000, and is for services, Bid Bond and Payment and Performance Bond is required.

BID BOND:

- a. If the Base Bid or the Base Bid plus the sum of any alternates fall into the criteria above requiring a Bid Bond, the bidder shall enclose a Certified Check or Bid Bond with each bid. A Certified Check or Bid Bond shall be for an amount not less than five percent (5%) of the Bid price and shall be made payable to the CITY OF FERNANDINA BEACH as a guarantee that the Bidder will not withdraw its bid for a period of ninety (90) calendar days after Bid closing time. Bid Bonds or Certified Checks will be returned to unsuccessful bidders within 10 days of bid award. Successful bidders will receive their Certified Check or Bid Bond after the contract/agreement has been signed and a Performance and Payment Bond is received.

PERFORMANCE AND PAYMENT BONDS:

- a. In the event the Contract is awarded to the Bidder, Bidder will thereafter enter into a written contract with the CITY OF FERNANDINA BEACH and furnish a Payment and Performance Bond in an amount equal to the contract price. The form of the bonds shall be in accordance with Section 255.05 of Florida Statutes. Failing to do so, Bidder shall forfeit its bid security.

Payment and Performance Bond shall be secured from or countersigned by an agency or surety company recognized in good standing and authorized to do business in the State of Florida.

The following exceptions to bidder providing Performance and Payment Bonds are as follows: In lieu of the Performance and Payment Bonds, a contractor may file with the City an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in part II of

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chapter 625, Florida Statutes. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bonds. The value of an alternative form of security shall be in the amount of the bid.

10. PUBLIC INFORMATION

- a. All information contained in this Bid is public information, and as such will be handled in accordance with chapter 119, Florida Statutes.

11. ADDITIONAL INFORMATION

- a. The City reserves the right to require Bidders to provide references and information on previous similar experience prior to award of the contract.

12. QUESTIONS

- a. Any questions about the INVITATION TO BID should be communicated per instructions in the INVITATION TO BID.

13. INDEMNIFICATION AND INSURANCE

INDEMNIFICATION

The CONTRACTOR agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR, its agents, officers, contractors, subcontractors, employees, or anyone else employed or utilized by the CONTRACTOR in the performance of this Agreement. The CONTRACTOR's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the CONTRACTOR against the City and the CONTRACTOR hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this Section, the CONTRACTOR shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the CONTRACTOR's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving CONTRACTOR of any of its obligations hereunder. If the CONTRACTOR assumes control of the defense of any third-party claim in accordance with this paragraph, the CONTRACTOR shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the CONTRACTOR shall not assume or maintain control of the defense of any third-party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees,

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if (i) an adverse determination with respect to the third-party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the

CONTRACTOR has failed or is failing to prosecute or defend vigorously the third-party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third-party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. CONTRACTOR expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes, as amended. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

INSURANCE

Prior to commencement of any work under this Contract and until completion and final acceptance of the work, the CONTRACTOR/VENDOR shall, at its sole expense, maintain the following insurance on its own behalf, and furnish to the CITY certificates of insurance evidencing same and reflecting the effective date of such coverage as follows:

The term "Contractor" as used in the insurance rider, shall mean, and include Subcontractors of every tier.

- A. Worker's Compensation and Occupational Disease Insurance in accordance with the applicable law or laws; Employer's Liability Insurance with limit of at least One Million (\$1,000,000) dollars. This includes sole proprietorships and officers of corporations who will be performing work on the job.
- B. Commercial General Liability with a combined Bodily Injury and Property Damage limit of not less than ONE Million (\$1,000,000.00) dollars per occurrence and TWO Million (\$2,000,000) Dollars in the aggregate. The aggregate must be applicable on a per project basis. Coverage must include the following perils:
 - 1. Broad Form Blanket Contractual Liability for liability assumed under this Contract and all other Contracts relative to the project.
 - 2. Completed Operations/Products Liability.
 - 3. Broad Form Property Damage
 - 4. Personal and Advertising Injury Liability
 - 5. Independent Contractors

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6. Endorsements must be furnished reflecting the inclusion of the interests of Owner, Construction Manager, General Contractor, Contractor, (your company), their officers, directors, partners, representatives, agents and employees, and naming each as an Additional Insured on a primary and non-contributing basis.
7. Coverage is to be endorsed to reflect that insurance is to be primary and non-contributory with respect to any other collectable insurance, for the Owner, General Contractor, Contractor, (your company) and all other parties required to be named as additional insureds.
8. Coverage is to be provided on an "occurrence" basis with carriers licensed and admitted to conduct business in the State of [your state] or otherwise acceptable to the Contractor (your company).
9. A copy of policy and/or endorsement(s) and any other documents required to verify such insurance are to be submitted with the appropriate certificate(s), or upon the request of Contractor (your company). Failure to provide these documents is not to be construed as a waiver of the requirements to provide such insurance.
- C. Commercial Automobile Liability Insurance covering the use of all Owned, Non-Owned, and Hired Vehicles with combined Bodily Injury and Property Damage Limit of at least One Million (\$1,000,000.00) Dollars.
- D. Umbrella I Excess Liability Insurance with a limit of no less than One Million (\$1,000,000) minimum per occurrence.
- E. During the term of this agreement, (if applicable) the Contractor/Vendor will carry Professional Liability Insurance which will cover liability for any damage or non-performance on account of any error, omission, or other provable negligence caused by the Contractor/Vendor. The amount of insurance shall not be less than One Million (\$1,000,000) per occurrence and aggregate.
- F. Loss Deductible – If the insurance of any CONTRACTOR/VENDOR contains deductible(s), penalty(s) or self-insured retention(s), the CONTRACTOR/VENDOR Whose insurance contains such provision(s) shall be solely responsible for payment of such deductible(s), penalty(s) or self-insured retention(s).
- G. Where an Off Project Site Property exposure exists, the Contractor at its sole expense shall furnish to the Owner and Contractor (your company) Certificates of Insurance and other required documentation evidencing the following coverage which shall provide for the interests of [Name of Owner] , [Name of General Contractor] and (your company) to be named as Loss Payees and shall contain a provision requiring the insurance carriers to waive their rights of subrogation against all indemnities' named in the contract.
"All Risk" Property Insurance on all materials, equipment and supplies intended to become a permanent part of the construction stored on premises away from the project site and while in transit, until actually delivered to the project site. Coverage is to be provided on a replacement cost basis.

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- H. The above insurances shall each contain the following wording verbatim: "[Name of Owner], [Name of General Contractor], and (your company) are interested in the maintenance of this insurance and it is agreed that this insurance will not be canceled materially changed or not renewed without at least a thirty (30) day advance written notice to [Name and address of Owner], [Name and address of General Contractor] and [Name and address of your company] by certified mail-return receipt requested."
- I. The amount of insurance contained in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of the Subcontractor or any of its Subcontractors.
- J. The Contractor shall file certificates of insurance prior to the commencement of work with the Owner and the General Contractor which shall be subject to the Owner, General Contractor and (your company) approval of adequacy of protection and the satisfactory character of the Insurer.
- K. Any type of insurance or any increase of limits of liability not described above which the Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
- L. The carrying of the insurance described shall in no way be interpreted as relieving the Contractor or Subcontractor of any responsibility of liability under this Contract.
- M. Any policies effected by the Contractor on its Owned and/or Rented Equipment and Materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the [Name of Owner], [Name of General Contractor], [Name of Contractor (your company)] and all other indemnities named in the Contract.
- N. Should the Contractor engage a Subcontractor, the same conditions will apply under this contract to each Subcontractor, however, the retained Subcontractor shall be required to maintain limits of liability of not less than One Million (\$1,000,000.00) Dollars per occurrence and Two Million (\$2,000,000) Dollars in the aggregate, with said limits applicable on a per project basis, or such greater limits as may be required by the retaining Subcontractor.

14. PAYMENT

Payment due hereunder shall be made by the City to CONTRACTOR/VENDOR in accordance with the Florida Prompt Payment Act. The City's preferred method of payment is electronically by credit card/line. Upon award, CONTRACTOR/VENDOR will be contacted by the City's provider, Commerce Bank, to participate in the City's electronic payments program. **CONTRACTOR/ VENDOR must state on Exhibit "A" Bid Form whether they accept credit card payments and provide their Accounting Department contact name, phone number and email address.**

15. BID PROTESTS

Bid protest conditions and procedures are in accordance with City Ordinances – Part 2, Chapter 2, Article VII, Division 2, Section 2-444.

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16. FEDERAL GRANT MONEY

In the event this project is funded with federal grant monies, CONTRACTOR/VENDOR may not participate in the bid if CONTRACTOR/VENDOR is listed in the Excluded Parties List System

(EPLS) a federal suspension and debarment listing www.sam.gov CONTRACTOR/VENDOR shall include copy of search results with bid or proposal.

17. LOBBYING

- a. Lobbying is defined as any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and/or all other groups who seek to influence the governmental decision of a Board Member, the City Manager, and/or any City Personnel during the solicitation process. The lobbying black-out period commences upon the issuance of this solicitation and concluded upon the signing of the agreement. CONTRACTORS shall not contact any Commission Member and/or any requesting or evaluating Department/Office personnel during said black-out period. All questions and procedural matters shall be directed to the City Manager. The City Commissioners and/or the City Manager may disqualify any solicitation response where any Commissioner, the City Manager, and/or City Personnel have been lobbied in violation of the black-out period.

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EXHIBITS

EXHIBIT “A”	CONTACT SHEET/BID FORM
EXHIBIT “B”	PUBLIC ENTITY CRIMES
EXHIBIT “C”	DRUG-FREE WORKPLACE CERTIFICATION
EXHIBIT “D”	E-VERIFY STATEMENT
EXHIBIT “E”	PROPOSER ACKNOWLEDGEMENTS AND AGREEMENTS
EXHIBIT “F”	CONFLICT OF INTEREST
EXHIBIT “G”	NON-COLLUSION AFFIDAVIT
EXHIBIT “H”	DISPUTES DISCLOSURE
EXHIBIT “I”	DRAWINGS CLARIFIER No. 1

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EXHIBIT “A”

CONTACT SHEET/BID FORM

CLARIFIER NO. 1 IMPROVEMENTS \$ _____

Name: _____

Federal Taxpayer ID: _____

Mailing Address: _____

City, State, & Zip Code: _____

Telephone: _____ Fax: _____

Email: _____

Submitted By: _____

Title: _____

FIRM Accepts Credit Cards*: Yes No

Accounting Contact:

Name: _____ Title: _____

Email Address: _____ Phone: _____

*See preferred method of payment under “Prompt Payment Act” section of the General Conditions

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “B”

SWORN STATEMENT UNDER F.S. SECTION 287.133(3) (A), ON PUBLIC ENTITY CRIMES

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

1. This sworn statement is submitted with Bid, Proposal or Contract for _____.
2. This sworn statement is submitted by (entity) _____ whose business address is _____ and (if applicable) Federal Employer Identification Number (FEIN) is _____ (If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number: _____.)
3. My name is _____ and my relationship to the entity named above is _____.
4. I understand that a "public entity crime" as defined in Paragraph 287.133(a) (g). Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or any agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in paragraph 287.133(a) (b), Florida Statutes, means finding of guilt or a conviction of a public entity crime with or without an adjudication of guilt, in any federal or state trial court of records relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1) (a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The City of Fernandina Beach, Florida ownership by one of shares constituting a controlling income among persons when not for fair interest in another person, or a pooling of equipment or income among persons when not for fair market value under a length agreement, shall be a prima facie case that one person controls another person. A person who was knowingly convicted of a public entity crime, in Florida during the preceding 36 months shall be considered an affiliate.

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7. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of the state or of the United States with the legal power to enter into a binding contract for provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies)
- _____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- _____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. (Please attach a copy of the final order.)
- _____ The person or affiliate was placed on the convicted FIRM list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in public interest to remove the person or affiliate from the convicted FIRM list. (Please attach a copy of the final order.)
- _____ The person or affiliate has not been placed on the convicted FIRM list. (Please describe any action taken by, or pending with, the Department of General Services.)

Signature

Date:

STATE OF FLORIDA

COUNTY OF _____

PERSONALLY, APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature at the space provided above on this ____ day of _____, 20____, and is personally known to me, or has provided _____ as identification.

Notary Public

My Commission expires: _____

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “C”

DRUG-FREE WORKPLACE CERTIFICATION

The below-signed INDIVIDUAL/FIRM certifies that it has implemented a drug-free workplace program. In order to have a drug-free workplace prepare, a business shall:

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

As the person authorized to sign this statement, I Certify that this firm complies fully with the above drug-free workplace requirements.

COMPANY: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ PHONE: _____

NAME (TYPED OR PRINTED): _____ TITLE: _____

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “D”
E-VERIFY STATEMENT

Bid/Proposal Number: _____

Project Description: _____

I/FIRM acknowledges and agrees to the following:

I/FIRM shall utilize the U.S. Department of Homeland Security’s E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. All persons employed by the FIRM during the term of the Contract to perform employment duties within Florida; and
2. All persons assigned by the FIRM to perform work pursuant to the contract with the Department.

Individual/Company/Firm: _____

Authorized Signature: _____

Title: _____

Date: _____

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “E”

PROPOSER ACKNOWLEDGEMENTS AND AGREEMENTS

The undersigned, as an employee or agent of the Proposer, having the authority to sign a binding agreement on behalf of the corporation, company, or firm presenting this submittal, confirms understanding and/or agreement and/or takes exception with any statement in the following sections of this RFP document.

1. INTRODUCTION AND GENERAL INFORMATION
Understands and agrees to all terms.
2. PROPOSAL INSTRUCTIONS, TERMS AND CONDITIONS
Understands and agrees to all terms.
3. EVALUATION AND CONTRACT OVERVIEW
Understands and agrees to all terms.
4. PROPOSER’S RESPONSE: SUBMITTAL INFORMATION
Understands and agrees to all terms.
5. PROPOSER’S RESPONSE: PROPOSED TEAM
Understands and agrees to all terms.
6. PROPOSER’S RESPONSE: PROPOSED COMPENSATION
Understands and agrees to all terms.

Name: _____ Title: _____

Signature: _____ Date: _____

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “F”

CONFLICT OF INTEREST STATEMENT

This sworn statement is submitted with Bid, Proposal or Contract for _____.

This sworn statement is submitted by (entity) _____ whose business address is _____ and (if applicable) Federal Employer Identification Number (FEIN) is _____ (If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number: _____.)

My name is _____ and my relationship to the entity named above is _____.

1. The above-named entity is submitting a Proposal for the City of Fernandina Beach.
2. The Affiant has made diligent inquiry and provides the information contained in the Affidavit based upon his/her own knowledge.
3. The Affiant states that only one submittal for the above proposal is being submitted and that the above-named entity has no financial interest in other entities submitting proposals for the same project.
4. Neither the Affiant nor the above-named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraints of free competitive pricing in connection with the entity's submittal for the above proposal. This statement restricts the discussion of pricing data until the completion of negotiations if necessary and execution of the Contract for this project.
5. Neither the entity nor its affiliates, nor anyone associated with them, is presently suspended or otherwise ineligible from participation in contract letting by any local, State, or Federal Agency.
6. Neither the entity nor its affiliates, nor anyone associated with them have any potential conflict of interest due to any other clients, contracts, or property interests for this project.
7. I certify that no member of the entity's ownership or management is presently applying for an employee position or actively seeking an elected position with the City of Fernandina Beach.
8. I certify that no member of the entity's ownership or management, or staff has a vested interest in any aspect of the City of Fernandina Beach.
9. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above-named entity, will immediately notify the City of Fernandina Beach.

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Signature

Date:

STATE OF FLORIDA

COUNTY OF _____

PERSONALLY, APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature at the space provided above on this ____ day of _____, 20____, and is personally known to me, or has provided _____ as identification.

Notary Signature

My Commission expires: _____

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “G”

NON-COLLUSION AFFIDAVIT

This sworn statement is submitted with Bid, Proposal or Contract for _____.

This sworn statement is submitted by (entity) _____ whose business address is _____ and (if applicable) Federal Employer Identification Number (FEIN) is _____ (If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number: _____.)

My name is _____ and my relationship to the entity named above is _____.

1. The above named is fully informed respecting the preparation and contents of the attached submittal and of all pertinent circumstances respecting such submittal;
2. Such Submittal is genuine and is not a collusive or sham submittal;
3. Neither the said Submitter nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Submittal in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached submittal or any other Bidder, or to fix any overhead, profit or cost element of the submittal price or the submittal price of any other Bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage against the City of Fernandina Beach, Florida or any person interested in the proposed Contract; and
4. The price or prices quoted in the attached submittal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

Date:

STATE OF FLORIDA

COUNTY OF _____

PERSONALLY, APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature at the space provided above on this ____ day of _____, 20__, and is personally known to me, or has provided _____ as identification.

Notary Signature

My Commission expires: _____

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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EXHIBIT “H”

DISPUTES DISCLOSURE FORM

Answer the following questions by placing an “X” after “YES” or “NO”. If you answer “YES”, please explain in the space provided, or via attachment.

Has your firm or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulations or any other regulatory agency or professional association within the last five (5) years?

YES___ NO___

Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES_____NO_____

Has your firm had against it or filed any request for equitable adjustment, contract claims, bid protest, or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES_____NO_____

If yes, state the nature of the request for equitable adjustment, contract claim, litigation, or protest, and state a brief description of the case, the outcome or status of the suit and the monetary amounts or extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation or falsification of facts shall be cause for forfeiture of rights for further consideration of this proposal for the City of Fernandina Beach.

Firm

Date

Authorized Signature

Printed or Typed Name and Title

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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**“ATTACHMENT A”
LIST OF SUBCONTRACTORS**

I _____/DO, _____/DO NOT, propose to subcontract some of the work on this project. I
propose to subcontract work to the following contractors/firms:

CONTRACTOR/FIRM NAME:	ADDRESS:	DESCRIPTION OF WORK/SERVICES TO BE PERFORMED:	CONTRACT AMOUNT

THIS FORM MUST BE INCLUDED WITH BID/PROPOSAL

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“ATTACHMENT B”
CITY OF FERNANDINA BEACH
“SAMPLE CONTRACT” AND GENERAL CONDITIONS
FOR
CONSTRUCTION SERVICES

This **AGREEMENT** made on the _____ day of _____ in the year of 20____, **BETWEEN** the owner, CITY OF FERNANDINA BEACH, 204 Ash Street, Fernandina Beach, FL 32034 (hereinafter referred to as “Owner” or “City”) and the Contractor, (insert Name, Address, City, State, Zip)

PROJECT:

CONTRACTOR:

ARCHITECT/ENGINEER:

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The OWNER and CONTRACTOR agree as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

1. Enumeration of Contract Documents

Contract Documents comprise this Agreement, the plans, drawings, specifications, project manual, addenda, and other materials contained in City of Fernandina Beach Bid Number _____. Documents comprising Bid Number _____ are incorporated into this Agreement by reference and are a part of this Agreement as if attached or repeated herein. This Agreement represents the entire Agreement between the parties hereto and supersedes any prior negotiations, representations, agreements, or understandings, either written or oral.

2. Intent of Contract Documents

Execution of the Contract by the Contractor is a representation that the Contractor has become familiar with the Contract Documents and field conditions under which the Work is to be performed within the requirements of Work specified by the Contract Documents.

The headings of the sections of this Agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

3. Definitions:

Definitions are provided in Appendix 1 of this Agreement.

ARTICLE 2 - SCOPE OF WORK

The Contractor shall execute the entire Work described in the Contract Documents, Summary of Work.

ARTICLE 3 - COMMENCEMENT DATE

The Commencement Date shall be established by the Owner and communicated to the Contractor in a Notice to Proceed (NTP) sent by registered mail to the Contractor's place of business not later than 30 days following execution of the Contract, or receipt of all insurance certificates, bonds, and Schedules of Values required by the Contract, whichever is later. Failure to provide the required insurance or bonds within ten (10) days of the Award of Bid shall constitute a delay by the Contractor in honoring his Bid.

The Contractor will not commence Work on the project until receiving a Notice to Proceed from the Owner.

ARTICLE 4 - SUBSTANTIAL COMPLETION DATE

The Contractor shall commence work within ten calendar days from the date of Notice to Proceed. The Contractor shall achieve Substantial Completion of the Work not later than _____ consecutive calendar days after the date specified by the Notice to Proceed, subject to adjustments of the Contract Time as provided in the Contract Documents. The Contractor shall achieve Final Completion of the work not later than thirty (30) days after reaching Substantial Completion.

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

ARTICLE 5 - CONTRACT AMOUNT

The Owner shall pay the Contractor the sum of \$xxx,xxx subject to additions and deductions as provided in the Contract Documents for all Work described in Article 2.

ARTICLE 6 - LIQUIDATED DAMAGES

The Contractor and Owner mutually agree that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing.

If the said Contractor shall neglect, fail or refuse to complete the work within the time specified, or any proper extension thereof granted in accordance with this Agreement, then the Contractor does hereby agree, as a part consideration for the award of this contract, to pay to the Owner Five Hundred Dollars (\$500.00) per calendar day from the twenty first day beyond the Substantial Completion Date not as a penalty but as liquidated damages for such breach of Contract. Furthermore, the Contractor agrees to pay to the Owner the amount of Five Hundred Dollars (\$500.00) for each calendar day that the Work remains incomplete after the date established for Final Completion.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticably and extreme difficulty

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of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain. Also, failure to meet requirements for substantial or final completion shall subject the Contractor to reinspection fees as set forth in the specifications.

In addition to liquidated damages, should the Owner become liable for additional architectural fees due to delays by the Contractor which extend construction beyond the contracted construction time, the Contractor shall be liable for payment of such expenses to the Owner.

Both Liquidated Damages and Reinspection Fees shall be implemented using a Deductive Change Order or Construction Change Directive. The exact form used and its titling of such change order shall be as determined by the Owner.

ARTICLE 7 - PAYMENTS

1. Progress Payments

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

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

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

Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents.

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

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

Take that portion of the Contract Amount properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Amount allocated to that portion of the Work in the Schedule of Values, less retainage of 10%.

Add that portion of the Contract Amount properly allocable to materials and equipment delivered and stored at the Project Site for subsequent incorporation into the Work, less retainage of 10%.

Subtract the aggregate of previous payments made by the Owner.

The progress payment amount shall be further modified under the following circumstances:

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

2. Final Payment

Final payment, comprising the entire unpaid balance of the Contract Amount, shall be made by the Owner to the Contractor when the Contract has been fully performed and accepted by the Owner. Final payment shall be contingent upon the Contractor providing all warranties, guaranties and waivers of liens required under the Project Closeout Section of the Specifications. Furthermore, payment shall be made in accordance with the Florida Prompt Payment Act applicable to local governments.

3. Certifying a Schedule of Values

Within 10 days after award of the Contract, the Contractor shall submit to the Architect/Engineer a Schedule of Values allocating the values of various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer or Owner may require. This Schedule of Values shall be reviewed by the Architect/Engineer and approved by the Owner, and shall be used as the basis for reviewing the Contractor's Applications for Payment.

The Schedule of Values shall include a cost breakdown indexed per the Sections of the Specifications, which shall clearly set forth labor as distinct from materials and from equipment. Rough-in work shall be shown separately from finish work.

4. Contractor Applications for Payment

By the 15th of each month the Contractor shall submit to the Architect/Engineer an itemized Application for Payment in accordance with the Schedule of Values. Such application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect/Engineer may require. Payment shall be made on account of materials and equipment delivered and suitably stored at the site for

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subsequent incorporation into Work. If approved in writing by the Owner, payment may similarly be made for materials and equipment suitably stored off the site.

Applications for Payment shall not include:

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

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that all work, equipment and materials included in the Application for Payment are to the best of the Contractor's knowledge, information and belief, free from liens, claims, security interests or encumbrances.

5. Certification of Payment Requests

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

6. Criteria for Withholding A Certificate for Payment

The Architect/Engineer or Owner may withhold approval of a Certificate for Payment or, because of subsequent events, may nullify a prior approval of payment in whole or in part if in the Architect/Engineer's or Owner's opinion Contractor representations to the Owner are not supported or are deemed inaccurate. If the Contractor and Architect/Engineer or Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate of Payment for the amount to which the Architect/Engineer and Owner are able to certify payment. Certification may be withheld for these reasons:

Defective Work not corrected;

- Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount
- Damages owed to the Owner or others;
- Evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or estimated Liquidated Damages; or
- Failure by Contractor to make payments properly and promptly to subcontractors or suppliers; or
- Persistent failure to carry out the Work in accordance with the Contract Documents or other material breach by Contractor.

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

ARTICLE 8 - TERMINATION OR SUSPENSION OF THE CONTRACT

1. Termination by The Contractor

The Contractor may terminate the Contract if work is stopped for a period of 60 days or longer for the following reasons:

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

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

2. Termination by The Owner For Cause

The Owner may terminate the Contract due to the Contractor's inability to perform for these reasons:

- Refusal or failure to supply properly skilled workers or materials;
- Disregarding the laws, ordinances or regulations of public authorities having jurisdiction over the Work; or
- Substantially breaching provisions of the Contract Documents.

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

- Take possession of the site and materials, equipment, tools, and machinery therein owned by the Contractor;
- Accept assignment of Subcontracts; and
- Finish the work by whatever means are available to the Owner.

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

If the unpaid balance of the Contract Amount exceeds the costs of finishing the work, such excess shall be used to pay the Contractor amounts

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due for materials and equipment stored on site and Work completed in accordance with the Contract Documents which has been Certified by the Architect/Engineer and accepted by the Owner. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner, which obligation for payment shall survive the termination of the Agreement.

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

Should the Owner's termination of the Contractor for Cause be challenged, and should such challenge prevail, then the Owner's termination of the Contractor shall be deemed to have been a Termination for Convenience, and Contractor's entitlement to compensation shall be determined in accordance with paragraph 3 below.

3. Termination by the Owner for Convenience

The Owner may, without cause, order the Contractor in writing to suspend, delay or terminate the Work in whole or in part for such period of time the Owner may determine. The Owner shall adjust the Contract Amount for increases in the cost of performance under the Contract caused by suspension, delay, or interruption.

No change in Contract Amount shall be made where the suspension, delay, or interruption for which the Contractor is responsible or attributable.

In the event of termination for convenience by the Owner, the Contractor shall only be entitled to and paid compensation earned through the date of termination and Termination Expenses. Termination Expenses are those jobsite costs directly attributable to termination (such as jobsite demobilization costs). Contractor shall not be entitled to direct, indirect, or consequential damages, or other damages for loss from and including, but not limited to economic loss, lost profit on under-performed portions of the work, loss of anticipated profits, idle equipment expenses, interest or carrying costs, overhead expenses, loss of efficiency, or loss of productivity, lost or reduced bonding capacity.

ARTICLE 9 - EXECUTION OF THE PROJECT

A. OBLIGATIONS OF THE ARCHITECT/ENGINEER

1. Architect/Engineer as Owner's Representative

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

The Architect/Engineer specifically assumes no duty or responsibility which may be construed as being for the benefit of and thereby enforceable by other parties providing labor, materials or services in connection with the Work such as, though not limited to, Contractor, Subcontractors, Sub-subcontractors, their agents, employees, or any of their bonding companies, it being understood that the Architect/Engineer's obligations are to the Owner, and in performing such obligations the Architect/Engineer may consequently alter the burdens and expense of such other parties. If the Contractor claims additional cost or time on account of the Architect/Engineers performing such obligations, the Contractor shall give notice as provided in Article 13.

The Owner and Contractor shall communicate through the Architect/Engineer. Communications by and with the Architect/Engineer and Architect/Engineer's consultants shall be through the Architect. Communications by and with subcontractors and suppliers shall be through the Contractor. Communication by and with other Contractors working on the site which are not parties to this Agreement shall be through the Owner.

2. Monitoring Progress, Quality and Compliance with Contract Requirements

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

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

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

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3. Review and Approval of Contractor's Submittals

The Architect will review and approve the Contractor's Submittals, such as shop drawings and product samples, for the limited purpose of checking for compliance with the Contract Documents. The Architect's review does not relieve the Contractor of his obligations under the Contract to comply with the plans and specifications.

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

4. Interpret Plans

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

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

The Architect may, as the Architect judges desirable, issue additional drawings or information indicating in greater detail the construction or design of the various parts of the Work; such drawings or information may be affected by field order or other notice to the Contractor, and provided such drawings or information are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or information without additional cost or extension of the Contract Time. If the Contractor claims additional cost or time on account of such additional drawings or information, the Contractor shall give the notice provided in Article 13.

5. Approving Non-Substantial Deviations

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

6. Certifying Applications for Payment

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

7. Preparing Change Orders

The Architect will prepare Change Orders for approval by the Owner.

8. Substantial Completion and Acceptant Reviews

The Architect will conduct inspections, and if Work is found Substantially Complete by the Owner and Architect, establish the date or dates of Substantial Completion and the date of Final Completion. The Architect will receive and forward to the Owner for the Owners' review, project records, written warranties and related documents required by the Contract and assembled by the Contractor. The Architect will issue a final Certificate for Payment upon compliance with requirements of the Contract Documents and acceptance by the Owner.

B. OBLIGATIONS OF THE OWNER

1. Project Manager

The Owner will designate a Project Manager, through which the City will communicate with the Architect and Contractor.

2. Information Provided by Owner

The Owner shall furnish surveys describing physical characteristics of the site, and utility locations.

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

The Owner will furnish the Contractor, free of charge, a maximum of ten sets of Construction Documents.

The Owner disclaims any responsibility for information not expressly set forth in the plans or specifications. Therefore, the Owner shall not be responsible for archived information or other information that may be in the Owner's possession or control, but which has not been utilized by the Project Architect and expressly contained, depicted, or otherwise expressly set forth in the Contract Documents.

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3. Permits

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

4. Owner's Right to Stop Work

If the Contractor fails to correct Work which is not in accordance with requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may order the Contractor to stop work or any portion thereof until the cause of such order has been eliminated. Such an order must be in writing.

5. Owner's Right to Carry Out Work

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

6. Interpretation of Contract Documents and Performance

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

7. Approving Substantial Deviations

The Owner will approve in writing all changes in the Work involving:

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

8. Owner's Right to Expedite Schedule

If Owner determines, in its reasonable opinion, that the performance of the Work as of any date during construction has not progressed or reached the level of completion required by the Contract Documents and/or the construction schedule acceptable to Owner, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Corrective Measures"). Such Corrective Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Corrective Measures required by Owner pursuant to this paragraph. The Owner may exercise the rights furnished hereunder or specifically pursuant to this paragraph as frequently as Owner deems reasonably necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule and the Contract Documents.

Such changes shall be affected by a Change Order signed by the Contractor, Architect, and the Owner.

C. OBLIGATIONS OF THE CONTRACTOR

1. Superintendent

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

2. Review of Contract Documents

The Contractor shall carefully review Contract Documents and information provided by the Owner, and shall at once report to the Architect any errors, omissions, or inconsistencies discovered.

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

3. Review of Field Conditions

The Contractor shall take field measurements and verify field conditions and carefully compare such with the Contract Documents before commencing the Work. Errors, omissions or inconsistencies discovered shall be reported to the Architect at once. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials (except for unforeseeable serious material shortages), tools and equipment, (5) availability of temporary utility service and (6) other similar issues. The Owner assumes no responsibility or liability

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for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in subparagraph

10.1.2, the Contractor shall be solely responsible for providing a safe workplace. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor of any Subcontractor to comply with the requirements of this Subparagraph.

4. Supervision and Construction Procedures

The Contractor shall perform the Work in accordance with the Contract Documents and Submittals approved by the Architect.

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

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

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or, the Owner's Project Manager, in administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

5. Inspection of Work

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

6. Labor and Materials

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

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

7. Warranty

The Contractor warrants to the Owner that materials, equipment, and skilled labor will be provided in accordance with the Contract Documents, and that the Work will be free from defects. Work not conforming with these requirements, including substitutions not properly approved and authorized, may be considered defective.

8. Construction Schedule

Prior to issuance of a Notice to Proceed, but not later than fourteen (14) days after Notice of Award, the Contractor shall prepare and submit to the Architect a Construction Schedule for the Work. The Schedule shall not exceed the time limits established in the Contract Documents, nor shall the Schedule reflect an early completion of the Work. The construction schedule shall document major construction activities and tasks, identifying the estimated beginning and ending dates for each identifiable component of the Work with activity durations limited to 14 days. The Construction Schedule shall also identify the critical path and any other near critical events which would most greatly affect the Construction Schedule. The Construction Schedule will be prepared in sufficient detail as may be acceptable to the Architect. The Construction Schedule shall be revised at appropriate intervals as required by conditions of the Work.

9. Project Records

The Contractor shall maintain the following project records at the project site:

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

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

Records shall be available to the Architect and Owner and, with the exception of the Superintendent's Log, shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

Additionally, the Superintendent's Log shall at a minimum document the dates and times of critical inspections; instructions received from the Architect; and weather conditions including dates, times, and amount of rainfall received.

10. Approval of Shop Drawings and Other Submittals

The Contractor shall review, approve, and submit to the Architect Shop Drawings, Product Data, Samples, and other Submittals required by the Contract Documents for approval by the Architect prior to their implementation. The Contractor shall perform no portion of the Work requiring submittal and review of these or similar data until approved by the Architect. Such Work shall be accomplished in accordance with approved Submittals.

The Contractor shall not submit any shop drawing or other submittal that is merely a tracing or other copy of any of the Contract Documents. Each submittal item must be prepared by the Contractor, or for the Contractor by a Subcontractor or Supplier of the Contractor. The Architect shall have the authority to reject any submittal items that violate this provision, and no extension of Contract Time shall be given on account of such rejection. Architect's review and action on any such Submittals shall not serve as a basis for or give rise to any claim in favor of Contractor or any third party against the Owner or Architect.

By submitting the materials described above to the Architect for approval, the Contractor represents that he has determined and verified materials, field measurements, and field construction criteria related to the Submittals and has checked and verified their compliance with requirements of the Contract Documents. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or other Submittals. The Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents unless the Architect makes specific written acceptance of said deviations on the Architect's letterhead.

11. Use of the Project Site

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

The Owner will be responsible for resolving disputes between the Contractor and other Contractors with which the Owner has a separate Agreement concerning use of the Project Site.

12. Cleanup of Project Site

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

13. Observations and Inspections

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

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

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

14. Correcting Rejected Work

The Contractor shall promptly correct Work rejected by the Architect for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The Contractor shall bear the costs of correcting such Work, including those for additional testing and inspections and compensation for any additional design or necessary administrative costs.

If, within one year after the date of Final Acceptance, or before the expiration of warranties provided by the Contractor, Subcontractor, or Suppliers, whichever is greater, or by the terms of a special warranty required by the Contract Documents; any of the Work is found not to be

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in accordance with the requirements of the Contract Documents, the Contractor shall correct it within ten (10) days after receipt of a written notice from the Owner. This obligation shall survive acceptance of the Work under the Contract and Termination of the Contract, if such

Termination has been exercised by the Owner.

If the Contractor fails to correct nonconforming Work within ten (10) days or such reasonable time as may apply, the Owner may complete the work in accordance with the provisions in Article 9-B-5 and 9-B-8 of this Agreement.

15. Acceptance of Non-Conforming Work

The Owner may at his option accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. In such cases the Contract Amount will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

16. Tests & Inspections

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

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

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

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

Certificates of testing, inspection or approval shall be secured by the Contractor and promptly delivered to the Architect

ARTICLE 10 - SUBCONTRACTORS

1. Reporting of Proposed Subcontractors

As soon as practical after the issuance of a Notice to Proceed, or as otherwise provided in the Contract Documents, the Contractor will furnish in writing to the Architect the names of persons or entities, including Subcontractors, material suppliers, equipment suppliers, and fabricators proposed for Principal Portions of the Work. After conferring with the Owner, the Architect will promptly inform the Contractor in writing whether or not there are reasonable objections to the any of the proposed persons or entities unto which the Contractor proposes to enter into an Agreement.

2. Rejection of Subcontractors

Neither the Contractor nor the Owner shall be required to Contract with anyone to whom either party has made a reasonable objection; excepting instances where the Contract Documents require use of a material, equipment, or other product for which there is no acceptable alternate supplier or installer.

3. Removal of Subcontractors

The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such change.

4. Subcontractors Bound by Contract Documents

By appropriate Agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, under this Agreement, assumes toward the Owner.

Each Subcontract shall preserve and protect the right of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that Subcontracting thereof will not prejudice such rights and shall allow the Subcontractor, to the extent provided in the Contract Documents, the benefit of all rights, remedies and redress against the Contractor that the Contractor has against the Owner.

In all Contracts between the Contractor and Subcontractor, suppliers, or fabricators, the Owner will be named as third party beneficiary.

Each Subcontract for a portion of the Work is assigned by the Contractor to the Owner under these conditions:

- Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Article 8-2 of this Agreement.

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- Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

ARTICLE 11 - CONSTRUCTION BY OWNER OR SEPARATE CONTRACTORS

1. Owner's Right to Perform Construction

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

2. Owner to Provide Coordination

The Owner shall provide for coordination of activities of the Owner's own forces and for Contractors under a separate Agreement to provide construction services on the Project Site. If part of the Contractor's Work depends upon prior Work performed by the Owner or other separate Contractors, the Contractor shall, prior to proceeding with that portion of the Work, at least forty-eight (48) hours prior to the start of such activity, report to the Architect apparent discrepancies or defects in other such construction that would render it unsuitable for the proper execution and results of the Contractor's Work. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's previously completed construction is fit and proper to receive the Contractor's Work. Further, Contractor shall cooperate in scheduling the work by providing the Owner with all requested schedule information and shall adjust the sequencing of its work, at no additional cost to the Owner.

ARTICLE 12 - CHANGES IN THE WORK

1. Contract Held Valid

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

2. Construction Change Directive

Changes in the Work may be directed by a Construction Change Directive prepared and signed by the Architect. A Construction Change Directive signed by the Contractor indicates agreement of the Contractor with the actions specified in the Directive, including the inclusion or absence of an adjustment in Contract Amount or Contract Time or the method for determining them. Construction Change Directives shall be issued using AIA Form G714.

3. Construction Change Order

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

- Contract Amount
- Contract Time
- The intent of the Contract Documents

In such instances, a Construction Change Order must be signed by the Architect, Contractor and Owner. Construction Change Orders shall be issued using AIA Form G701.

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

4. Changes in Contract Amount

No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued by Owner. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by an alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase to the Contract Sum or change in the Contract Time. Claims for disputes concerning Contract Amount shall be determined in accordance with Article 13 of this Agreement.

5. Cost of Work

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

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- Labor (payroll, taxes, fringe benefits, workers' compensation, health and retirement benefits, sick leave)
- Owned equipment (at lowest applicable equipment manual rate)
- Rented equipment (at actual rental rate)
- Materials
- Supplies
- Subcontractor's costs
- Bonds and insurance

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

The term "Cost of the Work" or "Direct Cost" shall not include any of the following:

- Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor whether at the site or in its principal or a branch office for general administration of the Change Order Work and not specifically included in the agreed upon schedule of job classifications, all of which are to be considered administrative costs covered by the Contractor's allowance for overhead and profit.
- Extraordinary fringe benefits not specifically identified above.
- Expenses of Contractor's principal and branch offices other than the Contractor's office at the job site.
- Any part of the Contractor's capital expenses, including interest on the Contractor's capital used for the Change Order Work and charges against the Contractor for delinquent payments.
- Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

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

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

- For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.
- For the Contractor, for Work performed by the Contractor's Subcontractor, seven and one-half percent (7-1/2%) of the amount due to the Subcontractor.
- For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, fifteen percent (15%) of the cost.
- For each Subcontractor, for Work performed by the Subcontractor's Sub-contractor, seven and one-half percent (7-1/2%) of the amount due the Sub-contractor.

6. Changes in Contract Time

Changes in Contract Time shall be granted only by Construction Change Order. Claims for disputes concerning Contract Time shall be determined in accordance with Article 13 of this Agreement.

7. Changes in Contract Time Due to Weather Conditions

The Contractor shall consider climatic conditions in preparing the construction schedule and shall anticipate therein periods where work may not be practical due to adverse weather conditions.

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

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

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

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9. Effective Date of Change Orders

Construction Change Orders shall become effective immediately upon execution by the Contractor, Architect, and Owner.

ARTICLE 13 - CLAIMS AND DISPUTES

1. Time Limits on Claims

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

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

2. Continuing Performance on the Contract

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

3. Claims for Concealed or Unknown Conditions

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

The Architect will promptly investigate and report to the Owner if field conditions were found to be materially different than those which could have been reasonably found given the criteria indicated above. If field conditions are found to be materially different, the Owner shall prepare a Construction Change Order providing an equitable adjustment in Contract Amount and/or Contract Time.

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

4. Claims for Additional Time

Claims for an increase in Contract Time will be made by the Contractor by presenting a "Request for Delay" (RFD) form to the Architect within 14 days of the occurrence giving rise to the claim. All claims for an increase in the Contract Time are waived if not so presented. RFD forms will be supplied to the Contractor by Owner or the Architect.

The sole and exclusive manner of increasing the Contract Time due to some occurrence giving rise to the representation of an RFD form is by Construction Change Order. Timely presentation of a RFD form is the prerequisite for obtaining a Construction Change Order. The Construction Change Order shall address any and all Claims based on said occurrence. With respect thereto, Contractor agrees that its exclusive remedy for delays in the performance of the Contract caused by events beyond its control, including delays claimed to be caused by the Owner or the Architect or attributable to the Owner or the Architect, and including Claims based on breach of Contract or negligence, shall be an extension of the Contract Time. Contractor hereby waives any and all other Claims based on said occurrence which are not addressed by the Construction Change Order.

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

5. Claims for Additional Compensation

Owner's liability to Contractor for any Claims other than Claims for extension of Contract Time, as described above, arising out of or related to the subject matter of this Contract including, but not limited to, claims for payment by Owner of the costs, damages, or losses because of changed condition under which the Work is to be performed or for additional Work, shall be governed by Article 12-4 and must be submitted in strict accordance with the following provisions:

All Claims must be submitted as a Request for Construction Change Order in the manner provided herein;

- Contractor must submit a Notice of Claim to the Owner and to the Architect within fourteen days (14) of when the Contractor was, or should have been, aware of the occurrence of the event giving rise to the Claim; and
- Within fourteen days (14) of submitting its Notice of Claim, Contractor shall submit to the Architect and Owner its Request for Construction Change Order using AIA Form G701, which shall include a written statement of details of the Claim, including a description of the Work affected.

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Contractor agrees that the Owner shall not be liable for any Claim the Contractor fails to submit as a Request for Construction Change Order or as a timely presented RFD form as provided in this Agreement.

After receipt of a Request for Construction Change Order, Owner, in consultation with the Architect, shall deliver to Contractor within thirty (30) days after receipt of request its written determination of the Claim.

Contractor's exclusive remedy for delays in performance of construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect including claims based on breach of contract or negligence, shall be a Claim or a RFD form submitted in compliance with this Article.

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

6. Resolution of Disputes by the Owner

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

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

7. Injury of Damage to Person or Property

If any party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or for others whose acts such party is legally liable; written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable amount of time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to the Claim is to be asserted, it shall be filed as a Claim pursuant to the conditions of this Article.

ARTICLE 14 - PROJECT CLOSEOUT

1. Substantial Completion of a Designated Portion

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

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

2. Substantial Completion

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

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

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

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

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

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

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

3. Final Acceptance and Payment

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

Neither final payment nor any remaining retainage shall become due until the Contractor submits to the Architect all information required in the Contract Documents, including, but not limited to, warranties, as-built plans, and operation and maintenance manuals.

Furthermore, final payment, nor any remaining retainage, shall be due until the Contractor executes and presents to the Owner a "Certificate of Claims Paid" and "Release of all Claims" form in such a form as may be acceptable to the Owner. Acceptance of final payment by the Contractor shall comprise a release of all claims under the Contract, and receipt of which acknowledges full and complete payment for all Work done, materials and equipment furnished, and damages or claims arising under this Agreement.

ARTICLE 15 - PROTECTION OF PERSONS AND PROPERTY

1. Compliance with Federal, State, and Local Laws, Ordinances, and Regulations

Contractor agrees to comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not necessarily limited to, the following:

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

2. Safety of Employees and Property

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

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

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

The Contractor shall promptly remedy damage and loss (other than damage or loss insured under requirements of the Contract Documents) to property referred in this Section caused in whole or in part by the Contractor, Subcontractor, Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by

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anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

3. Emergencies

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

ARTICLE 16 - INDEMNIFICATION, INSURANCE AND BONDS

1. Indemnification

The parties recognize that the Contractor is an independent contractor. The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the Owner, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Agreement. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the Owner and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. Such obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the Owner and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The Owner shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the Owner before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the Owner and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the Owner, be detrimental in any material respect to the Owner's reputation; (ii) the third party claim seeks an injunction or equitable relief against the Owner; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith. It is further the specific intent and agreement of said parties that all the Contract Documents on this Project are hereby amended to include the foregoing indemnification. CONTRACTOR expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes or is unenforceable pursuant to Section 725.06, Florida Statutes.

Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the Owner may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

2. Waiver of Subrogation

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

The Owner and the Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their subcontractors and suppliers.

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

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

3. Contractor's Insurance

The Contractor shall not commence any Work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, has named the Owner as an additional insured, except for Worker's Compensation Coverage, nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until all similar insurance required of the

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Subcontractor has been so obtained.

Such insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State of Florida and be doing business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of Class VI as identified in the latest issue of "Best's Key Rating Guide" unless otherwise accepted by the Owner in writing.

The Contractor's insurance, and the insurance of any other party bound to the Contractor, shall be considered primary. The Owner's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnifications, insurance, certificates of insurance and any additional insurance provisions of this Agreement.

4. Loss Deductible

The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the Contractor.

5. Subcontractor's Insurance

The Contractor shall require each of his Subcontractors to procure and maintain, during the life of the subcontract, insurance of the types specified in this Article or insure the activities of his Subcontractors in his policy as required in this Article.

6. Certificate of Insurance

The Owner shall be furnished proof of insurance coverage as follows:

- The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date
- Statement that the insurer will mail notice to the Owner and a copy to the Architect at least thirty (30) days prior to any material changes in provisions, cancellation, renewal, or non-renewal of the policy
- Certificate of Insurance shall be in the form as approved by the Owner and such Certificate shall clearly state all the coverages required in this Article
- If requested by the Owner, the Contractor shall furnish complete copies of his and his Subcontractor's insurance policies, forms and endorsements; and
- Receipt of certificates or other documentation of insurance or policies or copies of policies by the Contractor or by any of its representatives which indicate less coverage than required by the Contract Documents does not constitute a waiver of the Contractor's obligations to fulfill the requirements of this Article.

7. Workers' Compensation Insurance

The Contractor shall take out and maintain, during the life of this Agreement, Workers' Compensation and Employer's Liability Insurance for all his employees connected with the Work of this Project, and in case any Work is sublet, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Workers' Compensation Law. In case any class of contract at the Project Site is not protected under the Workers' Compensation statute, the Contractor shall provide adequate insurance, satisfactory to Owner for the protection of employees not otherwise protected.

8. Liability Insurance

The Contractor shall take out and maintain, during the life of this Agreement, Commercial General Liability and Commercial Automobile Liability Insurance as shall protect Owner from claims for damage for bodily injury and personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement, whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

Commercial General Liability:

- Minimum Coverage is \$2,000,000 including a separate project aggregate limit of \$2,000,000 for the Contract.
- Coverage shall include premises, operations, products, completed operations, independent contractors, contractual liability covering this Agreement, contracts and leases, broad form property damage coverages, personal injury and bodily injury.
- The Contractor is required to continue to purchase products and completed operations coverage for Work performed under this Agreement for a minimum of three (3) years following Substantial Completion.
- If Umbrella or Excess liability coverage is used to satisfy the requirements of this Section, it shall not be more restrictive than the underlying insurance policy coverages.

Commercial Automobile Liability:

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- Minimum Coverage is \$1,000,000.

Coverage shall include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owner and hired automobiles and employee non-ownership use.

9. Builder's Risk Coverage

The Contractor shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form issued to provide coverages on an "all risk" basis, including:

- Theft Coverage, and flood insurance where specified in the Contract Documents.
- A waiver of any co-insurance or deductible requirements.
- Off-site storage, transit and installation risks.
- Coverage of the interests of all parties, including the Contractor, Owner, Subcontractors, Sub-subcontractors and suppliers.
- A provision that the coverage shall not be lapsed or canceled due to occupancy by the Owner prior to final acceptance and payment by the Owner.
- The Owner being named as an additional insured.

10. Payment and Performance Bond

Contractor shall provide Owner with a Payment and a Performance Bond in the amount of the Contract Price within ten (10) days of the Notice of Award of Contract. Failure to provide the bond(s) shall result in this Agreement becoming null and void. No action on the part of the Owner shall be deemed to waive this requirement except a written amendment to this Agreement. Said bonds shall be in substantially the same form as in Section 255.05, Florida Statutes.

Additionally, bonds must meet the following specifications:

- The surety company shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida and be doing business in the State of Florida
- The surety company shall have a currently valid Certificate of Authority issued by the United States Department of the Treasury under Sections 9304 and 9308, Title 31, of the United States Code.
- The surety company shall be in full compliance with the provisions of the Florida Insurance Code
- The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued; and
- The surety company shall have at least a Policy Holding's Rating of "A-" and Financial Rating of VI in the latest issue of "Best's Key Rating Guide".

Alternative forms of security as described in Section 255.05, Florida Statutes, are acceptable where approved by the Owner in writing.

ARTICLE 17 - COMMENCEMENT OF STATUTORY LIMITATION PERIOD

1. The Commencement of Statutory Limitation Periods Between the Owner, Contractor and assignees are as follows:

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

2. Concerning Latent Defects and Fraud

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

ARTICLE 18 - MISCELLANEOUS PROVISIONS

1. Governing Law

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This Agreement shall be governed by the laws of the State of Florida.

2. Successors and Assigns

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

3. Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice. Email delivery shall also constitute delivery of written notice, and may, at Owner's sole discretion, include US Mail with proof of delivery in addition to the email.

4. Limitation of Liability

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

The Architect shall be liable only to the extent of its interest in the Project; and no officer, director, partner, agent, or employee of the Architect (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation.

5. Attorney Fees and Costs

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses, including attorney fees, as may be set by the Court.

6. Validity, Severability and Reformation

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

7. Force Majeure

Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, acts of terrorism, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, rules, ordinances, rules of regulations. The Contractor or Owner may suspend its performance on any assignment as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the Contractor or Owner shall resume its performance as soon as is reasonably possible.

8. Contractor Not A Third Party Beneficiary

Contractor understands and agrees that it shall look only to the City/Owner for payment and that it is not a third party beneficiary or in any manner otherwise a beneficiary of that certain Interlocal Agreement between the City of Fernandina Beach and Nassau County, Florida regarding payment of invoices on this project. Contractor, for good and valuable consideration contained in this Agreement does hereby irrevocably waive any right it might claim to seek payment from Nassau County, Florida for work performed on this project.

9. Public Records Law and Obligations

Pursuant to Section 119.0701, Florida Statutes, Contractor shall: (a) keep and maintain all public records as that term is defined in Chapter 119, Florida Statutes ("Public Records"), that ordinarily and necessarily would be required by the City in order to perform the work contemplated by this Agreement; (b) provide the public with access to Public Records, on the same terms and conditions that the City would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from public

records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining Public Records and transfer, at no cost to the City, all public records in possession of Contractor within thirty (30) days after termination of this Agreement, however terminated, and destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements and provide the City with a letter confirming that this has been done within thirty (30) days of the termination of this Agreement. All Public Records stored electronically must be provided to the City in a format that is

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compatible with the information technology of the City. If Contractor does not comply with a public records request, the City may pursue any and all remedies available in law or equity, including but not limited to specific performance.

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

OWNER: The City of Fernandina Beach

Dale L. Martin, City Manager

ATTEST –Caroline Best, City Clerk

APPROVED AS TO FORM AND LEGALITY:

Tammi E. Bach, City Attorney

CONTRACTOR:

Contractor's Name:

Title/Officer

ATTEST -

APPENDIX I - DEFINITIONS

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

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Application for Payment - A formal written request for payment submitted by the Contractor to the Architect for payment for work performed pursuant to this Agreement.

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

Bid - A properly signed proposal to do the work, or designated portion thereof for the stipulated sum indicated on the bid form and supported by data required by the Bid Documents.

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

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

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

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

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

Construction Change Directive - An order signed by the Architect instructing the Contractor to change the Work.

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

Contract/Agreement - The Agreement between the Owner and the Contractor as defined by the Contract Documents.

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

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

Contract Documents - Individual documents which collectively comprise the Contract between the Owner and Contractor, including: 1) the Agreement between the Owner and Contractor, 2) Bid Documents including the invitation to bid, Instructions to bidders and Contractor bid package, 3) Drawings, Specifications, Plans prepared by the Architect which describe the work to be performed, 4) addenda issued prior to execution of the Contract, 5) other documents listed in the Agreement, and 6) modifications issued after execution of the Contract, including: 1) written amendments to the Contract signed by both parties, 2) Construction Change Orders, and Construction Change Directives.

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

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

Day - As referenced in this Agreement "Day" includes all calendar days including weekends, holidays, and days of inclement weather.

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

Final Acceptance - The Owner's final acceptance of the work performed by the Contractor as recognized by making final and complete payment for all work intended by the Contract Documents.

Invitation to Bid - A formal solicitation issued by the City of Fernandina Beach identifying the scope, terms, conditions, and specifications of goods and services procured from private contractors.

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

Notice of Award of Contract - Written notice to the Contractor that his Bid has been accepted by the City Commission with the intent to enter into a Contract for the Construction of the Project.

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

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

Owner - The City of Fernandina Beach, or the City of Fernandina Beach's authorized representatives.

Partial Occupancy or Substantial Completion of a Designated Portion - Declaration by the Owner that a designated portion of the work has been completed so that it is ready for occupancy by the Owner for its intended purpose.

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

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

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

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

Project Manager - The City's authorized agent for communication with the Architect and Contractor and making decisions on the City's behalf as provided in the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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