

## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT is entered by and between CITY OF DeBARY, FLORIDA (hereinafter called the "City"), and \_\_\_\_\_, of \_\_\_\_\_ (hereinafter called the "Contractor"), on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of the City of DeBary, Florida; and

WHEREAS, this Agreement was competitively awarded pursuant to:

**CITY OF DEBARY**  
**SMALL SCALE STORMWATER IMPROVEMENT PROJECT NO. 8**  
**BID No. 04-23**

WITNESSETH, the City and the Contractor for TEN DOLLARS (\$10.00) and other good and valuable consideration hereby covenant and agree as set forth below:

### ARTICLE I – THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Construction Contract with Exhibits thereof; the General Conditions of the Contract (other conditions, if applicable); the drawings and technical specifications; and all addenda to the Contract issued prior to and all modifications (changes) issued after execution of this Contract. These form the Contract, and all are as fully a part of this Construction Contract as if attached hereto or repeated herein.

### ARTICLE II – THE PROJECT

1. The Contractor shall perform all the Work required by the Contract Documents to complete the Project as described and detailed herein, **SMALL SCALE STORMWATER IMPROVEMENT PROJECT NO. 8** and in accordance with the Technical Specifications Manual, all as pertaining to the City's property described in the Contract Documents. The Project comprises the completed construction required by the Contract Documents and in includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

2. Contractor represents and agrees that it has carefully examined and understands this Contract and the other Contract Documents, has investigated the nature, locality and site of the Project and the conditions and difficulties under which it is to be performed, and that it enters into this Contract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the City, or of any of the City's agents, consultants or employees.
3. As used in the Contract Documents, the term "Work" shall include all labor, supplies, materials and incidentals required for the construction of the improvements required by the Contract Documents, including use of equipment and tools, and all services and responsibilities prescribed or implied, which are necessary for the complete performance by the Contractor of its obligations under the Contract Documents.

### **ARTICLE III – TIME OF COMMENCEMENT AND COMPLETION DATE**

1. The Work to be performed under this Contract shall be commenced upon or immediately after delivery of notice from the City to Contractor to proceed ("Notice to Proceed"), Contractor shall thereafter diligently proceed with the completion of the Project within **One Hundred Twenty (120) calendar days** after the Notice to Proceed (the "Completion Date").
2. Notwithstanding anything else contained herein, if the City, in its sole judgment, shall deem it advisable to terminate this Contract before delivery of Notice to Proceed, then the City shall deliver written Notice of Termination of the Contract to the Contractor, the Contract shall be rendered null and void, and neither party shall be entitled to any damages or compensation in connection with such termination of the Contract.
3. Inasmuch as failure of the Contractor to complete the Project by the Completion Date may cause grave injury and damage to the City, time is of the essence in the performance of this Contract. Accordingly, the Contractor must commence work and complete the Project when and as required by this Contract.
4. In the event that the Contractor shall fall behind in schedule at any time, for any reason, and such delay is adversely affecting the City's ability to timely occupy and use the Project for its intended purpose, the City shall be entitled to direct acceleration or re-sequencing of the work to bring the Project back on schedule. In the event the Contractor determines that the Completion Date cannot be met by re-sequencing the work, then the Contractor shall immediately provide the City, and in any event within three (3) calendar days after the date of receipt of the City's instruction for re-sequencing or accelerating, a plan to complete the Project in the shortest possible time. No approval by the City of any plan for re-sequencing or accelerating of the work submitted by the Contractor pursuant to

this clause shall constitute a waiver by the City of its rights of recovery from damages or losses which the City may suffer by reason of delayed Project completion.

5. Contractor agrees to provide the City with each application for progress payment pursuant to Article V hereof, the Contractor's best estimate of any anticipated revisions to the Completion Date for the purpose of the City's planning; provided, however, and notwithstanding the making of any progress payments, no anticipated revisions to the Completion Date shall be effective and binding on the City and the Contractor without a written Change Order executed by the City in accordance with the procedure set forth in General Conditions Article VI hereof.
6. The Contractor further agrees that for each calendar day, that any work shall remain uncompleted after the Completion Date stipulated above, the Contractor shall be liable for and shall pay to the City the sum of \$500.00 (Five Hundred Dollars) per day as liquidated damages (not as a penalty), and such shall be deducted from the Contract Price and monies due the Contractor. Should the total amount chargeable as liquidated damages exceed the amount due or payable to the Contractor or his/her Surety, then such excess shall be paid to the City by the Contractor or his/her Surety. When City reasonably believes that Substantial Completion or Final Completion will be inexcusably delayed, City shall be entitled, but not required, to withhold from any amounts otherwise due to Contractor an amount then estimated by City to be adequate to recover liquidated damages applicable to such delays. The City's exercise of the right to terminate shall not release the Contractor from the obligation to pay said liquidated damages. The liquidated damages provided in this Section shall apply even if Contractor's work is terminated, or if the Contractor has abandoned the Work. Liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defaults in Contractor's performance hereunder for matters other than delays in completion of the Work.
7. No Damages for Delay Against City: Contractor's exclusive remedy for delays, impacts, disruption, resequencing, and interruptions in performance of the Work caused by events beyond Contractor's and its subcontractors', laborers', vendors', and materialmen's control, including delays, impacts, disruption, resequencing, and interruptions caused (or claimed to be caused) by or attributable to the City or the Engineer and their employees, consultants, and agents, shall be a claim for and be limited to an equitable extension of the Contract Time. Contractor expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays in Work, and Contractor expressly waives any and all other remedies for any claim for increase in the Contract Price, damages, expenses, losses, or additional compensation. Contractor shall not receive equitable time extensions for delays caused by or within the control of Contractor and its subcontractors, laborers, vendors, and materialmen.

**ARTICLE IV – CONTRACT PRICE**

1. In consideration of the performance of the Contract, the City agrees to pay the Contractor, by City's check, the Contract Price of:

\_\_\_\_\_  
Written Amount

\$ \_\_\_\_\_

2. For changes in the work, ordered by the City, the Contract Price shall be adjusted accordingly. Article VI stipulates the conditions governing changes in the work.
3. The Contractor shall be paid ninety percent (90%) of the proportional amount of the Contract Price with each progress payment, (such payments to be in proportion to the percentage completion of the Project). The value of each Application for Payment shall be equal to the total value of the Work performed to date in accordance with the Contract Documents, less an amount retained, and less payments previously made and amounts withheld in accordance with the Contract Documents. The balance constituting the retainage of the Contract Price shall be paid at the time of Final Payment as described in General Conditions Article XII hereof. Retainage under the Contract Documents is held by City as collateral security to assure completion of the Work. In no event shall any interest be due and payable to Contractor on any of the sums retained by City pursuant to any of the terms or provisions of any of the Contract Documents.
4. Any overpayment by City to Contractor under this Contract shall be promptly repaid to City upon demand.

**ARTICLE V – PROGRESS PAYMENTS**

1. Based upon applications for payment submitted to the City Representative by the Contractor and approved by the City, the City shall process and make progress payments to the Contractor as provided in the Contract Documents in accordance with the Local Government Prompt Payment Act as set forth in Part VII, Chapter 218, Florida Statutes, including applicable provisions for City representative review time.
2. Applications for progress payments will be submitted no more often than monthly during the performance of the Work. The Contractor shall submit the application for progress payment for City Representative’s approval in the form acceptable to the City. Each such application for payment shall set forth the value of all work completed on the date of application, including the sum of all prior payments.

3. On each application for progress payment, Contractor shall (1) list the name and address of each of its subcontractors, laborers, materialmen and suppliers who have performed work or provided supplies or material during the time period of Work reflected by the application; (2) provide an accounting of all sums invoiced by and paid to each of Contractor's subcontractors, laborers, materialmen and suppliers for Work performed or supplies and materials provided to date; and, (3) submit an updated progress schedule. In each application for progress payment, the Contractor shall certify as follows: (A) "There are no known mechanic's or materialmen's liens or payment bond claims outstanding at the date of this application for progress payment concerning the Construction Contract between City and Contractor; all due and payable bills with respect to the Project have been paid to date or shall be paid from the proceeds of this application for payment; there is no known basis for the filing of any mechanic's or materialmen's liens or payment bond claims on the Project and subcontractors, laborers and materialmen employed by the Contractor, have been or will be obtained in such form as to constitute an effective waiver of lien under the applicable laws of the State of Florida"; (B) "All improvements have been installed in accordance with the Contract Documents (except where noted or agreed upon in writing by the City pursuant to an approved Change Order)"; and (C) "No encroachments into the designated set-back lines and rights of way, as stipulated in the Contract Documents, exist."
4. Beginning with the second application for progress payment, the Contractor shall also deliver with each such application, as a condition precedent to payment thereof, waivers of lien for each of its subcontractors, laborers, materialmen and suppliers, current through the effective date of the previous application for payment. The waivers of lien from subcontractors, laborers, materialmen and suppliers shall be in a form acceptable to the City. The Contractor may, if any subcontractor, laborer, materialmen or supplier refuses to furnish a release in full, furnish a bond (separate from the Project payment bond) satisfactory to the City, against any lien.
5. The City shall promptly review each application for progress payment and make such exceptions, as the City reasonably deems necessary or appropriate under the state of circumstances then prevailing.
6. Based upon the approved application of progress payment, the City shall make payment to Contractor in the amount approved, subject, however, to the provisions of paragraph 7, herein. The payment of any application for progress payment by the City, including the final application, does not constitute approval or acceptance of that part of the Project to which such payment relates or relieves the Contractor of any of its obligations hereunder with respect hereto. Neither City nor Engineer is under any duty or obligation whatsoever to any subcontractor, supplier, laborer, materialmen or any other party to ensure that payments due and owing by Contractor to any of them are or will be made.

7. Any provisions hereof to the contrary notwithstanding, the City shall not be obligated to make current payment to the Contractor hereunder if the City has reason to believe that any one or more of the following conditions exists:
- (A) The Contractor fails to diligently prosecute the work in an efficient, timely and workmanlike manner and in strict accordance with the provisions of the Contract Documents;
  - (B) The Contractor fails to use an adequate number of qualified personnel and sufficient equipment to complete the Project without undue delay;
  - (C) The Contractor fails to make prompt payments to its subcontractors, suppliers, materialmen or laborers;
  - (D) Any part of such payment to the Contractor is attributable to work which is defective or not performed in accordance with the drawings and specifications; provided, however, such payment shall be made as to the part thereof attributable to work which is performed in accordance with the drawings and specifications and is not defective;
  - (E) Contractor fails to provide the information and documentation required with an application for progress payment;
  - (F) the Contractor is otherwise in default of any of its obligations hereunder or otherwise is in default under any of the contract requirements; or
  - (G) the Contractor fails to provide the City with an updated as-built diagram if required.

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City at the time of payment free and clear of all liens, claims, security interests and encumbrances.

## **ARTICLE VI – CHANGES**

1. The City may at any time, without notice to the sureties, make changes within the general scope of the Project, issue additional instructions, require additional work or direct the omission of portions of the work; provided, however, that the Contractor shall not proceed with any change involving an increase or decrease in Contract Price, without prior written authorization from the City in accordance with the procedure outlined hereunder.

2. The City shall order changes in the Project by giving the Contractor a written change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the Contractor shall forthwith, but in no event later than ten (10) days thereafter, furnish to the City a statement setting forth in detail, with a suitable break-down by trades and work classifications, the Contractor's estimate of the changes in the Contract Price attributable to the changes set forth in such Change Order Request, and a proposed adjustment to the Completion Date resulting from such changes and any adjustment of time and costs applicable to unchanged work resulting from such changes. If the City approves in writing such estimate by the Contractor, such Change Order Request and such estimate shall constitute a Change Order, and the Contract Price, and the Completion Date shall be adjusted as set forth in such estimate. The foregoing procedure shall apply to both additive and deductive change orders. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment thereof pursuant to the terms of this Contract. If the City and the Contractor cannot agree on the cost of any Change Order work, then the City may direct the Contractor to proceed with the Change Order work and the cost will be determined in accordance with the procedures established in the General Conditions of the Contract.
  
3. The price estimates for Change Order Requests shall be made on the basis of the actual costs of labor and materials involved in such work. Additional provision for determining the price of change orders is included in the General Conditions of the Contract.

## **ARTICLE VII – FINAL PAYMENT**

1. Final payment constituting the entire unpaid balance of the amount due to the Contractor under this Contract shall not be paid by the City to the Contractor until the Project has been completed, the Contract fully performed, and a final certificate for payment has been issued by the City Representative.
  
2. Anything to the contrary in this Contract or elsewhere in the Contract Documents notwithstanding, fifteen (15) days after final completion of the Project, including final punch-list items and acceptance thereof by the City or as soon thereafter as possible, the Contractor shall submit final application for payment ("Final Application") which shall set forth all amounts due to the Contractor and remaining unpaid. If the City Representative is in agreement with the requested amount, then the City shall pay the Contractor the amount due under such Final Application.

3. The Final Application shall not be made until the Contractor delivers to the City, a complete and final releases and waivers of all liens and rights to claim against the payment bond for all Work performed by Contractor and each subcontractor, vendor, materialmen and laborer and other documentation as may be requested by City establishing payment or satisfaction of obligations arising out of this Contract in a form acceptable to the City and an affidavit from Contractor that so far as the Contractor has knowledge or information, the release includes and covers all materials and services for which a lien or payment bond claim could be filed, but the Contractor may, if any subcontractor or supplier refuses to furnish a release in full, furnish a bond (separate from the Project payment bond) satisfactory to City, to properly indemnify the City, against any lien.
4. In the event of a bona fide dispute by the City of any sums for which payment has been requested, no interest shall be due on disputed sums until such dispute is resolved, provided that all undisputed sums shall have been paid in due course.
5. In addition to the above items, final payment shall not be made until the following items have occurred (1) the Work can be used and operated in accordance with applicable laws, applicable permits and as intended by the Contract Documents; (2) all items on the Substantial Completion punch list shall have been completed by Contractor to City's satisfaction; (3) all construction equipment, rubbish and debris have been removed from the Jobsite; and (4) written assignment to City of all warranties and guarantees which Contractor received from subcontractors, materialmen and suppliers relating to Work.
6. The payment of any application for payment by the City, including the Final Application for payment, does not constitute approval or acceptance of that part of the Work to which such payment relates nor does it relieve the Contractor of any of its obligations hereunder with respect hereto. The making of a payment, including final payment shall not constitute a waiver of claims by the City, including but not limited to claims arising from: (1) liens, claims, security interests or encumbrances arising out of this Contract; (2) failure of the Work to comply with the requirements of this Contract and its incorporated documents and state and local codes and requirements; (3) terms of warranties and all other post-final completion or construction obligations required by this Contract and its incorporated documents and/or as a matter of law; (4) defects, deficiencies and/or failures in the Work; (5) damages suffered directly or indirectly by the City to the caused in part or whole by the Contractor's or its subcontractors, employee's and agent's negligent performance under this Contract; and (6) any matter for which Contractor has indemnified City under this Contract.
7. The acceptance of the Final Payment by Contractor will constitute a waiver of all Claims by Contractor against City except those previously made in writing which the City agrees remain unsettled by Final Payment.



## ARTICLE VIII – TERMINATION / SUSPENSION

### A. Termination for Cause.

1. City may upon the occurrence of any one or more of the following events, terminate the Contractor's performance of Work (in part or in whole) for cause after fifteen (15) days written notice to the Contractor and its Surety and an opportunity to cure within such fifteen-day period:
  - (A) If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;
  - (B) If Contractor admits in writing an inability to pay its debts generally as they become due;
  - (C) If Contractor fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers, sufficient supervisory personnel, or suitable materials or equipment or failure to adhere to the Progress Schedules);
  - (D) If Contractor discontinues prosecution of the Work or any portion thereof;
  - (E) If Contractor allows any final judgment against it to remain unsatisfied for a period of ten days;
  - (F) If Contractor disregards laws, policies, court orders, or administrative directives, etc. of any governmental body, agency or court having jurisdiction;
  - (G) If Contractor disregards the authority of Engineer or Engineer;
  - (H) If Contractor files for bankruptcy or is adjudged as bankrupt or insolvent;
  - (I) If Contractor otherwise violates in any substantial way any provisions of the Contract Documents; or
  - (J) If Contractor fails to promptly pay subcontractors, suppliers, materialmen, laborers, etc. concerning materials provided or services performed for the Project.

2. If Contractor fails to correct the default within the fifteen (15) day period, the City shall have the right to issue a Notice of Termination to the Contractor and its Surety terminating the Contractor's performance of Work (in part or in whole) under this Contract. Upon issuing the Notice of Termination the City shall have the right to:
  - (A) Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  - (B) Incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere; and
  - (C) Complete the Work as City may deem expedient.
3. After receipt of a Notice of Termination, and except as otherwise directed by the City, the Contractor shall:
  - (A) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
  - (B) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.
  - (C) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
  - (D) Assign to the City, in the manner, at the times and to the extent directed by the City, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - (E) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the City, to the extent the City may require, which approval or ratification shall be final for all the purposes of this clause.

- (F) Transfer title and deliver to the City, in the manner, at the times, and to the extent, if any, directed by the City:
    - (i) the fabricated or non-fabricated parts, components of work in process, completed work, supplies, equipment and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination; and
    - (ii) the completed or partially completed "as built" drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City if required.
  - (G) Complete performance of such part of the Contract as shall not have been terminated by the Notice of Termination.
4. If City terminates Contractor's performance of work for cause, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by City arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to City. When exercising any rights or remedies under this paragraph, City shall not be required to obtain the lowest price for the Work performed.
  5. Where Contractor's services have been terminated by City for cause, the termination will not affect any rights or remedies of City against Contractor and its Surety then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor and its Surety from liability.
  6. If, after Notice of Termination for cause, it is determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the termination for convenience provisions of Article VIII paragraph B, below.
  7. City may, at its sole discretion, permit Contractor or Contractor's Surety to continue to perform Work when Contractor is in default, however caused. Further, the City may, at its sole discretion, either prior to or after termination of the performance of Contractor's services under this Contract, allow the Contractor's Surety to complete and perform the Work in accordance with the Contract Documents. Such a decision by City shall in no way operate as a waiver on the part of City of any of its rights or remedies under the Contract Documents.

## **B. City's Termination for Convenience.**

1. City may, without prejudice to any other right or remedy, terminate this Contract in whole or in part at any time for its convenience by giving Contractor and Surety ten (10) days written notice. City shall have the right, in that event, to take over any or all of Contractor's materials, (whether stored on or off site) supplies, equipment, sub agreements or other obligations to complete the Work and Contractor shall assign them to City upon City's request. Contractor shall proceed to complete any part of the Work, as directed by City, and shall settle all its Contract Claims and obligations under the Contract.
2. In the event of any such termination for the convenience by City, Contractor shall be paid in accordance with Article VIII, paragraph B. 5 below; however, Contractor shall not be entitled to or receive any anticipated supplemental costs, administrative expenses overhead and profit on uncompleted Work and any type of economic loss or wrongful termination damages. Contractor shall justify its Contract Claims as requested by City with thorough, accurate records and data.
3. After receipt of a notice of termination for convenience, the Contractor shall submit to the City its termination claim, in the form and with certification prescribed by the City. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions, in writing, are granted by the City upon request of the Contractor made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the City may determine on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
4. Subject to the provisions of Article VIII, paragraph B. 3 above, the Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work for the City's convenience, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work not terminated. The Contract shall be amended by Change Order accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph B. 5 below, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the City to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

5. In the event of the failure of the Contractor and the City to agree upon the whole amount to be paid to the Contractor by reason of the termination of work for the City's convenience, as provided in Article VIII, paragraph B. 4 above, the City shall pay to the Contractor the amounts determined by the City as follows, but without duplication of any amounts agreed upon in accordance with Article VIII, paragraph B. 4 above.
  - (A) Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - (B) Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - (C) Reasonable expenses directly attributable to termination relating to commitments which had become firm prior to the termination.

### **C. Contractor May Stop Work or Terminate.**

If, through no act or fault of Contractor, or its subcontractor or their agents or employees or any other person for whose acts they may be responsible, the Work is suspended for a period of more than ninety (90) days by City or under an order of court or other public authority, or Engineer fails to act on any application for payment within forty-five (45) days after it is submitted, or City fails for forty-five (45) days to pay Contractor any sum after the payment has been finally determined to be due, then Contractor may, upon ten (10) days written notice to City and Engineer and an opportunity to cure, terminate the Contract and recover from City payment for all Work executed to the date of termination performed in accordance with the Contract Documents and any expense sustained plus reasonable termination expenses. In addition, and in lieu of terminating the Contract, if Engineer has failed to act on an application for payment or City has failed to make any payment as aforesaid, Contractor may upon ten (10) days' written notice to City and Engineer and an opportunity to cure, stop the Work until payment of all amounts then due. With the exceptions provided in this section, these provisions shall not relieve Contractor of any obligations. Contractor shall carry on the Work in accordance with the progress schedule and without delay during disputes with the City.

#### **D. City May Suspend Work.**

1. Without invalidating the Contract Documents, and without notice to any surety, City may, at any time, order Contractor in writing to stop, delay or interrupt Work for such a period of time as City may deem appropriate. Upon receipt of that order, Contractor shall immediately proceed in accordance with any specific provisions or instructions, protect and maintain the Work, and make reasonable and diligent efforts to mitigate costs associated with the suspension order.
2. If any suspension of Work under this subsection causes an increase or decrease in Contractor's time required to perform or complete any part of the Work, City shall make a change in Contract Time; except that no change in Contract Time will be made for any suspension of Work to the extent that performance would have been suspended anyhow by causes not meeting the criteria for change orders, or for which an adjustment is provided or excluded under any other provision of the Contract Documents.
3. The parties further recognize that the safety of the public is of paramount concern. Therefore, the parties agree that any breach of the Contract Documents by Contractor related to the life, safety or health of the public shall be considered a material breach of the Contract Documents. Upon a material breach of the Contract Documents related to life safety, as determined by the Engineer, the Engineer shall have the right to issue a stop work order suspending the Work or any specific portion of the Work until the conditions are corrected. If the life safety conditions giving rise to the stop work order are not corrected by the Contractor within a reasonable time, as determined by the Engineer, then the material breach shall entitle City to terminate Contractor's performance of work under this Contract for cause. The recognition of breaches of the provisions of the Contract Documents related to life safety, as material breaches shall not be construed as a limitation on other remedies for breaches or material breaches of the Contract Documents. Contractor shall not be entitled for an extension of the Contract Time for a suspension of the Work pursuant to this Article VIII, paragraph D 3.

#### **ARTICLE IX – CONTRACTOR'S REPRESENTATIONS/OBLIGATIONS**

In order to induce City to enter into this Contract, Contractor makes and/or agrees to the following representations and terms:

1. Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, weather, and with all local conditions and federal, state and local laws, utility locations, ordinances, rules, policies and regulations that in any manner may affect cost, progress or performance of the Work. Contractor by its study excludes and releases the City from any implied warranties including but not limited to the "Spearin Doctrine", that the Plans and Specifications are adequate to perform the Work.
2. Contractor has made or caused to be made examinations, investigations and tests and studies as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.
3. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
4. Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
5. Contractor declares and agrees that the approval or acceptance of any part of the Work or material by the City, Engineer or any agent relating to compliance with the Contract Documents shall not operate as a waiver by the City of strict compliance with the terms and conditions of the Contract Documents.
6. Contractor acknowledges that the performance of the Work under the Contract Documents fulfills a City, and public purpose. To that end, Contractor agrees to investigate and respond to citizen complaints related to alleged damage caused by Contractor's performance of the Work within five (5) working days of receipt of the complaint from a citizen, Engineer, or the City, unless the Engineer grants Contractor additional time to respond. When a complaint is brought to the Contractor by a citizen (either through the City, Engineer, or directly from a citizen), the Contractor shall provide a response to the citizen (and provide the City and Engineer with a copy of such response) that identifies the citizen, citizen's street address and provides specific responses and actions taken or proposed to be taken by the Contractor to address the complaining citizen's complaint. If the Contractor fails to respond to a citizen complaint within five (5) working days, then the City may withhold subsequent progress payments until the complaint is addressed, as determined by the Engineer in his reasonable discretion.

7. Contractor shall be responsible for the satisfactory and complete execution of the Work described in the Contract Documents. The Contractor represents that it has the experience, financial capability and necessary personnel, equipment and material at its disposal to complete the Work in a good workmanlike manner in accordance with the Contract Documents without any defects in materials or workmanship.
8. The Contractor warrants and represents that all of its employees are treated equally without regard to race, color, disability, marital status, religion, sex, age or national origin and that during the performance of the Work, Contractor shall not engage in illegal discrimination.
9. Signature of this Contract by the Contractor shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract. The said rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside contractors. The City shall exercise its rights under this "Certificate" within one year following final payment.
10. The Contractor agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the City or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. The Contractor hereby certifies that no official, officer, agent or employee of the City has any material interest (as defined in Section 112.312 (15), Florida Statutes, as over five percent (5%) either directly or indirectly, in the business of the Contractor to be conducted here, and that no such person shall have any such interest at any time during the term of this Contract.
11. Until acceptance of the Work by the City it shall be under the charge and custody of the Contractor and Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work occasioned by any of the above causes before its completion and acceptance, except that in case of catastrophic damage the City may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor including, but not restricted to, Acts of God, of the public enemy or of governmental authorities.



## ARTICLE X – NO LIENS

Contractor acknowledges and agrees that the City is a Florida municipality, and as such, the City's property, the Work and the Project involved are not subject to construction liens pursuant to Chapter 713, Florida Statutes and other any liens. Contractor and its subcontractors, materialmen and laborers shall not file or record claims of lien or any other liens against the Work, the Project or any property owned by the City. Contractor hereby agrees to indemnify, defend and hold the City harmless from all liens filed by Contractor and its subcontractors, materialmen and laborers and all other claiming through Contractor against the Project, Work and any property owned by the City, including for the City's attorneys' fees and costs (including for pre-suit, trial and appellate level expenses with attorneys selected by the City). All subcontractors, materialmen, laborers, vendors and all others claiming by and through Contractor shall look exclusively to the payment bond posted in accordance with Section 255.05, Florida Statutes, if not properly paid. If a Notice of Commencement is executed and recorded for the Project, the Project's Payment Bond shall be attached to the Notice of Commencement and the following statement shall be added to the Notice of Commencement:

**“This is a public construction project of the City of DeBary, a Florida municipality and as such the public property and the project involved is not subject to construction liens pursuant to Chapter 713, Florida Statutes or any other liens. No liens shall be filed against the Project or any property of the City of DeBary. All subcontractors, materialmen, laborers, vendors and all others claiming by and through Contractor shall look to the payment bond posted in accordance with Section 255.05, Florida Statutes and attached hereto for payment, if not properly paid.”**

## ARTICLE XI – INDEMNITY AND INSURANCE

1. The Contractor shall indemnify and hold harmless the City and the City's officials, officers, agents, employees and Engineer from and against all claims, suits, actions, penalties, costs, losses, liabilities, damages and/or causes of action which may arise from or are caused by, in part or in whole, the actions, omissions, negligence, recklessness, or intentional wrongdoing of the Contractor and Contractor's subcontractors, agents, employees or anyone utilized by Contractor in the performance of Work (or any combination thereof) as a result of or during the performance of Work or services under this Contract, and from and against all costs, attorney's fees (utilizing attorneys selected by or agreeable to the City), expenses and liabilities incurred in or by reason of the defense of any such claim, penalties, suit or action (including pre-suit and trial and appellate levels), and the investigation thereof. The monetary limitation on this indemnity clause and each indemnity by Contractor of the City under this Contract is TWO MILLION FIVE-HUNDRED THOUSAND DOLLARS (\$2,500,000.00) per occurrence, which the parties acknowledge and agree is a commercially reasonable amount for this Contract. In any and all claims against the indemnified

parties by any employee of Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of this subsection shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable, by or for Contractor, or any subcontractor, or any supplier, or other person under Workers' Compensation acts, disability benefit acts, or other employee acts.

In the event that City incurs costs contrary to this indemnification provision or any other indemnification provision in the Contract Documents, City shall be entitled to deduct such costs from the Contract Price by issuing a Change Order.

2. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in the Bid Documents and Contract Documents. Except as otherwise specified in the Contract Documents, the insurance shall become effective prior to the commencement of Work by the Contractor and shall be maintained in force until at least three (3) months after Final Completion of the Work or such other time as required by the Contract Documents. Contractor shall provide all policies and certificates evidencing such insurance coverage for City's review and approval.
3. Nothing contained in this Contract or incorporated documents shall be considered or deemed a waiver of the City's sovereign immunity protections, including but not limited to those set forth in Section 768.28, Florida Statutes

## **ARTICLE XII – PUBLIC RECORDS**

The Contractor acknowledges and agrees that the City is a public entity that is subject to Florida's public records laws and as such, documents in Contractor's control and possession (including subcontractors) relating to the Project and Work performed for the City are subject to inspection pursuant to Chapter 119, Florida Statutes, unless otherwise exempt, excepted or a record does not meet the definition of a public record by applicable law. It is hereby specifically agreed that any record, document, computerized information and program, e-mail, electronic file, memo, drawing, audio or video tape, photograph, or other writing of the Contractor and its employees, sub-contractors and associates related, directly or indirectly, to this Contract, are likely considered to be Public Records whether in the possession or control of the City or the Contractor (including subcontractors), unless an exemption or exception under applicable law applies. Such records, documents, computerized information and programs, e-mails, electronic files, memos, drawings, audio or video tapes, photographs, or other writings of the Contractor are subject to the provisions of Chapter 119, Florida Statutes and applicable retention schedules, and may not be destroyed without the specific written approval of the City's City Clerk. While in the possession and control of the Contractor, all public records shall be secured, maintained, preserved, and retained in the manner specified pursuant to the Public Records Law. Upon

request by the City, the Contractor shall, within three (3) business days, supply copies of said public records to the City. All books, cards, registers, receipts, documents, and other papers in connection with this Contract shall, at any and all reasonable times during the normal working hours of the Contractor, be open and freely exhibited to the City for the purpose of examination and/or audit. Since the City's documents are of utmost importance to the conduct of City business and because of the legal obligations imposed upon the City and Contractor by the Public Records Law, Contractor agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies or electronic images thereof when such are requested by the City, regardless of any contractual or other dispute that may arise between Contractor and the City. Upon termination of this Contract, termination of Contractor's work under this Contract, or Acceptance of the Work by the City, whichever occurs first, the Contractor shall, at Contractor's expense, turnover the original or copy of all public records in Contractor's (including sub-contractors) control and possession to the City, except as otherwise directed by the City. Contractor hereby indemnifies the City concerning any claims, damages, suits, judgments, losses, attorneys' fee and litigation cost claims, expenses and penalties arising out of or concerning Contractor's and its subcontractors' violation of Public Records Law or this paragraph, including for the City's attorneys' fees and costs. This paragraph shall survive expiration and termination of this Contract.

### **ARTICLE XIII – OWNERSHIP OF DOCUMENTS**

The Contractor shall deliver to the City for approval and acceptance, and before eligible for final payment of any amounts due, all Work Product (whether or not completed), as herein defined, developed, prepared or purchased for the Work or pursuant to this Contract. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City will be kept confidential by the Contractor, at Contractor's expense and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order of court. Contractor may, during the course of its engagement hereunder, have access to, and acquire knowledge of or from, materials, data, strategies, systems or other information relating to the Work and City's facilities, which may not be accessible or known to the general public. All such knowledge acquired by Contractor shall not be used, published or divulged by Contractor to any other person, firm or corporations, or in any advertising or promotion regarding Contractor or its services, or in any other manner or connection whatsoever without first having obtained the written permission of City, which permission City may withhold in its sole discretion. Any confidentiality issues which may arise as matters of compliance with public records laws shall immediately be referred to the City Clerk.

All drawings, maps, sketches, test results, surveys, plans, designs, tangible work product and other data developed, produced or purchased under this Contract or at the City's expense ("Work Product") shall be and remain the sole and exclusive property of the City when developed, produced or purchased and City shall be vested with all rights thereof. The City shall have all rights to use the Work Product, including but not limited to the right

to reproduce and reuse Work Product at the discretion of the City. In the event of termination of this Contract or termination of Contractor's work under this Contract, the Contractor shall promptly (no more than five (5) business days from termination) furnish the City, at no additional cost or expense to the City, the Work Product (whether or not completed). Whenever required to be produced, Contractor, at its expense, shall provide the City with one (1) physical copy and one (1) copy in electronic format of the Work Product. This paragraph shall survive expiration and termination of this Contract.

#### **ARTICLE XIV – MISCELLANEOUS PROVISIONS**

1. Terms used in the Contract which are defined in the General Conditions of the Contract shall have the meanings designated in those Conditions.
2. All references herein and in the General Conditions to Engineer in the context of supervisory/inspecting authority, including review of change orders and applications for payment, shall be replaced with and refer to the City's Parks Engineer ("Engineer").
3. All covenants and agreements herein contained shall extend to and be obligatory on the successors and assigns of the Contractor and of the City, but the Contractor shall not assign this agreement or any payments to become due there under except with the prior written consent of the City. The Contractor agrees that its rights to payment hereunder and the rights of any assignee shall be subject to the rights of the City arising prior to such payment. The City shall have the right to assign its rights hereunder without prior notice to the Contractor and, in the event of such assignment, the Contractor shall continue to perform its obligations hereunder for the account of the assignee; provided, however, that such obligations shall be conditioned upon such assignee covenanting to make all payments required by the Contract Documents and not paid prior to the date of such substitution.
4. The Contractor hereby assigns to the City (and its assigns) all its interest in any purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the work which assignment will be effective upon acceptance by the City in writing and only as to those subcontracts and purchase orders which the City designates in said assignment at any time during the course of construction prior to final completion. ***IT IS FURTHER UNDERSTOOD AND AGREED THAT ALL PURCHASE ORDERS SHALL PROVIDE THAT THEY ARE FREELY ASSIGNABLE BY THE CONTRACTOR TO THE CITY AND/OR ITS ASSIGNS. THIS ASSIGNMENT IS PART OF THE CONSIDERATION FOR ENTERING INTO THIS CONTRACT WITH THE CONTRACTOR AND MAY NOT BE WITHDRAWN PRIOR TO FINAL COMPLETION OF THE PROJECT.***
5. For purposes of verifying that cost or pricing data submitted, in conjunction with the negotiation of this Contract or any contract change or other modification, are accurate, complete, and current, the City or its authorized representatives, shall - until the expiration of three (3) years from the date of Final Payment under this Contract - have

the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were prepared by the Contractor prior to and after the date of execution of the Contract, but relating to the Contract. The Contractor agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after Final Payment under the subcontract, unless the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation.

6. Any written notice required or given pursuant to or in relation to the Contract shall be sent certified or registered mail, postage prepaid, with return receipt requested or by overnight courier service with delivery verification (such as UPS or Fedex) sent to the following addresses:

If to the City:                      City of DeBary  
   Attn: City Manager  
   16 Colomba Rd.  
   DeBary, Florida 32713

If to the Contractor: \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

7. The Contractor shall be responsible for obtaining and paying for all Project permits, licenses and related fees for construction including but not limited to: Building Permit, Utility Permits including Water, Sewer and Electrical Permits, Utility Hook Ups and Impact Fees and any additional Permit or Fee associated with the issuance of the Building Permit exclusive of Road Impact Fees which will be paid directly by the Owner. The Contractor shall be responsible for coordinating the connection and commencement of all electrical, sewers, water and other utility services as applicable.
8. In the event of a conflict between any provision of the other Contract Documents and this Contract, the provisions of this Contract shall be deemed to govern to the extent of the conflict.
9. Disagreement is to be governed by the law of the State of Florida. Venue for any litigation between the parties to this Contract shall be in Volusia County, Florida and any trial shall be non-jury.

10. The parties expressly agree that each party shall be solely responsible for their own attorneys' fees and costs incurred in any negotiation, dispute resolution or litigation related to or arising out of the Project and this Contract, except as otherwise expressly specified in the Contract Documents (by way of example: bonds and indemnity provisions).
11. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission percentage, brokerage or contingent fee accepting bona fide employees or established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City in its discretion shall have the right to cancel this Contract without liability or, to remain a party to this Contract and deduct from the Contractor's compensation the full amount of such commission percentage, brokerage, or contingent fee.
12. Contractor and their subcontractors shall be licensed to perform the required work in accordance with the laws of the State of Florida and local ordinances.
13. IN NO EVENT SHALL THE CITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DELAY DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, OR COST OF COVER INCURRED BY CONTRACTOR, SUB-CONTRACTORS OR ANY THIRD PARTIES ARISING OUT OF THIS CONTRACT AND/OR CONCERNING THE PERFORMANCE OF WORK BY THE CONTRACTOR, SUB-CONTRACTORS OR BY THE CITY UNDER THIS CONTRACT.
14. In accordance with the provisions of Section 255.05, Florida Statutes and the Bid Documents, the Contractor, at Contractor's expense, shall provide to the City, a Performance Bond and Payment Bond for the Project, each in an amount not less than the total construction cost for the Project and in a form acceptable to the City and meeting the requirements of the Bid Documents. The Performance Bond and Payment Bond shall be delivered to City prior to the commencement of any Work under this Contract and shall not expire until expiration of the warranty periods for the Project. The Contractor shall cause the posting of the Payment Bond in accordance with Section 255.05, Fla. Stat. prior to commencement of Work.
15. If any terms or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, to be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

16. This Contract shall become effective on the Effective Date and shall remain in effect until the Contractor completes the Work required by this Contract to the full and complete satisfaction of the City, unless terminated earlier. "Effective Date" shall be the date on which the last signatory hereto shall execute this Contract.

[SIGNATURE PAGE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have made and executed this Contract, the day and year first above written.

[INSERT CONTRACTOR NAME]

\_\_\_\_\_  
CONTRACTOR

(Seal)

By \_\_\_\_\_  
(Title)

ATTEST:

DATE \_\_\_\_\_

\_\_\_\_\_

City of DeBary, FLORIDA

(Seal)

BY: \_\_\_\_\_  
Karen Chasez, Mayor

ATTEST:

DATE \_\_\_\_\_

\_\_\_\_\_  
City Clerk



## PERFORMANCE BOND

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_  
\_\_\_\_\_ as Principal, hereinafter called Contractor,  
and \_\_\_\_\_ as Surety, hereinafter called  
Surety,  
are held and firmly bound unto the City of DeBary, Florida, as obligee, hereinafter called  
City, in the amount of \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves,  
their heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 2023, entered  
into a Contract with City for:

**CITY OF DEBARY  
SMALL SCALE STORMWATER IMPROVEMENT PROJECT NO. 8  
BID No. 04-23**

in accordance with Drawings and Specifications prepared by the City, which Contract is by  
reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, if the  
Principal shall in all respects promptly and faithfully perform and comply with the terms and  
conditions of said Contract and its obligations thereunder and shall indemnify the City and  
the Consulting Engineer and save either or all of them harmless against and from all costs,  
expenses and damages arising from the performance of said Contract or the repair of any  
work there under, then this obligation shall be void; otherwise, this Bond shall remain in full  
force and effect, in accordance with the following terms and conditions:

1. The Principal and Surety jointly and severally agree to pay the City any  
difference between the sum to which the said Principal would be entitled on  
the completion of the Contract, and that sum which the City may be obliged  
to pay for the completion of said work by Contract or otherwise, and any  
damages, direct or indirect or consequential, **including without limitation  
those for delay**, expenses, costs, and attorney's fees including appellate  
proceedings, which the said City may sustain on account of such work, or on  
account of the failure of said Contractor to properly and in all things, keep  
and execute all of the provisions of said Contract.
2. And this Bond shall remain in full force and effect for a period of one (1) year  
from the date of acceptance of the project by the City and shall provide that  
the Contractor guarantees to repair or replace for said period of one (1) year  
all work performed and materials and equipment furnished that were not  
performed or furnished according to the terms of the Contract, and shall  
make good, defects thereof which have become apparent before the  
expiration of said period of one (1) year.

If any part of the project, in the judgment of the City, for the reasons above stated needs to be replaced, repaired or made good during that time, the City shall so notify the Contractor in writing. If the Contractor refuses or neglects to do such work within five (5) days from the date of service of such Notice, the City shall have the work done by others and the cost thereof shall be paid by the Contractor or its Surety.

- 3. And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive Notice of any change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.
- 4. The surety presents and warrants to the City that they have a Best's Key Rating Guide General Policyholder's Rating of " \_\_\_\_\_ " and Financial Category of "Class \_\_\_\_\_".

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_ 2023, A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its under-signed representative, pursuant to authority of its governing body.

WITNESS:

(If Sole Ownership or Partnership, two (2) Witnesses required).

(If Corporation, Secretary only will attest and affix seal)

PRINCIPAL:

\_\_\_\_\_

\_\_\_\_\_  
Authorized Officer (Affix Seal)

WITNESSES:

\_\_\_\_\_

Title

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State

WITNESS:

\_\_\_\_\_

SURETY:

\_\_\_\_\_  
Corporate Surety

\_\_\_\_\_  
Attorney-in-Fact (Affix Seal)

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State

\_\_\_\_\_  
Name of Local Insurance Agency

Phone: (\_\_\_\_)\_\_\_\_\_

**CERTIFICATES AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the within bond; that \_\_\_\_\_ who signed the said bond on behalf of the Principal, was then \_\_\_\_\_ of said Corporation; that I know the signature, and that the signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

\_\_\_\_\_  
Secretary                      Corporate Seal

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath that this person is the Attorney-in-Fact, for the \_\_\_\_\_ and that this person has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of DeBary, Florida.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023, A.D.

(Attach Power of Attorney to  
Original Bid Bond and Financial  
Statement from Surety Company)

\_\_\_\_\_  
Notary Public  
State of Florida-at-Large

My Commission Expires: \_\_\_\_\_

**- END PERFORMANCE BOND -**

**PAYMENT BOND**

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_

\_\_\_\_\_ as Principal, hereinafter called Contractor, and

\_\_\_\_\_ as Surety, hereinafter called Surety,

are held and firmly bound unto the City of DeBary, Florida, as Obligee, hereinafter called City, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 2023 entered into a Contract with City for:

**CITY OF DEBARY  
SMALL SCALE STORMWATER IMPROVEMENT PROJECT NO. 8  
BID No. 04-23**

in accordance with Drawings and Specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, if the Principal shall promptly make payments to all claimants, as herein below defined, then this obligation shall be void; otherwise, this Bond shall remain in full force and effect, subject to the following terms and conditions:

1. A claimant is defined as any person supplying the Principal with labor, material and supplies, used directly or indirectly by the said Principal of any subcontractor in the prosecution of the work provided for in said Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after performance of the labor or after complete delivery of materials and supplies by such claimant, may sue on this Bond for the use of such claimant, prosecute the suite to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The City shall not be liable for the payment of the costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless claimant, other than one having a direct contract with the

Principal, shall within ninety (90) days after such claimant's performance of the labor or complete delivery of materials and supplies, deliver to the Principal written notice of the performance of such labor or delivery of such material and supplies and the nonpayment therefore.

- b. After the expiration of one (1) year from the performance of the labor or completion of delivery of the materials and supplies; it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitations shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - c. Other than in a state court of competent jurisdiction in and for the City or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- 4. The Principal and the Surety jointly and severally, shall repay the City any sum which the City may be compelled to pay because of any lien for labor or materials furnished for any work included in or provided by said Contract.
  - 5. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration of or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications applicable thereto shall in any way affect its obligations on this Bond, and the Surety hereby waives notice of any such change, extension of time, alterations of or addition to the terms of the Contract, or to the work or to the Specifications.
  - 6. The Surety represents and warrants to the City that they have a Best's Key Rating Guide General Policyholder's rating of " \_\_\_\_\_ " and Financial Category of "Class \_\_\_\_\_".

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_ 2023, A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its under-signed representative, pursuant to authority of its governing body.

WITNESS:

(If Sole Ownership or Partnership, two (2) Witnesses required).

(If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

\_\_\_\_\_

\_\_\_\_\_  
Authorized Officer (Affix Seal)

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State

SURETY:

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Corporate Surety

\_\_\_\_\_  
Attorney-in-Fact (Affix Seal)

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State

\_\_\_\_\_  
Name of Local Insurance Agency

Phone: (\_\_\_\_)\_\_\_\_\_

**CERTIFICATES AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the within bond; that \_\_\_\_\_ who signed the said bond on behalf of the Principal, was then \_\_\_\_\_ of said Corporation; that I know the signature, and that the signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

\_\_\_\_\_  
Secretary                      Corporate Seal

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath that this person is the Attorney-in-Fact, for the \_\_\_\_\_ and that this person has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of DeBary, Florida.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023, A.D.

(Attach Power of Attorney to  
Original Bid Bond and Financial  
Statement from Surety Company)

\_\_\_\_\_  
Notary Public  
State of Florida-at-Large

My Commission Expires: \_\_\_\_\_

**- END PAYMENT BOND -**



**CITY OF DEBARY – BID NO. 04-23**  
**SMALL SCALE STORMWATER IMPROVEMENT PROJECT NO. 8**

**CONSTRUCTION CONTRACT - GENERAL CONDITIONS**

**ARTICLE 1 - PRELIMINARY MATTERS**

1. COPIES OF DOCUMENTS - CITY will furnish to the CONTRACTOR five (5) sets of Drawings and Specifications, at no cost to the CONTRACTOR. Additional copies will be furnished upon request at the cost of reproduction.
2. COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED - The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the day on which CITY delivers the executed Contract to CONTRACTOR.
3. STARTING THE PROJECT - CONTRACTOR shall start to perform its obligations under the Contract Documents on the date indicated on the Notice to Proceed. No Work shall be done at the site prior to such date without CITY's permission.
4. BEFORE STARTING CONSTRUCTION
  - A. Before undertaking any part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. It shall at once report in writing to ENGINEER any conflict, error or discrepancy which it may discover.
  - B. Within ten (10) days after receipt of the executed Contract by the CONTRACTOR, CONTRACTOR shall submit to Engineer a tentative Progress Schedule indicating the starting and completion dates of the various stages of the Work and a preliminary schedule of Shop Drawing submissions.
  - C. Within twenty (20) days after receipt of the executed Agreement/Contract by the CONTRACTOR, but before starting the Work at the site, a conference will be held to review the above schedules, to establish procedures for handling Shop Drawings and other submissions and for processing Applications for Payment, and to establish a working understanding between the parties as to the Project. Present at the conference will be CITY or its Representative, ENGINEER, Resident Project Representative (if any), CONTRACTOR and its Engineer and any other representatives of parties involved in the Project, as CITY may require.

## **ARTICLE 2 - CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS**

1. **INTENT** - It is the intent of the Specifications and Drawings to describe a complete project to be constructed in accordance with the Contract Documents and to include all items necessary for the proper execution and completion of the Work. The Contract Documents comprise the entire agreement between CITY and CONTRACTOR. They may be altered only by a Modification.
2. **CONTRACT DOCUMENTS** - The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The CONTRACTOR shall review the Contract Documents and if there is a conflict, error, discrepancy or omission in these Documents, it shall call it to the Engineer's attention in writing, at once, and before proceeding with the Work affected thereby. In resolving such conflicts, errors, discrepancies, and omissions, the documents shall be given precedence in the following order: Agreement/Contract, Modifications, Addenda, Instructions to Bidders, General Conditions, Specifications and Drawings. Written figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
3. **VARIANCE OF CONDITIONS**
  - A. If the Contractor believes that any conditions met by it are at variance with the conditions shown by the Contract Documents, that there is any conflict, error, discrepancy or omission in the Contract Documents, or that any instructions given by the Engineer are at variance with the Contract Documents, it shall notify the Engineer, in writing, within Seventy-two (72) hours of the discovery of such conflict, variance, error, discrepancy or omission specifying the same. No Work affected by such conflict, variance, error, discrepancy or omission shall be done, except in the case of emergency endangering life or property, which would result in a claim by the CONTRACTOR for extra compensation until the question has been resolved as herein specified. The CONTRACTOR shall, however, proceed with other Work not in question or affected thereby and not deemed by it to entitle it to extra compensation. The performance by the CONTRACTOR of Work affected by the conflict, variance, discrepancy, error or omission without giving notice within the time above specified or after such notice and before the resolution of the question shall be deemed an acknowledgment by the CONTRACTOR that no extra cost is involved, and that if inappropriate, the Work so performed will be removed and replaced with proper Work, and shall constitute an absolute waiver of any claim for extra compensation resulting there from.
  - B. If the ENGINEER determines that a conflict, variance, discrepancy, error or omission exists, the correction of which the CONTRACTOR agrees will not involve extra cost, the Engineer shall order the necessary change or

correction and the CONTRACTOR shall proceed with the work. If the CONTRACTOR does not agree that extra cost is not involved, the matter shall be submitted to the CITY in the manner provided for in Article 13 - SETTLEMENT OF DISPUTES. The CONTRACTOR shall proceed with the changes specified by the ENGINEER to correct the conflict, variance, error, discrepancy or omission without further delay and the questions of extra compensation shall be determined as provided in Article 7 Paragraph 7 of these General Conditions entitled DECISIONS ON DISAGREEMENTS.

- C. Under any circumstances wherein delay in the Work during the determination of questions relating to variances, errors, or discrepancies, or any other matter would involve, in the opinion of the CONTRACTOR, danger to life or property, the CONTRACTOR shall proceed with the Work and take such steps as it deems necessary to correct the condition. It shall notify the Engineer within seventy-two (72) hours after the circumstances arose. If the CONTRACTOR believes the measures taken entitle it to extra compensation, the parties shall endeavor to agree upon an amount. Upon the failure to do so, the matter shall be determined as provided for in Article 13 - SETTLEMENT OF DISPUTES of these General Conditions. The failure of the CONTRACTOR to notify the Engineer within the time above specified or to present in writing at that time its claim that it is entitled to extra compensation shall be deemed as an absolute waiver by it of any right to extra compensation therefore.

#### 4. GIVING NOTICE

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid to the last business address known to it who gives the notice.

#### 5. COMPUTATION OF TIME

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

#### 6. DUTIES AND OBLIGATIONS

The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder, and, in particular, but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by Article 4, Paragraph 14, Article 11, Paragraphs 1 and 7 and Article 12, Paragraph 3 of these General Conditions, the rights and remedies available to CITY there under, shall be in addition to and shall not be construed in any way as a limitation of any rights and remedies available to it which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.

Should CITY or CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other or of any of its employees or agents or others for whose acts it is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

The Contract Documents shall be governed by the laws of the State of Florida, the County of Volusia and City of DeBary, Florida.

**ARTICLE 3 - AVAILABILITY OF LANDS:  
PHYSICAL CONDITIONS; REFERENCE POINTS**

1. AVAILABILITY OF LANDS

- A. City shall furnish, as indicated in the Contract Documents and not later than the date when needed by CONTRACTOR, the lands upon which the Work is to be done, right-of-way for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise specified in the Contract Documents. If CONTRACTOR believes that any delay in CITY's furnishing these lands or easements entitles it to an extension of the Contract Time, it may make a claim therefore as provided in Article 10 of these General Conditions. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of material and equipment.
- B. The CITY will, upon request, furnish to the CONTRACTOR copies of all available boundary surveys.

2. UNFORSEEN PHYSICAL CONDITIONS - CONTRACTOR shall notify CITY and Engineer in writing within seventy-two (72) hours of discovery of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. ENGINEER will promptly investigate those conditions and advise CITY in writing if further surveys or subsurface tests are necessary. Promptly thereafter, CITY shall obtain the necessary additional surveys and tests and furnish copies to Engineer and CONTRACTOR. If ENGINEER finds that physical conditions which differ materially from those intended In the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a Change order shall be issued incorporating the necessary revisions.

### 3. REFERENCE POINTS

- A. Unless otherwise provided in the Contract Documents, CONTRACTOR shall lay out its Work from base lines and benchmarks established by the CITY and shall be responsible for all measurements in connection therewith.
- B. Unless otherwise provided in the Contract Documents, the CITY will furnish upon request by the CONTRACTOR, all location and limit marks reasonably necessary for the execution of the work. Benchmarks will also be established by the CITY at pertinent points for control of elevations and for grades unless otherwise provided in the Contract Documents.
- C. The CONTRACTOR shall, at its own expense, furnish all stakes, templates, patterns, and platforms, equipment and labor that may be required in setting and cutting, or laying out any part of the work. After base lines and bench marks for the Work have been provided by the CITY, the CONTRACTOR will be held responsible for the proper execution of the Work to such lines and grades, and all stakes or other marks shall be preserved by the CONTRACTOR until removal is authorized. The CITY may require that Work be suspended at any time when for any reason such marks cannot be properly followed.
- D. The CONTRACTOR shall keep the CITY and Engineer informed, a reasonable time in advance, of the times and places at which it intends to do Work in order that lines and grades may be furnished, that inspection may be provided and that necessary measurements for the record may be made with the minimum of inconvenience to the CITY or of delay to the CONTRACTOR.
- E. The CONTRACTOR shall report to the CITY and Engineer whenever any reference point is lost or destroyed, or requires relocation because of changes in grades or locations. The CONTRACTOR shall replace and accurately relocate all reference points so lost, destroyed or moved.

## ARTICLE 4 - CONTRACTOR'S RESPONSIBILITIES

### 1. SUPERVISION AND ENGINEER

- A. CONTRACTOR shall supervise and direct the work efficiently and with its best skill and attention. It shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR shall be exclusively responsible to see that the finished Work complies accurately and completely with the Contract Documents.

- B. CONTRACTOR shall maintain on the Worksite at all times during work progress a competent resident Engineer, who shall not be replaced without written notice to City and Engineer except under extraordinary circumstances. The Engineer will be the Contractor's representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the Engineer shall be as binding as if given to CONTRACTOR.

## 2. LABOR, MATERIALS AND EQUIPMENT

- A. The CONTRACTOR shall provide competent, qualified personnel to lay out its Work from base lines and benchmarks established and to perform construction as required by the Contract Documents. It shall at all times maintain good discipline and order at the site.
- B. CONTRACTOR shall furnish all material, equipment, transportation, labor, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work, unless otherwise provided in the Contract Documents.
- C. All materials and equipment shall be new except as otherwise provided in the Contract Documents. If required by Engineer, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.
- E. The CONTRACTOR shall be responsible for providing a complete and operable installation of all equipment it furnishes. Any changes or modifications required to the Contract Documents as a result of the equipment manufacturer's requirements, and all adjustments to all other Work affected thereby, including but not limited to, added engineering costs due to redesign (to be paid to the ENGINEER), structural, mechanical, electrical, heating, ventilation and air conditioning changes shall be borne by the CONTRACTOR at no additional cost to the CITY.
- F. The protection of stored supplies and materials shall be the Contractor's responsibility and the City shall not be liable for any loss of supplies and materials, by theft or otherwise, nor for any damage to the stored supplies and materials. Materials shall be so stored as to insure the preservation of their quality and fitness for the Work and shall be so located as to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. Materials improperly stored may be rejected without testing.

### 3. SUBSTITUTE MATERIALS OR EQUIPMENT

- A. If the General Requirements of the Specifications, Instructions to Bidders, law, ordinance or applicable rules or regulations permit CONTRACTOR to furnish or use a substitute that is equal to any material or equipment specified, and if CONTRACTOR wishes to furnish or use a proposed substitute, it shall submit to Engineer all pertinent information, plans, documents, data and material which may be necessary or desirable for ENGINEER to evaluate whether the material or equipment is an acceptable substitute. By virtue of such submittal, CONTRACTOR thereby warrants and represents that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and be capable of performing the same function as the specified material or equipment.
- B. In addition, CONTRACTOR shall, prior to the conference called for in Article 1, Paragraph 4 (C) of these General Conditions make written application to Engineer for approval of such substitute material or equipment which shall include a certification as to the satisfaction of the requirements of Paragraph "A" above, and which shall also state whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty and shall identify all variations of the proposed substitute from that specified. At the election of Engineer, CONTRACTOR shall also have the substitute supplier of material or equipment sign the certification required by this paragraph.
- C. No substitute materials or equipment shall be ordered or installed without the written approval of Engineer who will be the sole judge of equality, and Engineer may require CONTRACTOR to furnish such other data as it considers appropriate. No materials or equipment shall be ordered or installed without first complying with Paragraphs A and B above and furnishing any guarantee or replacement bonds (150% of replacement cost) required by CITY to be named as sole obligee, which shall be furnished at Contractor's expense. The approval by Engineer of any substitute material or equipment shall not diminish the Contractor's or supplier's responsibility for the material or equipment submitted as a substitute under this Article.
- D. If subsequent to the award of the Contract for the rare occasions that it becomes necessary (because of delays in delivery, strikes, discontinuance of manufacture of items specified or the approved substitutions prior to award) to use an item of equipment or material which is of a different type than the equipment or material specified, or the approved equal thereof, the Engineer, by change order may authorize the use of such different type equipment or material. Each such different type item (and possibly changes in other parts of the Work related to the item) may be the same, more or less, in cost than the item specified. In its request for use of such different type item, the CONTRACTOR shall submit to the Engineer in writing a complete description of the proposed item including dimensions, operational characteristics, changes (if any) that will be required to other related parts of the Work, etc. It shall also submit to the Engineer in writing full information as to costs of the

item specified, the cost of the different type item being proposed as well as costs (additional or credits) of changes (if any) to any related parts of the work. Such information shall be in such form and detail as to permit the Engineer to check, to its satisfaction, the costs involved. Upon approval of such different type item when the cost thereof is less or greater, the Engineer will recommend by change order in writing the proper adjustment in payment to the CONTRACTOR.

4. **PATENT FEES AND ROYALTIES:** CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of CITY or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless CITY and Engineer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents and shall defend all such claims in connection with any alleged infringement of such rights.
5. **PERMITS**
  - A. CONTRACTOR shall obtain and pay for all construction permits and licenses, except as otherwise noted, and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of its Bid.
  - B. The CONTRACTOR shall obtain and pay for insurances that may be required by the various permits.
  - C. Before starting work, the CONTRACTOR shall obtain and pay for all required licenses, permits and related fees for Construction including, but not limited to: Building Permits, Utility Permits, Water and Sewer Hookup and Impact Fees and any additional Permit or Fee associated with the issuance of the Building Permit exclusive of Road Impact Fees which will be paid directly by the CITY.
6. **LAWS AND REGULATIONS -** CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If CONTRACTOR observes that the contract Documents are at variance therewith, it shall give the Engineer written notice thereof, within seventy-two (72) hours of its observation, and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to Engineer, it shall bear all costs arising there from.



7. TAXES - CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by it in compliance with the law of the place where the Work is to be performed, unless otherwise stipulated elsewhere in the Contract Documents. CITY is exempt from Florida Sales Tax and will provide current Certificate of Exemption.
  
8. USE OF PREMISES/USE OF PUBLIC STREETS
  - A. CONTRACTOR shall confine its equipment, the storage of materials and equipment and the operations of its workers to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.
  
  - B. CONTRACTOR shall not place or maintain, or allow to be placed or maintained, any advertising matter, sign, bill, poster, etc., on or about the site, except those required by law or by the Contract Documents, unless approved by the Engineer, in writing.
  
  - C. CONTRACTOR shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall it subject any part of the Work to stresses or pressures that will endanger it.
  
  - D. USE OF PUBLIC STREETS - The use of public streets shall be such as to provide a minimum of inconvenience to the public and to other traffic. The CONTRACTOR's vehicles and other equipment shall be operated in such manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the road shall be placed so as to cause as little obstruction to the traveling public as possible. Any earth or other excavated material spilled from trucks shall be removed by the CONTRACTOR and the streets cleaned to the satisfaction of the CITY.
  
  - E. The CONTRACTOR shall preserve from damage all property (including public and private property and utilities) along the line of Work, and which is in the vicinity of or is in any way affected by the Work, the removal or destruction of which is not called for by the Plans and whenever such property is damaged due to the activities of the CONTRACTOR or any of its subcontractors, agents or employees, it shall be immediately restored to a condition similar or equal to that existing before such damage or injury was done by the CONTRACTOR, and at its own expense, or CONTRACTOR shall make good such damage or injury in an acceptable manner.

- F. No additional monetary compensation will be allowed for any delays, disruptions, inconveniences, inefficiencies, constructive acceleration or damages of any nature sustained by CONTRACTOR due to any delay, disruptions, constructive accelerations, inefficiency, interference relating to utilities or appurtenances or from the operations of relocating and installing utilities.
9. RECORD PLANS - CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to Engineer and shall be delivered to it for CITY upon completion of the Project.

During the entire construction operation, the CONTRACTOR shall maintain records of all deviations from the Drawings and Specifications and shall prepare there from "record" drawings showing correctly and accurately all changes and deviations from the Work made during construction to reflect the Project as it was actually constructed. These drawings shall conform to recognized standards of drafting, shall be neat and legible. The sum of One Thousand Dollars (\$1,000) will be withheld from the Contract Price until delivery of the set of "record" drawings is made to the CITY.

10. SAFETY AND PROTECTION

- A. The CONTRACTOR will be solely responsible for initiating formulating, supervising, reviewing and overseeing any and all safety precautions, practices, procedures, and programs which are or should be provided in connection with the Work. CONTRACTOR will take all necessary or proper precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to:
1. All employees on the Work Site and any other person who may be affected thereby whether or not such person is involved with the Work.
  2. All the Work and all materials or equipment to be incorporated therein whether in storage on or off the site.
  3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- B. DAMAGE TO EXISTING STRUCTURES AND UTILITIES - The CONTRACTOR shall be responsible for and make good all damage to pavement beyond the limits of Contract Work, buildings, telephone or other cables, water pipes, sanitary pipes, or other structures which may be encountered, whether or not shown on the Drawings.

Information shown in the Contract Documents as to the location of existing utilities has been prepared from the most reliable data available to the Engineer. This information is not guaranteed, however, and it shall be this CONTRACTOR'S responsibility to determine the location, character and depth of any existing utilities. It shall assist the utility companies, by every means possible to determine said locations. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from its activities.

- C. ADJUSTMENTS OF UTILITY CASTINGS, COVERS AND BOXES - All existing utility castings, including valve boxes, junction boxes, manholes, hand holes, pull boxes, inlets and similar structures in the areas of grading and paving shall be adjusted by the CONTRACTOR to bring them flush with the surface of the finished Work, if so shown on the drawings. Where these items are not shown on the drawings, (To be adjusted by Contractor), it will be the Utility Owners responsibility to adjust them.
  - D. NOTIFICATION TO UTILITY COMPANIES - The excavators shall comply with FL 77-153 regarding notification of existing gas and oil pipeline company owners. Evidence of such notice shall be furnished to the CITY prior to excavating.
11. EMERGENCIES - In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from Engineer or CITY is obligated to act at its discretion to prevent threatened damage, injury or loss. It shall give Engineer written notice within seventy-two (72) hours of any significant changes in the Work or deviations from the Contract Documents caused thereby. If CONTRACTOR believes that additional Work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, it may make a claim therefore as provided in Articles 9 and 10 of these General Conditions.
12. **CLEANING - During the progress of the Work, to the full extent feasible, CONTRACTOR shall keep the Project Site free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work, it shall remove all waste materials, rubbish and debris from and about the Project as well as all tools, construction equipment and machinery, and surplus materials and shall leave the site clean and ready for occupancy and use by CITY. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents. If the Contractor fails to clean up as provided in the Contract Documents, the City may do so and City shall be entitled to reimbursement from the Contractor for said costs. Alternatively, if the Contractor fails to comply with this section, the City shall have the right to, after one warning to Contractor of non-compliance with this provision and a 24-hour opportunity to cure, assess Contractor \$100 per each day the Project Site is in non-compliance with this provision as liquidated damages and such assessment shall be deducted from the Contract Price and withheld from subsequent progress payment(s). If a repeat violation of this section occurs,**

**the City shall have the right to immediately assess the Contractor, without prior notice and an opportunity to cure, \$100 per each day that the Project Site is in non-compliance.**

13. HAZARDOUS OR TOXIC WASTE. When the CONTRACTOR's operations encounter or expose any abnormal condition, which may indicate the presence of a hazardous or toxic waste, such operations shall be discontinued in the vicinity of the abnormal conditions and the Engineer shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, ground water, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes and shall be treated with extraordinary caution. Every effort shall be made by the CONTRACTOR's operations shall not resume until so directed by the Engineer. Disposition of the hazardous or toxic waste will be made in accordance with the requirements and regulations of any Local, State, or Federal Agency having jurisdiction.

## **ARTICLE 5 - WORK BY OTHERS**

1. WORK BY THE CITY - CITY may perform additional Work related to the Project by itself, or it may let other direct contracts therefore. CONTRACTOR shall afford the other Contractors who are parties to such direct contracts (or CITY, if it is performing the additional Work itself) reasonable opportunity for the introduction and storage of materials and equipment for the execution of work, and shall properly connect and coordinate its Work with theirs.
2. CONTRACTOR'S RESPONSIBILITY
  - A. If any part of Contractor's Work depends for proper execution or results upon the Work of any such other Contractor (or CITY), CONTRACTOR shall, prior to commencing the Work, inspect and promptly report to Engineer in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. Its failure to so report shall constitute an acceptance of the other Work as fit and proper for the relationship to its Work.
  - B. CONTRACTOR shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. CONTRACTOR shall not endanger any Work of others by cutting, excavating or otherwise altering others Work and will only cut or alter others Work with the written consent of Engineer and of the other Contractors' who's Work will be affected.

3. WORK BY OTHERS NOT NOTED - If the performance of additional Work by other Contractors or CITY is not noted in the Contract Documents prior to the execution of the contract, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional Work by CITY or others involves it in additional expense or entitles it to an extension of the Contract Time, it may make a claim therefore as provided in Articles 9 and 10 of these General Conditions.
4. The CONTRACTOR shall arrange its Work and dispose of its materials so as not to interfere with operations of other contractors engaged upon adjacent work and to join his Work to that of others in a proper manner, in accordance with the spirit of the Plans and Specifications, and to perform his Work in the proper sequence in relation to that of other contractors. Each contractor shall be responsible for any damage done by him or his agents to the work performed by another contractor.

## **ARTICLE 6 - CITY'S RIGHTS AND RESPONSIBILITIES**

### **1. GENERAL**

- A. CITY shall issue all communications to CONTRACTOR through Engineer.
- B. CITY shall furnish the data required of it under the Contract Documents promptly and shall make payments to CONTRACTOR Promptly after they are due as provided in Article 12, Paragraphs 4(A) and 9(A) of these General Conditions.
- C. CITY's duties in respect of providing lands and easements and possibly providing engineering surveys to establish reference points, unless otherwise stipulated elsewhere, are set forth in Article 4, Paragraphs 1 and 3 of these General Conditions.
- D. In addition to its rights to request changes in the Work in accordance with Article 8 of these General Conditions, CITY (especially in certain instances as provided in Paragraph 8.4) shall execute Change Orders as provided under the Contract Documents.
- E. CITY's responsibility in respect of certain inspections, tests and approvals is set forth in Article 11, Paragraph 2 of these General Conditions.
- F. In connection with CITY's right to stop Work or suspend Work, see Article 11, Paragraph 5 and Article 13, Paragraph 1 of these General Conditions. Paragraph 13.2 deals with CITY's right to terminate services of CONTRACTOR.

## ARTICLE 7 – ENGINEER’S STATUS DURING CONSTRUCTION

1. CITY’S REPRESENTATIVE - Unless otherwise provided elsewhere in the Contract Documents, the CITY’s Engineer (“Engineer”) will be CITY’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as CITY’s representative during construction are set forth in Articles 1 through 15 of these General Conditions. Should the CITY appoint as its representative a party other than the Engineer, such CITY’S Representative shall have the same authority and duties as those assigned to the Engineer hereunder.

Contract administration, inspection and acceptance of materials and workmanship shall be the responsibility of the CITY. CITY may employ its own Field Representatives for such work or may authorize other party to perform such duties. Accordingly, the terms “Engineer”, “Inspector” and other references to the person or persons granting approval, authority or permission, conducting inspections or tests, observing the work and so forth, shall be defined as and understood to denote the CITY’s Representative or its authorized representative.

2. VISITS TO SITE - The Engineer shall make sufficient visits to the site for the exclusive purpose of observing the progress of the Work in order to evaluate, in general, whether the CONTRACTOR (S) are achieving the applicable performance parameters as generally embodied in the project’s design and communicated via the drawings and Specifications. The Engineer shall not be responsible either directly or indirectly for the initiation, formulation, supervision or overseeing of construction means, methods, techniques, sequences or procedures, or safety precautions, practices, procedures or program employed in connection therewith. These matters shall be within the exclusive discretion, control and responsibility of the CONTRACTOR (S). Engineer shall not in any way be responsible for the failure of CONTRACTOR (S) to perform the construction Work in accordance with the Drawings and Specifications.
3. CLARIFICATIONS AND INTERPRETATIONS - Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification and interpretation entitles it to an increase in the Contract Price, it may make a claim therefore as provided in Article 9 of these General Conditions. No oral clarification or interpretation shall be valid.
4. REJECTING DEFECTIVE WORK
  - A. Engineer will have authority to disapprove or reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective or does not meet the requirements of any inspection, test or approval referred to in Article 11, Paragraph 2 (A) of these General Conditions or has been damaged prior to approval of final payment or otherwise fails to comply with the Drawings or Specifications).

It will also have authority to require special inspection or testing of the Work as provided in Article 11, Paragraph 4(B) of these General Conditions, whether or not the Work is fabricated, installed or completed.

- B. Such authority to disapprove or reject or to require special inspection or testing shall not be construed as giving the Engineer, either directly or indirectly, any power, control or authority over the CONTRACTORS' construction means, methods, techniques, sequences or procedures (or safety precautions, practices, procedures or programs employed in connection therewith) and shall not be construed as giving the Engineer the power, control or authority to stop the Work, but Engineer shall recommend to CITY to order stopping the Work if it is in the CITY'S best interest.

## 5. SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS

- A. In connection with Engineer's responsibility for Shop Drawings and samples, see the appropriate Section of the Technical Specifications.
- B. In connection with Engineer's responsibility for Change Orders, see Articles 8, 9 and 10 of these General Conditions.
- C. In connection with Engineer's responsibilities in respect of Application for Progress Payments, etc., see Article 12 of these General Conditions.

- 6. RESIDENT PROJECT REPRESENTATIVES - If the CITY and Engineer agree, the Engineer will furnish a Resident Project Representative and assistants to assist the Engineer in carrying out its responsibilities at the site. If the design ENGINEER is not authorized by the CITY to provide a Resident Project Representative, the CITY will provide a City Representative authorized to perform such duties.

## 7. DECISIONS ON DISAGREEMENTS

- A. The Engineer will be the initial interpreter of the requirements of the Contract Documents and the judge of the performance there under. In its capacity as interpreter and judge, it will exercise its best efforts to insure faithful performance of the Work by both CITY and CONTRACTOR. It will not show partiality to either and will not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work, or the interpretation of or performance under the Contract Documents, shall be referred to the Engineer for decision, which it will render in writing within a reasonable time.
- B. Should either CITY or CONTRACTOR object to any decision by the Engineer with respect to any such claim, dispute or other matter that has been referred to the Engineer, except any which have been waived by the making or acceptance of final payment as provided in Article 12 of these General Conditions, Paragraph 12.11, such objection shall be resolved in accordance with Article 13. However, no demand for legal action for any such claim, dispute or other matter shall be made until the earlier of:

1. The date on which the Engineer has rendered its decision or
2. The tenth (10th) day after the parties has presented their evidence to the Engineer if it has not rendered its written decision before that date.  
No demand for legal action shall be made later than thirty (30) days after the date on which the Engineer rendered its written decision in respect of the claim, dispute or other matter as to which legal action is sought, and the failure to demand legal action within said thirty days' period shall result in the Engineer's decision being final and binding upon CITY and CONTRACTOR. If the Engineer renders a decision after legal proceedings have been initiated, such decision may be entered as evidence but shall not supersede the legal proceedings, except where the decision is acceptable to the parties concerned.

## **ARTICLE 8 - CHANGES IN THE WORK**

1. **ADDITIONS, DELETIONS OR REVISIONS BY CITY** - The CITY, without invalidating the Contract, may order extra Work or make changes by altering, adding to, or deducting from the Work, the Contract Price being adjusted accordingly. Upon receipt of a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 9 or Article 10 of these General Conditions on the basis of a claim made by either party. The Contract Price and Contract Time may be changed only through a Change Order.
2. **MINOR CHANGES BY ENGINEER** - In giving instructions, the Engineer shall have authority to make minor changes in the Work not involving extra cost and not inconsistent with the purposes of the Contract. Except in an emergency endangering life or property, no extra Work or change shall be made unless pursuant to a Change Order from the CITY signed or countersigned by the Engineer, and no claim for an addition to the Contract Price shall be valid unless so ordered. If CONTRACTOR believes that any minor change or alteration authorized by Engineer entitles it to an increase in the Contract Price, it may make a claim therefore as provided in Article 9 of these General Conditions.
3. **UNAUTHORIZED WORK BY CONTRACTOR** - Additional Work performed by CONTRACTOR without authorization of a Change Order is done at its own risk and will not entitle it to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 4, Paragraph 12 and Article 11, Paragraph 4(B) of these General Conditions.



#### 4. EXECUTION OF CHANGE ORDER

- A. CITY shall execute appropriate Change Orders prepared by Engineer covering changes in the Work to be performed as provided in Article 3, Paragraph 2 of these General Conditions and Work performed in an emergency as provided in Article 4, Paragraph 12 of these General Conditions and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is agreed upon by CITY.
- B. It is CONTRACTOR'S responsibility to notify its Surety of any changes affecting the general scope of the Work or change in the Contract Price, and the amount of the applicable Bonds shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to CITY.
- C. Upon delivery of a Change Order executed by the CITY to the Engineer, the Change Order shall be deemed a part of this Contract in all respects and the Engineer shall instruct the CONTRACTOR to proceed accordingly by delivery of a fully executed copy thereof.
- D. Upon receipt of notification that a Change Order prepared as above has been submitted to the CITY, the CONTRACTOR shall not proceed with any part of the Work affected by said Change Order until said Change Order is signed by the CITY. If, however, the delay for said time would cause, in the opinion of the CONTRACTOR, a material increase in the cost for completing the work, the CONTRACTOR may proceed at its own risk. The failure of the CONTRACTOR to proceed during said time shall be deemed its acknowledgment that the delay will not cause any such expense to it.
- E. In determining the value of the Extra Work, addition or deletion, the need for delay and resultant additional cost, if any, to the CONTRACTOR shall be considered and specifically stated as part of the cost of the Extra Work or reduction of the credit for any deletion. Failure to specifically state such amount shall be deemed an admission by the CONTRACTOR of the absence thereof.
- F. It is the specific intent of the parties that the Work required is to be performed at the firm prices stated and that no extras or changes in the Work either additions or deletions involving a change in the Contract Price shall be undertaken nor performed by the CONTRACTOR, nor shall it receive any additional compensation nor allow any credit, (except for increase or decrease in quantity as hereinafter provided and with respect to emergencies) if said extras, changes, additions or deletions have not been expressly approved and authorized as expressly provided herein.

## ARTICLE 9 - CHANGE OF CONTRACT PRICE

### 1. GENERAL

- A. The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at its expense without change in the Contract Price.
- B. The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to CITY and Engineer within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless CITY allows an additional period of time to ascertain accurate cost data. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.
- C. Value of Work Covered by Change Order
  - 1. The Cost of the Work of any such extra, deleted or changed work or change shall be determined in one or more of the following ways:
    - a. By estimate and acceptance in a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; the substantiating itemized data shall include the following:
      - (i) Labor rates and hours
      - (ii) Itemized material list and price
      - (iii) Construction equipment hours and rates
      - (iv) Subcontractor's costs itemized as above
      - (v) Any other information that will aid the CITY and/or Engineer in evaluating the cost and thereby expediting the approval of the Change Order.
    - b. by unit prices named in the Contract or subsequently agreed upon;
    - c. by cost and percentage or by cost and a fixed fee.

2. If the CITY, on its own initiative, or upon recommendation of the Engineer, wants any Extra Work or change in the Work constituting an alteration, addition to, or deduction from, the Work, the Engineer shall prepare a "Change Order" setting forth the kind, character and quantity of such work and the Engineer estimate of the value thereof determined as hereafter provided.
3. In preparing such estimate of value it shall consult with the CONTRACTOR and ascertain the CONTRACTOR'S acceptance of said valuation and willingness to perform the additional work or eliminate the deletions for said sum, which shall be evidenced on said Change Order by the signature of the CONTRACTOR or its duly authorized representative. The Engineer shall submit said Change Order to the CITY and notify the CONTRACTOR of the date of said submission. The CITY shall have ten (10) days from the date of said submission within which to signify acceptance of the Change Order at the value stated therein, which shall be evidenced by the signature thereon of the CITY.

## 2. COST OF THE WORK

A. For purposes of Change Orders, the term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work directly required by the Change Order. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 9.2, B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work required by the Change Order under schedules of job classifications agreed upon by CITY and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work required by the Change Order. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include Engineers and foremen at the site. The expenses of performing Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by CITY.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection there with. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts,

rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to it and shall deliver such bids to CITY who will then determine with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Cost of the Work shall be determined in accordance with Article 9 Paragraph 2, A and B of these General Conditions. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
4. Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories and surveyors) employed for services specifically related to the Work required by the Change Order.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, traveling and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work required by the Change Order.
  - b. Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
  - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, use or similar taxes related to the Work and for which CONTRACTOR is liable imposed by any governmental authority.

- e. Deposits in connection with the performance of the Work, negligence, royalty payments and fees for permits and licenses.
- f. Losses, damages and expenses, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of, and to, the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, it shall be paid for its services a fee proportionate to that stated in Article 9 Paragraph 3(A) of these General Conditions.
- g. The cost of utilities, fuel and sanitary facilities at the site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

B. The term Cost of the Work shall not include any of the following:

- 1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contract agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the schedule referred to in Article 9 Subparagraph 2(A)(1) of these General Conditions -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.
- 2. Expenses of CONTRACTOR'S principal and branch offices other than its office at the site.
- 3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 4. Cost of premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same.

5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Article 9 Paragraph 2(A) of these General Conditions.

### 3. CONTRACTOR'S FEE

- A. The CONTRACTOR'S Fee which shall be allowed to CONTRACTOR for its overhead and profit shall be determined as follows:
  1. A mutually acceptable fixed fee; or if none can be agreed upon,
  2. A fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Article 10 Paragraphs 2(A)(1) and Article 9 Paragraphs 2(A)(2) of these General Conditions, the Contractor's Fee shall be ten (10%) percent.
    - b. For costs incurred under Article 9 Paragraph 2(A)(3) of these General Conditions, the Contractor's Fee shall be five (5%) percent and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten (10) percent, and
    - c. No fee shall be payable on the basis of costs itemized under Article 9 Paragraphs 2(A)(4), (2)(A)(5) and 2(B) of these General Conditions.
- B. The amount of credit to be allowed by CONTRACTOR to CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.
- C. Whenever the cost of any Work is to be determined pursuant to Article 9 Paragraphs 2(A) of these General Conditions, CONTRACTOR will submit in form prescribed by CITY an itemized cost breakdown together with supporting data.

4. ALLOWANCES - It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such material suppliers or Subcontractors and for such sums within the limit of the allowances as Engineer may approve. Upon final payment, the Contract Price shall be adjusted as required and an appropriate

Change Order issued. The CONTRACTOR agrees that the original Contract Price includes such sums as it deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

## **ARTICLE 10 - CHANGE OF THE CONTRACT TIME**

1. GENERAL - The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to CITY and Engineer within fifteen (15) days of the commencement of the event giving rise to the claim. Notice to the extent of the claim with supporting data shall be delivered within forty-five (45) days of such commencement unless Engineer allows an additional period of time to ascertain more accurate data. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
2. DELAY IN PERFORMANCE OF CONTRACT
  - A. The CONTRACTOR will be required to diligently and timely prosecute the Work under the Contract and to complete the entire Work not later than the time specified in the Agreement/Contract. The Work shall be "complete" only after the final clean-up of the premises has been completed and all punch-list items corrected to the satisfaction of CITY and Engineer.
  - B. If the CONTRACTOR'S progress in completing the Work is delayed for any reason (including, but not limited to acts, errors, omissions or conduct of the CITY, Engineer, or Subcontractor or material supplier, or any other Contractor or Subcontractors) CONTRACTOR'S exclusive remedy shall be an extension of the time allowed for completion of the Work under this Contract. Under no circumstances, however, shall CONTRACTOR be entitled to claim or recover damages resulting from any such delay.
  - C. The CONTRACTOR shall notify the CITY in writing of such delay and the cause thereof, within time stated in the preceding Paragraph 10.1. The Engineer shall then ascertain the facts and the extent of the delay inform the CITY and determine if CITY agrees to provide an extension of the Contract Time in an amount equal to time lost due to delays beyond the control of the CONTRACTOR. If the CONTRACTOR objects to any adjustment made by the CITY under this clause, such dispute shall be determined in accordance with Article 16 of these General Conditions.
  - D. No such extension of time shall be deemed a waiver by the CITY of its right to terminate the Contract for abandonment or delay by the CONTRACTOR as provided in the Contract, nor shall such extension be deemed to relieve the CONTRACTOR from full responsibility for performance of its obligations hereunder.

3. LIQUIDATED DAMAGES FOR DELAY - All time periods stated in the Contract Documents are of the essence of the Contract. Since the damages and losses to the CITY which will result from the CONTRACTOR'S failure to complete the Work within the time specified (including any extensions thereof approved by the CITY) are impossible to accurately determine in the event of any delay in completing the Work on schedule, the CONTRACTOR agrees to pay the CITY liquidated damages in the sum established in the Contract for each consecutive calendar day (including Sundays and all holidays) by which the CONTRACTOR shall fail to complete its Work as required by the Contract. Such sums are hereby agreed to be reasonable predictions of damages which will be sustained and are specifically declared to not constitute a penalty for breach of Contract.

## **ARTICLE 11 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

1. WARRANTY AND GUARANTEE - CONTRACTOR warrants and guarantees to CITY and Engineer that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and will give proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in Article 11 Paragraph 2 of these General Conditions. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests or approvals shall be considered defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 11 of these General Conditions. The warranty and guarantee under this provision shall be separate and in addition to Contractor's obligations under other provisions of the Contract Documents.
2. TESTS AND INSPECTIONS
  - A. If either the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project requires any Work to be inspected, tested, or approved, the CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval.
  - B. CONTRACTOR shall give Engineer and CITY timely notice of readiness of the Work for all inspections, tests or approvals. If any such Work required so to be inspected, tested or approved is covered without written approval of Engineer, it must, if requested by Engineer and/or CITY, be uncovered for observation, and such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given Engineer and CITY timely notice of its intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.



- C. Neither observation by Engineer nor inspections, tests or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from its obligations to perform the Work in accordance with the requirements of the Contract Documents.
  - D. The CITY will provide all required tests necessary for field control of project. Generally these tests are Proctors, Densities, Bearing Value, and concrete quality tests. All mix designs such as Asphalt, Concrete, or Soil Cement will be furnished and paid for by the CONTRACTOR. Any pre-manufactured products such as pipe, inlets, steel, etc., will require a certified mill analysis report. Any tests that have to be repeated because of failure to meet specifications will be deducted from final payment to CONTRACTOR, costs of tests to be current industry rate as determined by the Engineer.
3. ACCESS TO WORK - Engineer and its representatives and other representatives of CITY shall have unlimited access to the Work. CONTRACTOR shall provide proper and safe facilities for such access and observation of the Work and also for any inspections or testing thereof by others.
4. UNCOVERING WORK
- A. If any part of the Work is covered contrary to the instruction of Engineer or CITY, it must, if directed by Engineer or CITY, be uncovered for its observation and replaced at CONTRACTOR'S expense.
  - B. If any Work has been covered which Engineer or CITY has not requested to observe prior to its being covered, or if Engineer considers it necessary or advisable that covered Work be inspected or tested, CONTRACTOR, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer or CITY may require that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional services, and an appropriate deductive Change Order shall be issued. If, however, such Work is found to be in accordance with the Contract Documents, CONTRACTOR shall be entitled to request an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if it makes a claim therefore as provided in Articles 9 and 10 of these General Conditions.

5. CITY MAY STOP THE WORK - If the Work in any respect fails to comply with the Contract Documents, or is causing unsafe conditions, in the opinion of the CITY, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or if CONTRACTOR fails to make prompt payments to Subcontractors or for labor, materials or equipment, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.
6. CORRECTION OR REMOVAL OF DEFECTIVE WORK - If required by Engineer or CITY prior to approval of final payment, the CONTRACTOR shall promptly, without cost to CITY and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from Engineer or CITY, CITY may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services and performance of testing, shall be paid by CONTRACTOR, and an appropriate deductive Change Order shall be issued. CONTRACTOR shall also bear the expenses of making good all Work of others destroyed or damaged by its correction, removal or replacement of its defective Work.
7. **ONE YEAR CORRECTION PERIOD - If, after the approval of final payment and prior to the expiration of one year after the date of Final Completion, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly (no longer than thirty (30) days from a request by the CITY unless otherwise agreed to by the CITY), without cost to CITY and in accordance with CITY'S written instructions, either correct such defective Work, or, if it has been rejected by CITY, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, CITY may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services shall be paid by CONTRACTOR. If circumstances warrant it, including, but not limited to, in an emergency, CITY may have the defective Work corrected or the rejected Work removed and replaced, and CONTRACTOR shall be liable to the CITY for the costs of such. Notwithstanding the above, this provision shall not modify, restrict or impair the CITY's rights against the CONTRACTOR either during or subsequent to the expiration of said period, it being understood that said period establishes an additional remedy to the CITY in the event the Work does not comply with the Contract Documents. Any repair, correction or replacement of Work performed under warranty shall comply with the requirements of the Contract Documents and shall be verified by the performance of testing, at CONTRACTOR's expense, as CITY may require. Any defective Work that is either corrected or rejected and replaced will be warranted and guaranteed for a period of the greater of (i) one (1) year from**

the date of Final Completion; and (ii) one (1) year from the date of such correction or removal and replacement, even if it had previously been corrected or replaced, in accordance with the provisions of this Section. If within such extended warranty period, that Work or any portion thereof is once again found to be defective, CITY shall be entitled to all of CITY's rights and remedies under this Section. This provision relates only to the specific obligation of the CONTRACTOR to repair, correct and replace the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to the CONTRACTOR's obligations other than specifically to correct the Work. The CONTRACTOR acknowledges that the above (1) one year repair, correction and replacement period is separate from and addition to CONTRACTOR's warranty that the Work has been completed in compliance with the Contract Documents.

8. ACCEPTANCE OF DEFECTIVE WORK - If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, it may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after approval of final payment, an appropriate amount, acceptable to CITY, shall be paid by CONTRACTOR to CITY.
9. NEGLECTED WORK BY CONTRACTOR - If CONTRACTOR should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, CITY, after ten (10) days written notice to CONTRACTOR may, without prejudice to any other remedy it may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against CONTRACTOR in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including appropriate reduction in the Contract Price. If the payments then or thereafter due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to CITY.

## **ARTICLE 12 - PROJECT COMPLETION**

### **1. FINAL PAYMENT**

- A. Engineer 's recommendation for final payment will constitute a representation by it to CITY that the conditions precedent to CONTRACTOR being entitled to final payment as set forth in Article 12 Paragraph 6(A) of these General Conditions, have been fulfilled.

- B. Engineer may refuse to recommend the whole or any part of any payment if, in its opinion, it would be incorrect to make such recommendation to CITY. It may also, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in its opinion to protect CITY, including, but not limited to, loss or damage arising from the fact that:
1. The Work is defective, or completed work has been damaged requiring correction or replacement.
  2. Claims or Liens have been filed, or there is reasonable cause to believe such may be filed.
  3. The Contract Price has been reduced because of Change Orders.
  4. CITY has been required to correct defective Work or complete the Work in accordance with Article 11 Paragraph 6 of these General Conditions.
  5. Unsatisfactory prosecution of the Work, including failure to furnish acceptable submittals or to clean up.

## 2. SUBSTANTIAL COMPLETION

- A. Prior to final payment, CONTRACTOR may, in writing to CITY and Engineer, certify that the entire Project or part thereof is Substantially Complete and request that Engineer issue a notice of Substantial Completion. Within a reasonable time thereafter, CITY, CONTRACTOR and Engineer shall make an inspection of the Project to determine the status of completion. If Engineer does not consider the Project (or part thereof) substantially complete, it will notify CONTRACTOR in writing giving its reasons therefore. If Engineer considers the Project (or part thereof) substantially complete, it will prepare and deliver to CITY a tentative notice of Substantial Completion which shall fix the date of Substantial Completion and the responsibilities between CITY and CONTRACTOR for maintenance, heat and utilities. There shall be attached to the notice a tentative list of items to be completed or corrected before final payment, and the notice shall fix the time within which such items shall be completed or corrected, said time to be within the Contract Time. CITY shall have ten (10) days after receipt of the tentative notice to review, approve or disapprove the tentative notice. If, after considering CITY'S objections, Engineer concludes that the Project is not Substantially Complete, it will notify CONTRACTOR in writing stating its reasons therefore. If, after CITY's review and approval of the tentative notice, the Engineer considers the PROJECT Substantially Complete it will, within fifteen (15) days, execute and deliver to CITY and CONTRACTOR a **definitive** notice of Substantial Completion (with a revised list of items to be completed or corrected) reflecting such changes from the tentative notice as it believes justified.

- B. CITY shall have the right to exclude CONTRACTOR from the Project (or a specified part thereof) after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.
3. PARTIAL UTILIZATION - Prior to final payment, CITY may notify CONTRACTOR in writing of its desire to use a specified part of the Project which it believes it may use without significant interference with construction of the other parts of the Project. If CONTRACTOR agrees, it will certify to CITY and Engineer that said part of the Project is Substantially Complete and request Engineer to issue a notice of Substantial Completion for that part of the Project. Within a reasonable time thereafter CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Project to determine its status of completion.

If Engineer does not consider that it is Substantially Complete, it will notify CITY and CONTRACTOR in writing giving its reasons therefore. If Engineer, CITY and CONTRACTOR consider that part of the Project to be Substantially Complete, the Engineer will execute and deliver to CITY and CONTRACTOR a notice to that effect, fixing the date of Substantial Completion as to that part of the Project, attaching CITY shall have the right to exclude CONTRACTOR from any part of the Project which Engineer has so certified to be Substantially Complete, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list (punch list).

4. FINAL INSPECTION - Upon written notice from CONTRACTOR that the Project is complete, Engineer will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.
5. FINAL APPLICATION FOR PAYMENT - After CONTRACTOR has completed all such corrections to the satisfaction of Engineer and CITY and delivered all maintenance and operating instructions, schedules, record drawings, guarantees, Bonds, certificates of inspection and other documents, all as required by the Contract Documents, it may make application for final payment following the procedure for progress payments. The final application for Payment shall be accompanied by such data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished there under. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls material and equipment bills, and other indebtedness connected with the Work for which CITY or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, material supplier, fabricator or other vendor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify it against any Lien.

## 6. APPROVAL OF FINAL PAYMENT

- A. If, on the basis of their observation and review of the Work during construction, their final inspection and review of the final Application for Payment, all as required by the Contract Documents, Engineer and CITY are satisfied that the Work has been completed and CONTRACTOR has fulfilled all of its obligations under the Contract Documents, Engineer will, within twenty (20) days after receipt of the final Application for Payment, indicate recommendation for payment and present the Application for Final Payment to CITY for payment. Thereupon, Engineer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions of Article 12 Paragraph 8. Otherwise, it will return the Application to CONTRACTOR, indicating in writing its reasons for refusing to approve final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. CITY shall, within ten (10) days of presentation to it of an approved final Application for Payment, make arrangements to promptly pay CONTRACTOR the amount recommended by Engineer.
  - B. If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of CONTRACTOR, and Engineer so confirms, CITY shall, without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if Bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the Engineer prior to recommendation for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
7. CONTRACTOR'S CONTINUING OBLIGATION - Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by Engineer, nor the issuance of a Notice of Substantial Completion, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Project or any part thereof by CITY, nor any act of acceptance by CITY, nor any failure to do so, nor any correction of defective Work by CITY nor the expiration of the one year warranty period, provided in Article 11 Paragraph 7 of these General Conditions hereof shall constitute an acceptance of Work not in accordance with the Contract Documents.

## ARTICLE 13 - SETTLEMENT OF DISPUTES

1. GENERAL -The purpose of this Article is to provide a cooperative team building dispute resolution process for payment of monetary obligations and provision of time extensions under the Contract Claim provisions of the Contract Documents. The team building approach to dispute resolution provided in this Section is intended to complement other requirements imposed by the Contract Documents and is not intended to create duties or obligations not otherwise imposed by law or these Contract Documents. The parties remain responsible for performance of all obligations imposed under these Contract Documents. At all times during the time that any Contract Claim is pending and in the process of being resolved or decided, the CONTRACTOR shall proceed diligently with the Work so as to achieve completion of the Work within the Contract Time. To the end that disputes between the CITY and CONTRACTOR may be minimized and their prompt settlement facilitated, the parties agree that all questions or disputes arising between them shall be settled as follows:
  - A. Contract Claims by the CONTRACTOR must be made by written notice on the form provided in the Contract Documents or on Company letterhead with complete documentation to the Engineer with a copy to the City's City Manager. Notices shall be given at the earliest possible moment and in no event later than the time allowed in the Contract Documents. All questions relating to the Work, the performance thereof, or the requirements pertaining thereto, shall be determined by the Engineer and its decision shall be final and conclusive and binding upon the parties, but all disputes of any damages to which either party may be entitled hereunder and all other questions involving payment of money only, shall be subject to determination or review as prescribed in the succeeding paragraphs of this numbered clause.
  - B. Whenever the CONTRACTOR shall object to any decision by the Engineer relating to compensation or any other money payment, it shall, within ten (10) days after the commencement of the event giving rise to the claim for additional money, file a detailed notice of its objections or of its alleged claim, as the case may be, and in default of such notice, it shall be deemed to have ratified the decision, and to have waived the alleged breach and damages therefore, and to have waived any and all rights and remedies which it might otherwise have had.
  - C. Within thirty (30) days of the filing of said objection or claim, the CITY shall notify the CONTRACTOR in writing, whether it agrees or disagrees with said objection or claim. The failure of the CITY to give such written notice within said time shall be deemed to constitute the CITY'S **rejection** of said objection or claim.
  - D. If the CITY agrees with the objection or claim, the additional compensation asserted in the objection or claim shall be added to the Contract Price and paid as provided for other payments hereunder.
  - E. Within fifteen (15) days of receipt of the CITY'S written notice that it disagrees with the objection or claim, or at the end of thirty (30) days of no notice the CONTRACTOR shall notify the CITY, in writing, of its intention to sue ("Notice of Intention to Sue") which shall set forth the specific objections and claims and the amounts involved for which it intends to seek recovery. The failure of the

CONTRACTOR to give said notice within said time shall constitute an absolute waiver of and bar to its right to bring suit in any Court of Law or Equity whatsoever, to recover any sum or sums for any objection or claim with which the CITY specified disagreement in the notice.

2. If, the Work being in all respects completed and acceptable to the CITY and ready for final payment, the time for the CITY to agree or disagree with any such objection or claim or CONTRACTOR'S time for giving said Notice of Intention to Sue have not expired, the time for final payment hereunder shall be extended until thirty (30) days after the last day for the CONTRACTOR'S Notice of Intention to Sue. It is the purpose and intention of these provisions that when Final Payment is made, the CITY may ascertain the exact cost of the project and know that no claims by the CONTRACTOR are pending, or if claims for which Notice of Intention to Sue have been given as herein required, have not been litigated, the CITY shall know the exact subject matter and amount thereof in order to provide, in its sole discretion, necessary funds to provide for payment of such claims upon final determination thereof.
3. The parties agree that the CONTRACTOR shall not be entitled to any extra compensation not determined exactly in accordance with these provisions of the Contract Documents and that, with respect to all objections and claims for which the CONTRACTOR has given Notice of Intention to Sue, suit thereon shall be instituted in said Courts before the date of Final Payment, otherwise they shall be deemed waived and forever barred.
4. False Claims
  - a. If a CONTRACTOR is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentations of fact or fraud on the part of the CONTRACTOR, he shall be liable to the CITY for an amount equal to such unsupported part of the claim in addition to all costs to the CITY attributable to the cost of reviewing said part of his claim.

The CITY and the CONTRACTOR acknowledge that the "Florida False Claims Act" provides civil penalties not more than \$10,000.00 plus remedies for obtaining treble damages against contractors or persons causing or assisting in causing Florida Governments to pay claims that are false when money or property is obtained from a Florida government by reason of a false claim.

**– END OF GENERAL CONDITIONS –**