

**HARRISON STREET PARKING GARAGE
PROGRESSIVE DESIGN-BUILD AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 2026 (“Effective Date”) by and between the City of Hollywood, Florida, hereinafter referred to as the “City” or “Owner”, and Finrock Construction, LLC, a Florida Corporation authorized to do business in the State of Florida, hereinafter referred to as “Design-Builder”, whose Federal I.D. is 59-3401395.

WITNESSETH

WHEREAS, the City recently solicited proposals for design-build services in relation to the Harrison Street Parking Garage Design-Build project (“Project”); and

WHEREAS, Design-Builder submitted a proposal to design and construct the Project and was selected to receive the award of the Project;

WHEREAS, Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement; and

WHEREAS, City and Design-Builder wish to enter into this Agreement to set forth the terms, conditions, and requirements of Design-Builder’s design and construction services in completing the Project.

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, City and Design-Builder now agree as follows:

Article 1.0 Scope of Work for Phase 1 and Phase 2 Services

1.1 Phased Delivery. City and Design-Builder will implement the Project on a phased basis.

1.2 Phase 1 Services. The City has selected Design-Builder on the basis of Design-Builder's proposal for the performance of design, pricing, and other services for the Project during Phase 1. Design-Builder shall perform such services to the level of completion required for Design-Builder and the City to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "Open-Book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Exhibit B, *Design-Builder Design Cost*. The level of completion required for Phase 1 Services is defined in Exhibit A, *Scope of Services* (either as a percentage of design completion or by defined deliverables).

1.3 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in Exhibit A, *Scope of Services*. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, City may (a) accept the Contract Price and issue a Notice to Proceed with Phase 2 services, or (b) enter into a negotiation with Design-Builder on the scope and Contract Price, and, if required, on the schedule, for Phase 2 services to achieve a mutually acceptable basis on which to proceed, or (c) reject Design-Builder's proposal for Phase 2 and either (i) cancel the Project, (ii) proceed with another Design-Builder, or (iii) exercise the "off-ramp" final design provisions of Section 1.4, *Off-Ramp*. The Contract Price for Phase 2 Services will be as set forth in Exhibit B, Design-Builder Design

Cost when mutually agreed between the parties, and this Agreement shall be amended to add the agreed-upon Contract Price for Phase 2 Services in Exhibit C, Phase 2 Cost. Once the parties have agreed upon the Contract Price and City has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 services, all as further described in Exhibit A, *Scope of Services*, as it may be revised.

1.4 Off-Ramp

1.4.1 The parties acknowledge that the City's ability to successfully complete the Project may be significantly impacted if the City elects to terminate Design-Builder's services at the end of Phase 1, rather than proceeding to Phase 2 under Section 1.3 ("Phase 2 Services") and certain design subconsultants are not available to continue working on the Project. Consequently, Design-Builder hereby agrees that if the City terminates Design-Builder for any reason, the City shall have the right to contract directly with such design subconsultants for design-related services on this Project, and Design-Builder shall take such steps as are reasonably necessary to enable the City to implement such relationship. Design-Builder shall provide in any design

sub consultancy agreements that the City shall have the right to negotiate directly with such design subconsultants for the continuation of their services with respect to the Project, and that any provisions with respect to copyright or the ownership of instruments of service confirm such right of the City.

- 1.4.2** If the parties are unable to reach an agreement on Design-Builder's proposed Contract Price for Phase 2 under Section 1.3 within the time limit for acceptance specified in the Proposal, as may be extended by the mutual agreement of the parties, then the proposed Contract Price shall be deemed withdrawn and of no effect. In such event, the City and Design-Builder shall meet and confer as to how the Project will proceed, with the City having the following options:
- .1** The City may declare Phase 1 Services completed and authorize Design-Builder to continue to advance the final design of the Project as an extension of Phase 1 or as an Additional Service, as applicable; or
 - .2** The City may terminate the relationship with Design-Builder and proceed to exercise its available options to perform the final design and construction with parties other than Design-Builder.
- 1.4.3** If the City fails to exercise either of its options under Section 1.4.2 in a reasonable period of time, Design-Builder may give written notice to the City that it considers this Agreement completed. If the City fails to exercise either of the options under Section 1.4.2 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed.
- 1.4.4** If the City terminates the relationship with Design-Builder under Section 1.4.2.2, or if this Agreement is deemed completed under Section 1.4.3, then Design-Builder shall have no further liability or obligations to the City under this Agreement.
- 1.5** Completion. Once Design-Builder has received a Notice to Proceed with Phase 2, Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, labor, manuals, start-up, commissioning and testing services necessary to complete the Work described in and reasonably inferable from the Contract Documents, including Exhibit A (Scope of Services). A requirement of Substantial Completion of the Work is that Design-Builder shall conduct performance tests to demonstrate that the Facility Performance Criteria have been met.

Article 2.0 Contract Documents

- 2.1 Contract Documents.** The Contract Documents are comprised of the following:
- .1** The Design-Build Criteria set forth in this Agreement;
 - .2** All written modifications, amendments and change orders to this Agreement issued in accordance with Attachment A, General Conditions;
 - .3** Written Special Conditions, if any, to the General Conditions; Written Supplementary Conditions, if any, to the General Conditions;
 - .4** The General Conditions set forth as Attachment A to this Agreement;
 - .5** This Agreement, including all exhibits and forms;

.6 Technical Specifications and Drawings – Finalized in Phase 2

.7 Attachments, Exhibits and Forms attached hereto:

Attachments:

A. General Conditions

Exhibits:

A. Scope of Services

B. Phase 1 Cost

C. Phase 2 Cost

D. Project Schedule

E. List of Contract Documents Drawings and Specifications

F. Authorization for Construction-Project Terms and Requirements

G. Project Team

H. GMP Qualifications & Clarifications

I. RFQ Solicitation

J. RFQ Response

K. Assignment and Assumption Contract

Forms:

1. Performance Bond

2. Payment Bond

Article 3.0 Interpretation and Intent

- 3.1 Contract Documents.** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Phase 1 Compensation and the agreed Contract Price for Phase 2 Services. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. In case of discrepancy among technical specifications, and drawings, specifications shall govern.
- 3.2 Meanings.** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in Attachment A, General Conditions.
- 3.3 Entire Agreement.** The Contract Documents form the entire agreement between City and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein in their entirety. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4.0 Ownership of Work Product

- 4.1 City's Limited License upon Payment in Full.** Upon City's payment in full for the Work performed in Phase 1 under the Contract Documents, Design-Builder shall be deemed to have conveyed to City all drawings, Specifications and other documents and electronic data furnished by the Design-Builder to City under this Agreement (the "Work Product") developed by Design-Builder for City's use in the design, construction, occupancy and maintenance of the Project. Design-Builder shall require a similar provision conveying to City their respective Phase 1 design Work Product from each of Design-Builder's design subconsultants. The conveyance of such Work Product shall not include any patent, trade secret, or other intellectual property owned by Design-Builder or its respective subconsultants prior to undertaking the Work hereunder, but Design-Builder and its subconsultants shall grant City a nonexclusive license to use such intellectual property included in the Work Product for City's design, construction, occupation, operation, maintenance and repair of the Project, but not for use on any other project or facility without Design-Builder's (or its subconsultant's) express written consent. Design-Builder shall include provisions in each of its subconsultants' agreements reflecting the conveyance and license provided above.
- 4.2 City's Limited License upon City's Termination for Convenience or Design-Builder's Election to Terminate.** If (i) the City terminates the Project for its convenience as set forth in GC Article 61 or GC Article 62; (ii) Design-Builder elects to terminate this Agreement in accordance with GC Article 63; or (iii) the City elects the "off ramp" option provided in Section 1.4 of this Agreement, Design-Builder shall, upon the City's payment in full of the amounts due Design-Builder under the Contract Documents, be deemed to have granted the City a

limited license to use the Work Product to complete the Project and subsequently use and occupy the Project, conditioned on the following:

- .1 Use of the Work Product is at the City's sole risk without liability or legal exposure to Design-Builder or anyone working for or through Design-Builder, including Design Consultants of any tier (collectively the "Released Parties").
- .2 If the City elects the "off ramp" option provided in Section 1.4 of this Agreement and retains any of the Design-Builder's design subconsultants, then the risk, liability and legal exposure with respect to Work Product shall be as set forth in the agreement or agreements between City and such design subconsultant or subconsultants.

4.3 City's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to GC Article 62 and (i) it is determined that Design-Builder was in default, and (ii) the City has fully satisfied all of its obligations under the Contract Documents, then Design-Builder shall grant the City a limited license to use the Work Product in connection with the City's completion, use and occupancy of the Project. This limited license is conditioned on the City's express understanding that its use of the Work Product is at the City's sole risk and without liability or legal exposure to any Released Party.

4.4 City's Release for Use of Work Product. The City recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if the City uses the Work product under Article 4 in whole or in part, the City releases the Released Parties from any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the City's use of the Work product.

4.5 "Of Record" Status. Design-Builder shall only be obligated to act as the Architect-of-Record, Engineer-of-Record or any other "of-Record" status when Design-Builder actually performs the tangible construction of the Project.

Article 5.0 Contract Time

5.1 Dates of Commencement.

5.1.1 Design-Builder's Phase 1 Services shall commence within ten (10) days of Design-Builder's receipt of the City's Phase 1 Notice to Proceed unless the parties mutually agree otherwise in writing. Design-Builder shall complete the Phase 1 Services in accordance with Exhibit D, *Project Schedule*.

5.1.2 The Phase 2 Services shall commence on the date within ten (10) days of Design-Builder's receipt of the City's Phase 2 Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion

5.2.1 Substantial Completion of the Work shall be achieved in accordance with Exhibit D, *Project Schedule*, and Attachment A, *General Conditions*.

- 5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved in accordance with Exhibit D, *Project Schedule*, and Attachment A, *General Conditions*.
- 5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved in accordance with Exhibit D, *Project Schedule*, and Attachment A, *General Conditions*.
- 5.2.4 All of the dates set forth in this Article 5.0 shall be subject to adjustment in accordance with the General Conditions.

5.3 **Time is of the Essence.** City and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. City agrees to provide all site access, materials, information, data, and approvals required under the Contract Documents in a timely manner, as required for Design-Builder to achieve the interim milestones of the Schedule and the Scheduled Substantial Completion Date and Scheduled Final Completion Date.

5.4 **Liquidated Damages.** Design-Builder understands that if Substantial Completion is not achieved by the Scheduled Substantial Completion Date (as it may be extended hereunder), City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not achieved in accordance with Exhibit E, Project Schedule, and Exhibit D, General Conditions, Design-Builder shall pay the City three thousand five hundred dollars, \$3,500, as liquidated damages for each calendar day that Substantial Completion extends beyond the Scheduled Substantial Completion Date. Design-Builder agrees that if Final Completion is not achieved by the Scheduled Final Completion Date, Design-Builder shall pay City five hundred dollars, \$500.00, as liquidated damages for each day that Final Completion extends beyond the Scheduled Final Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature incurred by the City which are occasioned by any delay in achieving Substantial Completion or Final Completion.

5.5 Recovery Schedule

Owner's Right to Demand a Recovery Schedule: If, in the reasonable opinion of the Owner, the Design Builder's progress falls behind the most current approved Project Schedule or if the Owner reasonably believes the Substantial Completion Date will not be met due to the Design-Builder's actions or inactions, the Owner may, in writing, require the Design Builder to prepare and submit a detailed Schedule Recovery Plan.

5.5.1 Plan Submission and Content:

The Design Builder shall submit the Schedule Recovery Plan within five (5) business days of the Owner's written demand. The plan shall include:

- A narrative explaining the reason(s) for the delay.
- Specific, detailed steps the Design Builder will take to accelerate progress and regain lost time.
- Proposed adjustments to the sequencing of work.

- Plans to increase labor forces, work after hours, or work on holidays/weekends.
- A revised project schedule demonstrating compliance with the original Substantial Completion Date.

5.5.2 Implementation and Costs:

Once the Owner provides written approval, the Design Builder must implement the Schedule Recovery Plan immediately. The Design Builder is generally responsible for all associated costs, unless the delay was caused by an excusable delay as defined in the contract.

5.5.3 Consequences of Non-Compliance:

Failure to comply with this section is deemed a material breach of this Contract, and Owner may withhold payment or seek other remedies under the contract and Florida law.

Article 6.0 Compensation and Contract Price

6.1 Phase 1 Compensation. For the Phase 1 Services, the City shall pay Design-Builder compensation in accordance with Exhibit B, Phase 1 Cost.

6.2 Phase 2 Contract Price. For the Phase 2 Services, the City shall pay Design-Builder in accordance with Exhibit C, Phase 2 Cost, subject to adjustments made in accordance with the Attachment A General Conditions.

Article 7.0 Guaranteed Maximum Price

[This Article 7 acts as a placeholder and will be completed as part of the amendment to add the GMP for Phase 2 Services].

7.1.1 The DESIGN-BUILDER shall prepare and deliver to the PROJECT MANAGER an all-inclusive Guaranteed Maximum Price proposal for the project. The DESIGN-BUILDER shall include in the GMP proposal the following:

- A. A recital of the specific CONTRACT DOCUMENTS, including design and construction documents, drawings, specifications, and all addenda, used in the preparation of the GMP proposal;
- B. The six elements of the GMP are as follows:
 1. Design Cost (Conceptual, Schematic, Detailed 50% and 100% with pricing.)
 2. Cost of Work
 3. Construction Fee
 4. General Conditions Costs
 5. Construction Contingency
 6. Owner’s Contingency
- C. A draft schedule of values; and
- D. A description of all other inclusions to, or exclusions from, the GMP; and
- E. All assumptions and clarifications; and
- F. The final construction schedule.

7.1.1 The DESIGN-BUILDER acknowledges that the CONTRACT DOCUMENTS will be at 30% design development at the time of the GMP proposal. Nevertheless, the GMP proposal shall include all costs for the WORK/Services required by the completed CONTRACT DOCUMENTS, and if the GMP is accepted by the OWNER, the DESIGN-BUILDER shall be entitled to no increase in the GMP if the WORK required by the completed CONTRACT DOCUMENTS: (i) is required by the CONTRACT DOCUMENTS for construction; (ii) is reasonably inferable from the “Design Criteria Package” incomplete documents; (iii) is consistent with the OWNER’s programmatic goals and objectives; (iv) is consistent with the OWNERS’s design and construction standards and the general industry standards for completion of the WORK/services; (v) is not a substantial enlargement of the Scope of Services/WORK; or (vi) substantially conforms to the nature, type, kind or quality of WORK/services depicted in Exhibit A, *Scope of Services*.

7.2 Design-Builder guarantees that it shall not exceed the GMP of (\$TBD) Dollars (\$TBD). Documents used as a basis for the GMP shall be identified in the Contract Price Exhibits for this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

7.3 Contingency.

7.3.1 Design-Builder Contingency. The GMP includes a Design-Builder Contingency in the amount of (to be established at time of GMP) Dollars (\$) which is available for Design-Builder’s exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration ordered by the Owner; (c) escalation of materials; (d) omissions, however caused; (e) Subcontractor defaults; or (f) those events under Article 11.10 and GC Article 48 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Design-Builder Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency and shall provide Owner as part of the monthly status report required by amended to add the agreed-upon Contract Price for Phase 2 Services of the General Conditions of Contract an accounting of the Design-Builder Contingency, including all reasonably foreseen uses or potential uses of the Design Builder Contingency. Design-Builder agrees that with respect to any expenditure from the Design Builder Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.3.2 Owner Contingency. The GMP includes an Owner Contingency in the amount of (to be established at time of GMP) Dollars (\$) which is available for Owner's exclusive use for unanticipated costs that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) specific Owner allowances, (b) Owner request(s) to accelerate, and (c) reasonable scope gaps as adjudicated reasonable by the Owner. The Owner Contingency is not available to Design-Builder for any reason without prior approval by the Owner. The Design-Builder will be required to furnish documentation justifying the use of the Owner Contingency and provide documentation evidencing proposed expenditures to be charged to the Owner Contingency prior to approval and the release of funds by the Owner. Proper Documentation for use of the Owner Contingency shall be determined by the Owner. Owner shall provide Design-Builder notice of all anticipated charges against the Owner Contingency.

7.4 Savings.

7.4.1 If the sum of the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall remain with the City.

Article 8.0 Procedure for Payment

8.1 Payment for Phase 1 Services

8.1.1 City shall compensate Design-Builder for professional services at the time agreed upon deliverables are complete. City shall compensate Design-Builder for construction services in accordance with GC Article- 54. The City shall compensate the Design-Builder monthly for Phase 1 Services performed under the Agreement on the following basis:

- A.** Not Used
- B.** Invoices received from the Design-Builder for Phase 1 Services pursuant to Exhibit B, Design Builder Design Cost to this Agreement will be reviewed and approved by the City's representative, to verify that services have been rendered in conformity with the Agreement. Approved invoices will then be sent to the Finance Department for payment. Invoices will be paid required under Florida's Local Government Prompt Payment Act, Section 218.70 *et seq.*, Florida Statutes.
- C.** Not Used
- D.** Payments made for construction services performed in the execution of Phase 1 Services shall be made in accordance with the applicable provisions of Florida Statute 218.70 *et seq.*, the Local Government Prompt Payment Act and GC Article 54.
- E.** **Final Invoice:** In order for both parties herein to close their books and records, the Design-Builder will clearly state "final invoice" on the Design-Builder's final/last billing to the City for Phase 1 Services. This shall constitute Design-Builder's certification that all Phase 1 services have been properly performed and all charges and costs have been invoiced to the City. Any other charges for Phase 1 Services not properly included on this final invoice are waived by the Design-Builder.

F. In order to do business with the City of Hollywood, Design-Builder is required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's OpenGov [e-Procurement](#) System which can be accessed at [Vendor Registration | Hollywood, FL - Official Website](#) If Design-Builder intends to use sub-consultants, Design-Builder must also ensure that all sub-consultants are registered as consultants in OpenGov. All sub-consultant agreements must include a contractual provision requiring that the sub-consultant register in OpenGov system. The City will not finalize a contract award until the City has verified that the Design-Builder and all of its sub-consultants are registered with the City of Hollywood.

8.2 Progress Payments for Phase 2 Services

Payment for Phase 2 Services shall be in accordance with GC Article 53 or as otherwise agreed to by the Parties in the amendment to add the GMP for Phase 2 Services.

Article 9.0 Indemnity, Insurance and Bonds

9.1 Indemnity. The indemnification provisions set forth in GC Article 37 are applicable during the Term of this Agreement and shall survive the termination or expiration of this Agreement.

The DESIGN-BUILDER shall indemnify, defend and hold harmless the CITY, its officers and employees, from any and all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the DESIGN-BUILDER and persons employed or utilized by the DESIGN-BUILDER in the performance of the CONTRACT DOCUMENTS. These provisions shall survive the expiration or earlier termination of the CONTRACT DOCUMENTS. Nothing in this contract shall be construed in any way to affect the sovereign immunity of the CITY or the rights of the CITY as set forth in Section 768.28, Florida Statutes.

9.2 Insurance. Insurance obligations shall be as set forth in GC Article 18 are applicable during the Term of this Agreement.

9.3 Bonds and Other Performance Security. Prior to the Notice to Proceed for Phase 2 Services, Design-Builder shall provide the Public Construction Bond attached hereto as *Performance and Payment Bond*.

9.4

Article 10.0 Subcontracting

The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The Design-Builder is encouraged to seek additional small business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the Design-Builder shall promptly do so, subject to acceptance of the new subcontractor by the City.

SUBCONTRACTORS AND PURCHASE ORDERS

Unless waived in writing, for good cause, by the PROJECT MANAGER, DESIGN-BUILDER must obtain competitive pricing and subcontract, in compliance with the requirements of this Article 10, for 100% of DESIGN-BUILDER direct construction cost required under this contract. Subcontracts and purchase orders, involving amounts not in excess of Fifty Thousand Dollars (\$50,000.00) may be awarded without the prior approval of the PROJECT MANAGER. All other subcontracts and purchase orders shall be awarded according to the following procedure:

DESIGN-BUILDER shall prepare for PROJECT MANAGER'S review and approval a list of subcontractors and suppliers for each bid who meet the DESIGN-BUILDER's schedule of minimum requirements. DESIGN-BUILDER shall solicit bids from a minimum of three such subcontractors for each subcontract, when available. After receiving such bids, DESIGN-BUILDER shall analyze them and make recommendations to the PROJECT MANAGER for awards. When the PROJECT MANAGER has approved the award of any such subcontract or purchase order (it being understood that should no approval or rejection be provided within ten (10) business days from receipt, such subcontractor or supplier shall be deemed approved), DESIGN-BUILDER shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of CONTRACT DOCUMENTS; that the subcontractor shall be bound to the DESIGN-BUILDER, to the same extent as DESIGN-BUILDER is bound to the CITY, to name the CITY, its employees and officers as an additional insureds on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that DESIGN-BUILDER shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the CITY'S interest; and that, in the event this contract is terminated for any reason, the subcontractor shall, at the CITY'S option, perform its subcontract for the CITY, or for a CONTRACTOR designated by the CITY, without additional or increased cost, provided the subcontractor is paid in accordance with its subcontract. In the event of such termination, DESIGN-BUILDER shall sign and cause each subcontractor to sign an Assignment of Rights under Construction Subcontract, attached as Exhibit K. Nothing contained herein shall impose on the CITY an obligation to assume any subcontract or make any payments to any subcontractor to perform, and nothing contained herein shall create any contractual relationship between the CITY and any subcontractor. If the PROJECT MANAGER shall approve as the selected subcontractor or supplier a bidder

whose bid exceeds that of the bidder recommended by the DESIGN-BUILDER, whose bid complies with the CONTRACT DOCUMENTS (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the DESIGN-BUILDER is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the Guaranteed Maximum Price shall be increased by the lesser of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in the determination of the cost of changes in the WORK.

Article 11.0 Other Provisions NONE

11.1 Truth-In-Negotiation Certificate

Signature of this Agreement by the Design-Builder shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement.

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 noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The City shall exercise its rights under this Article 11.1 within one (1) year following final payment.

11.2 Personnel

The Design-Builder represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this the City.

All of the services required herein under shall be performed by the Design-Builder or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the Design-Builder's key personnel, as may be listed in Exhibit "A", must be made known to the City's representative and written approval, must be granted by the City's representative before said change or substitution can become effective.

The Design-Builder warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the Design-Builder's personnel (and all Subcontractors), while on City premises, will comply with all City requirements governing conduct, safety and security.

11.3 Federal and State Tax

The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Design-Builder. The Design-Builder shall not be

exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Design-Builder authorized to use the City's Tax Exemption Number in securing such materials.

The Design-Builder shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to the performance of the Work.

11.4 Availability of Funds

The City's performance and obligation to pay under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of City Commissioners.

11.5 Reserved

11.6 Reserved

11.7 Reserved

11.8 Remedies

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Broward County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the City and/or Design-Builder.

11.9 Conflict of Interest

The Design-Builder represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the City's Code of Ethics. The Design-Builder further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Design-Builder shall promptly notify the City's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the Design-Builder's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Design-Builder may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Design-Builder. The City agrees to notify the Design-Builder of its opinion

by certified mail within thirty (30) days of receipt of notification by the Design-Builder. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Design-Builder, the City shall so state in the notification and the Design-Builder shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Design-Builder under the terms of this Agreement.

11.10 Excusable Delays

The Design-Builder shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Design-Builder or its subcontractors and without their fault or negligence. "Excusable Delays" include, but are not limited to, acts of God, Force Majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe or unusual weather conditions.

Upon the Design-Builder's request, the City shall consider the facts and extent of any failure to perform the Work and, if the Design-Builder's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the work at any time.

Excusable Delay may be compensable or non-compensable.

- (a) Compensable Excusable Delay. Excusable Delay is only compensable when: (i) the delay extends the CONTRACT TIME; and (ii) Excusable Delay is due solely to fraud, bad faith or active interference on the part of CITY or its agents. In no event shall Design/Builder be compensated for interim or non-critical delays, which do not extend the CONTRACT TIME.
- (b) If Design/Builder is entitled to an increase in the CONTRACT PRICE as a result of a Compensable Excusable Delay pursuant to this subsection and the General Conditions set forth in this Agreement, the CONTRACT PRICE will be increased by a determined sum based on the approved staff rates in the contract at time of delay per calendar day for which such compensation is payable. Such an increase will be reflected in an approved CHANGE ORDER.
- (c) Non-Compensable Excusable Delay. When Excusable Delay is not due solely to fraud, bad faith or active interference on the part of CITY or its agents, then Design/Builder shall be entitled only to a time extension and no further compensation for the delay.

11.11 Arrears

The Design-Builder shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The Design-Builder further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

11.12 Disclosure and Ownership of Documents

The Design-Builder shall deliver to the City's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Agreement.

To the extent allowed by Chapter 119, Florida Statutes, 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 or at its expense will be kept confidential by the Design-Builder and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, database, reports and other data developed, or purchased, under this Agreement for or at the City's expense shall be and remain the City's property and may be reproduced and reused at the discretion of the City. Any use, reuse, or modification of the data, documents, or other work product developed by the Design-Builder shall be at the City's sole risk, without liability of legal exposure to the Design-Builder or anyone working by or through the Design-Builder.

All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

11.13 Independent Contractor Relationship

The Design-Builder is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Design-Builder's sole direction, supervision, and control. The Design-Builder shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Design-Builder's relationship and the relationship of its employees to the City shall be that of an Independent Contractor and not as employees or agents of the City.

The Design-Builder does not have the power or authority to bind the City in any promise, agreement or representation.

11.14 Contingent Fees

The Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Design-Builder, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

11.15 Access and Audits

The Design-Builder shall maintain adequate records to justify all charges, expenses, and costs

incurred in estimating and performing the work for at least five (5) years after completion or termination of this Contract. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Design-Builder's place of business.

11.16 Nondiscrimination

DESIGN-BUILDER represents and warrants to the City that DESIGN-BUILDER does not and shall not engage in discriminatory practices and that there shall be no discrimination in connection with CONTRACTOR'S performance under this Agreement on account of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services. DESIGN-BUILDER further covenants that no otherwise qualified individual shall, solely by reason of his/her race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services, be excluded from participation in, be denied any Services, or be subject to discrimination under any provision of the Contract Documents.

11.17 Authority to Practice

The Design-Builder hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's representative upon request.

11.18 Severability

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, 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 as 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.

11.19 Public Entity Crimes

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the Design-Builder certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

11.20 Modifications of Work

The City reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Design-Builder of the City's notification of a contemplated change, the Design-Builder shall, in writing: (1) provide a detailed estimate for

the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall affect the Design-Builder's ability to meet the completion dates or schedules of this Contract.

If the City so instructs in writing, the Design-Builder shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City's decision to proceed with the change. Such suspension shall be considered an Excusable Delay.

If the City elects to make the change, the City shall initiate a Contract amendment or change order in compliance with the City's Code of Ordinances and the Design-Builder shall not commence work on any such change until such written change order is signed by the Design-Builder and approved and executed on behalf of the City of Hollywood.

11.21 Notice

All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered or, if by mail, on the fifth (5th) day after being posted or the date of actual receipt, whichever is earlier.

TO DESIGN-BUILDER:
Attn: Steven Lockhart
2400 Apopka Boulevard,
Apopka, FL 32703

TO THE CITY OF HOLLYWOOD

Notice shall be effective upon receipt by the individuals designated above.

11.22 Entirety of Contractual Agreement

The City and the Design-Builder agree that the Contract Documents set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the Contract Documents may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 11.20 - Modifications of Work.

11.23 Not Used

11.24 Regulations; Licensing Requirements

The Design-Builder shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Design-Builder is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

11.25 Scrutinized Companies

- A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the Design-Builder certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Design-Builder is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the City.

- B. When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the Design-Builder certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the City determines, using credible information available to the public, that a false certification has been submitted by Design-Builder, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Contract renewal, if applicable.

11.26 Public Records

DESIGN-BUILDER acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of Chapter 119, Florida Statutes. DESIGN-BUILDER agrees to maintain public records in CONTRACTOR'S possession or control in connection with CONTRACTOR's performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. DESIGN-BUILDER shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.

In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by DESIGN-BUILDER to the City Manager, at no cost to the City,

within seven Days of termination of this Agreement. All such records stored electronically by DESIGN-BUILDER shall be delivered to the City in a format that is compatible with the City's information technology systems. Upon termination of this Agreement, DESIGN-BUILDER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to DESIGN-BUILDER shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

IF THE (COLLECTIVELY KNOWN AS "CONTRACTOR" IN THIS SECTION) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954.921.3211, pcerny@hollywoodfl.org, Hollywood City Hall 2600 Hollywood Blvd., Room 221 Hollywood, FL 33020.

Contractor must comply with public records laws, specifically to:

- 1. Keep and maintain public records required by the public agency to perform the service.**
- 2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.**
- 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.**
- 4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.**

11.27 Counterparts

The Contract Documents, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Contract. The City may execute the Contract through electronic or manual means. Design-Builder shall execute by manual means only, unless the City provides otherwise.

11.28 E-Verify - Employment Eligibility

Design-Builder warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, Design-Builder shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the Design-Builder's subconsultants performing the duties and obligations of this Contract are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Design-Builder shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. Design-Builder shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

City shall terminate this Contract if it has a good faith belief that Design-Builder has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If City has a good faith belief that Design-Builder's subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, City shall notify Design-Builder to terminate its contract with the subconsultant and Design-Builder shall immediately terminate its contract with the subconsultant.

If City terminates this Contract pursuant to the above, Design-Builder shall be barred from being awarded a future contract by City for a period of one (1) year from the date on which this Contract was terminated. In the event of such contract termination, Design-Builder shall also be liable for any additional costs incurred by City as a result of the termination.

11.29 Standard of Care

Design-Builder has, during the selection and negotiation process which has preceded this Contract, represented to CITY that the Design-Builder is possessed of a superior level of skill, knowledge, experience and expertise as compared to that of other professionals in Design-Builder's area of practice. Design-Builder acknowledges that CITY has relied on Design-Builder's representations of skill, knowledge, experience and expertise. By executing this Contract, Design-Builder agrees that Design-Builder will exercise that degree of care, knowledge, skill and ability as other professionals possessing the degree of skill, knowledge, experience and expertise which Design-Build Entity has claimed Design-Builder shall perform such duties as may be assigned without neglect. Design-Builder accepts the relationship of trust and confidence established by this Contract, and covenants with CITY to cooperate with CITY and to utilize Design-Builder's best skill, efforts and judgment in furthering the interests of the CITY. Design-Builder agrees to perform each assignment in the best, most efficient

and economical manner consistent with the CITY's interests.

Design-Builder further contracts with CITY to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Contract first written. It is specifically understood that the Accessibility provisions of the Americans with Disabilities Act (ADA) shall be complied with and incorporated into the project.

Article 12.0 INTENTIONALLY LEFT BLANK

In executing the Contract Documents, Owner and Design-Builder each individually represent that it has the necessary financial resources to fulfill its obligations under the Contract Documents, and each has the necessary corporate approvals to execute the Contract Documents, and perform the services described herein. This paragraph is not intended to supersede, or otherwise modify, any rights that the City may otherwise have, including, but not limited to, the rights set forth in Section 11.4 (Availability of Funds) above.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this contract on the day and date first above written, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.

THE CITY OF HOLLYWOOD, a municipal
corporation of the State of Florida

By: _____
Josh Levy, Mayor

ATTEST:

Approved By:

Patricia A. Cerny, MMC City Clerk

Stephanie Tinsley, Director of Financial Services

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Damaris Henlon,
City Attorney

Design-Build Services Agreement Phase 1

WHEN THE PRINCIPAL IS A CORPORATION:

attest:



Secretary

Donald T. Smyrk
CFO/Secretary



Name of Corporation

BY: FINROCK CONSTRUCTION LLC

(Affix Corporate Seal)

DANIEL HELMICK

Printed Name

EVP

Official Title

Design-Build Services Phase 1

WHEN THE DESIGN-BUILDER IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(SEAL)

(Witness)
(Signature of individual)

(SEAL)

(Witness)
(Signature of individual)

WHEN THE DESIGN-BUILDER IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

Witness (Name of Firm)

(SEAL)

(Witness)
(Signature of individual)

WHEN THE DESIGN-BUILDER IS A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness) (Name of Firm)

(Witness)

BY:

(Partner)

LIST OF ATTACHMENTS, EXHIBITS AND FORMS

Attachments:

- A. General Conditions

Exhibits:

- A. Scope of Services
- B. Phase 1 Cost
- C. Phase 2 Cost
- D. Project Schedule
- E. List of Contract Documents Drawings and Specifications
- F. Authorization for Construction-Project Terms and Requirements
- G. Project Team
- H. GMP Qualifications & Clarifications
- I. RFQ Solicitation
- J. RFQ Response
- K. Assignment and Assumption Contract

Forms:

- 1. Performance Bond
- 2. Payment Bond

ATTACHMENT A

GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

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1. Definitions

Wherever the words or terms defined in this Article 1 or pronouns used in their stead occur in the Specifications or other Contract Documents, they shall have the meanings herein given.

"Addendum" - A written explanation, interpretation, change, correction, addition, deletion, or modification of the Contract Documents issued in writing by the Owner prior to opening the Bids.

"Agreement" means Harrison Street Parking Garage Progressive Design-Build Agreement which these General Conditions are attached to as Attachment A.

"Application for Payment" The form furnished by the City which is to be used by the Design-Builder to request progress or final payment and which includes such supporting documentation as is required by the Contract Documents.

"Bonds" - Bid, Public Construction Bond, and other instruments which protect against loss due to inability, failure or refusal of the Design-Builder to perform the Work specified in the Contract Documents.

"Change Order" A document signed by the Design-Builder and the City and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after execution of the Agreement.

"Construction Documents" - Documents, consisting of Drawings and Technical Specifications, to be prepared or assembled by the Design-Builder consistent with the Design Criteria Package unless a deviation from the Design Criteria Package is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Article 2.4.

"Contract Documents" – Shall have the meaning set forth in Article 2.1 of the Agreement.

"Contract Price" The total monies payable by the City to the Design-Builder under the terms and conditions of the Contract Documents.

"Contract Time" - The number of successive calendar days stated in the Contract Documents for the completion of the Work.

"Cost of Work" – Costs as are further defined herein that are reasonably incurred in the delivery of a project that do not include overhead and profit.

"City" City of Hollywood Commissioners, Hollywood, Florida.

"Defective Work" - Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to final payment.

"Design-Builder" – As designated in the Agreement.

"Design-Builder's Representative" – an employee of the Design-Builder who shall represent the Design-Builder. Communications given to the Design Builder's Representative or decisions made by the Design Builder's Representatives shall be as binding as if given to or made by the Design-Builder. Important communications or decisions shall be confirmed in writing. Other communications or decisions shall be similarly confirmed on written request in each case.

"Design Consultant" - A qualified, licensed design professional who is an employee of Design-Builder or a subconsultant furnishing design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

"Drawings" - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show the character, location, nature, extent and scope of the Work to be performed, which have been prepared and approved by the Owner, and which are considered a part of the Contract Documents.

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

"Field Order" - An order by the Owner that does not impact the cost or time of performance of the Work.

"Final Completion" - The date on which all Work is complete as determined by the Owner in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Article 56 and the submission of all documents set forth in Article 57.

"Force Majeure Events" - Events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, quarantine, travel restrictions, adverse or unusual weather conditions, and other acts of God.

"Guaranteed Maximum Price (GMP)" – The amount proposed by the Design-Builder and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes the sum of all reimbursable costs

(cost of work, inclusive of contingencies and allowances) plus a fee for the Design-Builder's overhead and profit. All costs incurred above the GMP are the responsibility of the Design-Builder.

"General Requirements"- Division 1 of the Technical Specifications.

"Hazardous Conditions"- any materials, wastes, substances, conditions and chemicals which are considered or deemed to be hazardous, which are or become regulated by any local governmental authority, the State of Florida, or the United States Government, under applicable law, or the handling, storage, remediation, or disposal of any such materials which are regulated by applicable law.

"Inclement Weather"- A normal workday during which the Design-Builder was unable to perform critical path work for a continuous period of more than four (4) hours during that day.

"Field Service Manager" The Field Service Manager shall be in attendance at the project site during performance of a portion of the Work and shall report to, and be under the direct supervision of, the Project Manager, if applicable, or the Owner. The Field Service Manager shall have no authority to permit deviation from or to modify any of the provisions of the Drawings or Specifications without the written permission or instruction of the Owner.

"Laws and Regulations; Laws or Regulations" – Applicable laws, rules codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body having jurisdiction over the Project or the Site and which is authorized to issue such Laws and Regulations as of the Effective Date of the Agreement.

"Normal Working Hours" - Normal working hours shall consist of forty (40) hours per week with no more than eight (8) hours per day Monday through Friday, not including holidays.

"Notice to Proceed" The written notice issued by the City, or its authorized agents, to the Design-Builder authorizing the Design-Builder to proceed with the Work and establishing the date of commencement of the Contract Time.

"Owner" The City of Hollywood, Hollywood, Florida.

"Owner's Representative" shall be the Owner's Project Manager.

"Owner's Senior Representative" shall be the Project Manager, as directed by the Owner.

"Project" - The entire construction to be performed as provided in the Contract Documents.

"Project Manager" - The Director of Design and Construction Management of the CITY of Hollywood, Florida, or authorized designee.

"Shop Drawings" - All drawings, diagrams, illustrations, schedules, and other data which are

specifically prepared by or on behalf of the Design-Builder to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Design-Builder to illustrate material or equipment for some portion of the Work.

"Specifications" - (Same definition as for Technical Specifications hereinafter).

"Subcontractor" An individual, firm, or corporation having a direct contract with the Design-Builder or with any other Subcontractor of the Design-Builder for the performance of a part of the Work at the Site. For purposes of this Agreement, Subcontractor includes any Design subconsultants.

"Substantial Completion" - The date as determined by the Owner but which determination shall not be unreasonably withheld, as evidenced by the Owner's definitive Certificate of Substantial Completion, when the construction of the entire Project (or a specified part thereof) is sufficiently completed, in accordance with the Contract Documents and Article 55, so that the entire Project (or a specified part) can be utilized for Owner's beneficial use or the purposes for which it is intended. When the entire Project is considered to be Substantially Complete, this does not constitute Final Completion of the entire Project.

"Supplier" - A manufacturer, fabricator, provider, distributor, materialman or vendor.

"Technical Specifications" - Those portions of the Contract Documents consisting of the General Requirements and written technical descriptions of materials, equipment, products, supplies, manufactured articles, standards and the execution of the Work.

"Unbalanced Bid Items" – Bid items in which the unit prices are not in line with industry standards or averages for the items. In order for a bid to be balanced each item must carry its proportionate share of direct cost, overhead, and profit. Unbalanced items which are installed and billed at the beginning of a project also result in "front-end loading."

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

"Work" - Comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including, but not limited to, procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

"Work Authorization" - A document which, when executed by the City and Design-Builder, becomes a part of the Contract Documents and specifies the scope of work, duration, total price, liquidated damages, and schedule for a specific project to be constructed by Design-Builder in accordance with the terms of the contract document.

"Work Directive" A written directive to the Design-Builder, issued on or after the Effective Date of the Agreement, and signed by the City, ordering an addition, deletion or revision in the Work in response to an emergency or in the case of an inability to agree upon the amount of compensation of a requested change. The Design-Builder shall proceed upon receipt of a Work Directive to complete the work on a "cost plus" basis in accordance with Article 44, Paragraph A.3.C. A Work Directive may not change the Contract Price or Contract Time but is evidence that the parties expect that the change directed or documented by a Work Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price and/or Contract Time.

"Written Amendment" A written amendment of the Contract Documents, signed by the City and the Design-Builder on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly work-related aspects of the Contract Documents.

2. Preliminary Matters

2.1 When the Design-Builder delivers the signed Agreement to the City, the Design-Builder shall also deliver to the City such Bonds and Insurance Certificates or other documents as the Design-Builder may be required to furnish in accordance with the Contract Documents. The CITY will provide the DESIGN BUILDER with one set of Contract Documents electronically after issuance of the Notice to Proceed.

2.2.0 General Services.

2.2.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.2.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including, but not limited to; (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the Design-Builder and Owner contingency accounts; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.2.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Article 2.2.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract

Time(s) and indicate schedule variance, if any, and month-on-month trends within the schedule. The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.2.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.3 Design Professional Services.

2.3.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Design-Build Criteria (Exhibit E to the Agreement), as the Design-Build Criteria may have been changed through the design process set forth in this Article 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Design-Build Criteria, or, if applicable, previously submitted design submissions. Changes to the Design-Build Criteria, including those that are deemed minor changes under Article 44. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such

submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review, the Construction Documents in accordance with the procedures set forth in Article 2.4.1 above. Design-Builder shall proceed with construction in accordance with the Construction Documents and shall submit digital Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Owner's review of any interim design submissions, meeting minutes, and Construction Documents shall not be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Laws and Regulations.

2.5.1 Design-Builder shall perform the Work in accordance with all Laws and Regulations and shall provide all notices applicable to the Work as required by all applicable Laws and Regulations.

2.5.2 Intentionally left blank.

2.6 Government Approvals and Permits.

2.6.1 Design-Builder shall obtain on Owner's behalf, and Owner shall pay for all necessary permits, approvals, licenses (software licenses excluded), government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are required for the Project.

3. Before Starting Construction

The Design-Builder shall submit to the Owner for review those documents identified in the Contract Documents. Before undertaking each part of the Work, the Design-Builder shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Design-Builder shall notify the Owner, in writing, of all conflicts, errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing from the Owner before proceeding with any part of the Work affected thereby. The Design-Builder shall not take advantage of any apparent error or omission which may be found in the Contract Documents, but the Owner shall be entitled to make such corrections therein and interpretations thereof in writing, as it may determine to

be necessary for the fulfillment of their intent. The Design-Builder shall be responsible for all errors in construction which could have been avoided by such examination and notification and shall correct at his own expense all Work improperly constructed through failure to notify the Owner and request specific instructions.

4. Design-Builder's Construction Phase Services

- 4.1** Preconstruction Conference: Following the execution of the Agreement and prior to start of construction, a preconstruction conference will be scheduled by the Owner and Design-Builder, which must be attended by the Design-Builder and Owner. This conference will be held to review the above schedules, to establish procedures for handling shop drawings and other submissions, and to establish a working understanding between the Parties as to the Project. This conference may include representatives of the City, local utilities, regulatory agencies, other contractors performing work in the area for the City, and any other party that may be deemed as necessary for the orderly performance of the Work. However, this does not relieve the Design-Builder of the responsibility of contacting local utilities and any other necessary agencies or contractors.
- 4.2** Unless otherwise provided for in the Contract Documents the Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Work consistent with the Contract Documents.
- 4.3** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 4.4** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.
- 4.5** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 4.6** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

4.7 Design-Builder shall keep the Site free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

4.8 Design-Builder's Responsibility for Project Safety.

4.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate Safety Representative(s) with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative(s) shall be individual(s) stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative(s) shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors, Owner and others as applicable.

4.8.2 Design-Builder and Subcontractors shall comply with all Laws and Regulations relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Laws and Regulations. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by any applicable Laws and Regulations, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

4.8.3 Design-Builder's responsibility for safety under this Article 4.8 is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Laws and Regulations, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

4.9 Design-Builder's Warranty.

4.9.1 Design-Builder warrants to Owner that the construction of the Work, including all materials and equipment furnished as part of the construction of the Work, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a

commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Article 4.9 or the Contract Documents. Design-Builder will provide Owner with an executed Form of Guarantee, attached to the Agreement as Attachment F, Form of Guarantee, and all manufacturers' warranties upon Substantial Completion.

- 4.10** Within one (1) calendar year from Substantial Completion, Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such Defective Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

The one-year correction period referenced in Article 4.10 above applies only to Design-Builder's obligation to correct Defective Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

5. Intent and Amending Contract Documents

A. Intent

The Contract Documents comprise the entire Agreement between the City and Design-Builder concerning the Work. The Contract Documents are complementary, so that any Work exhibited in the one shall be executed just as if it has been set forth in all, in order that the Work shall be completed in every respect according to the complete design or designs as decided and determined by the Owner.

It is the intent of the Contract Documents to describe the Work, functionally complete, to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by the Design-Builder whether or not specifically called for.

In the event of a conflict, omission, error or discrepancy in the Contract Documents the Design-Builder shall promptly notify the Owner. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth in Article 3.0 of the Agreement.

The captions or subtitles of the several Articles and Divisions of these Contract Documents constitute no part of the context hereof, but are only labels to assist in locating and reading the provisions hereof.

From time to time during the progress of the Work, the Owner may furnish supplementary drawings attached to a Change Order, a Field Order, a work Directive, or as a response to the Design-Builder's request for additional information, as he determines necessary to show changes or define the Work in more detail, and these also shall be considered as part of the Contract Documents.

B. Amending and Supplementing the Contract Documents

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

- a. A formal Written Amendment
- b. A Change Order
- c. A Field Order
- d. A Work Directive

As indicated in Articles 44 and 49, Contract Price and Contract Time may only be changed by a Change Order per Article 43.

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

- a. A Field Order
- b. The Owner's approval of a Shop Drawing or Sample, provided that Design-Builder has called such variation or deviation from the Contract Documents to the attention of Owner in a writing in accordance with Article 71, which specifically identifies the change.
- c. The Owner's written interpretation or clarification of the Intent of the Contract Documents.
- d. As indicated in Articles 44 and 49, Contract Price and Contract Time may only be changed by a Change Order per Article 43.
- e.

6. Reuse of Documents

Neither the Design-Builder, nor any Subcontractor or Supplier, nor any other person or organization performing or furnishing any of the Work shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents (or copies of any thereof) prepared by the Owner for use on the Work, and they shall not reuse any of them on extensions of the project or any other project without prior written consent of the City and the Owner.

7. Occupying Private Land

The City shall furnish, as indicated in the Contract Documents, the Lands upon which the work is to be performed, Rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Design-Builder. These Lands are shown on the Contract Drawings and it is the Design-Builder's Responsibility to perform the work within the legally

described Limits of the Lands. The Design-Builder shall provide for all additional Lands and access thereto required for temporary Construction facilities or storage of equipment and materials.

The Design-Builder shall not (except after written consent from the proper parties) enter or occupy with personnel, tools, equipment or materials, any land outside the rights of way or property of the City. Upon request of the City, the Design-Builder shall give a copy of the written consent to the City.

8. Work in State and City Rights-of-Way and Easements

When the Work involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the Design-Builder shall (as the Work progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance.

9. Work Adjacent to Telephone, Power, Water, Sewer, Drainage Cable TV and Gas Company Structures

In all cases where Work is to be performed near utilities including, but not limited to, telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the Design-Builder shall provide written notification to the respective companies of the areas in which Work is to be performed, prior to the actual performance of any Work in these areas, and shall take all actions necessary to protect such facilities from damage.

10. Use of Public Streets

The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and nonvehicular traffic. Any earth or excavated material spilled from trucks shall be removed by the Design-Builder and the streets cleaned to the satisfaction of the Owner and the City Engineering Department, the Florida Department of Transportation, or other local agency having jurisdiction, as applicable.

11. Subsurface Investigation

In the preparation of the Contract Documents, the Owner has relied on the reports and tests of subsurface conditions taken at the job site. Such reports are not guaranteed as to their accuracy or completeness and are not part of the Contract Documents. The City does not warrant or guarantee the accuracy or correctness of this material with respect to actual subsurface conditions.

The Design-Builder shall be responsible for having determined to his satisfaction, the nature and location of the Work, the conformation of the ground, the character and quality of the substrata, the types and quantity of materials to be encountered, the nature of the ground water conditions, the character of equipment and facilities needed preliminary to and during the execution of the Work, the general and local conditions and all other matters which can in any

way affect the Work. The prices established for the Work to be done will reflect all costs pertaining to the Work.

12. Obstructions

The information and data shown or indicated in the Contract Documents with respect to existing underground utilities at or contiguous to the site and reports of prior property ownership of the site are based on information and data furnished to the City by the owners of such Underground Utilities or others. The City is not responsible for the accuracy or completeness of any such information or data, and the Design-Builder shall have full responsibility for reviewing, checking and verifying all such information and data, for locating all Underground Utilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of which will be considered as having been included in the Contract Price.

All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions identified by Design-Builder following a standard of care similar to that of a responsible contractor performing similar scope in a similar geographical area (“Standard of Care”) shall be temporarily removed from or supported across all excavations. Where it is necessary to temporarily interrupt services, the Design-Builder shall notify the Owner or occupant of such facilities, both before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the Design-Builder shall obtain permission from their owner, or shall make suitable arrangements for their disconnection by their owner. The Design-Builder shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly as soon as the Work has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new work are shown, but are to be verified in the field by the Design-Builder prior to performing the Work. The Design-Builder shall uncover these pipes, ducts, cables, etc., carefully, prior to installing his Work. Any discrepancies or differences found shall be immediately brought to the attention of the Owner in order that necessary changes may be made to permit installation of the Work.

13. Dimensions of Existing Structures

Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new work, the Design-Builder shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information.

14. Elevation Datum

The datum adopted for the Project is NAVD of 1988. All elevations refer to this datum.

15. Work to Conform

During its progress and on its completion, all Work shall conform to the lines, levels, and grades

indicated on the Drawings or the Contract Documents and shall be built in a thoroughly substantial and workmanlike manner, in accordance with the Contract Documents and the written instructions or written directions given from time to time by the Owner. In no case shall any Work in excess of the requirements of the Contract Documents be paid for unless so approved in writing by an appropriately executed change order, work directive or written amendment.

All Work done without written instructions having been given by the Owner, done without proper lines or levels, or done during the absence of the Owner, or his agent, will not be estimated or paid for except when such Work is authorized in writing by an appropriately executed change order, work Directive or written amendment. Work so done may be ordered uncovered or taken down, removed and replaced entirely at the Design-Builder's expense.

16. Location of Proposed Work

Piping and structures to be installed by Design-Builder, will be located substantially as indicated on the Drawings, but the right is reserved by the City, to make such modifications in location as may be found desirable to avoid interference with existing structures or for other reasons. Where fittings, etc., are noted on the Drawings, such notation is for the Design-Builder's convenience and does not relieve the Design-Builder from laying and jointing different or additional items where required without additional compensation. Design-Builder shall be entitled to compensation if City directs a change in location of piping or structures that results in an increase in the quantity of materials or depth of excavation.

17. Bonds

The bond requirements may be waived where permissible under applicable law.

The Design-Builder shall, upon delivery of the executed Agreement with the City, deposit with the City a Public Construction Bond, in the form included in these documents, providing for the satisfactory completion of the Work and providing security for payment of all persons performing labor in connection with this Agreement. Such bond shall be furnished in an amount equal to 100% of the value of construction as security for the performance and payment of all Design-Builder's obligations under the Contract Documents and shall be recorded by Design-Builder in the public records of Broward County. The form and conditions of the Bond and the Surety shall be acceptable to the City. As soon as possible after the Notice to Proceed for Phase 2 Services, Design-Builder shall deliver to the City a certified copy of the recorded Public Construction Bond or, when applicable, the recorded Payment and Performance bonds. **No payment will be made for the Work performed under the Contract Documents for Phase 2 until a recorded certified copy of the appropriate bond(s) has been delivered to City.**

The bond shall be written by a Surety Company of recognized standing, licensed to do business in the State of Florida, and having a resident agent in the State of Florida. The Surety Company shall hold a current certificate of authority as acceptable surety on Federal Bonds in accordance with U.S. Department of Treasury, Fiscal Service, Bureau of Government Financial Operations, Circular 570, current revision, entitled, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies". The bond

shall be executed by an Attorney-in-Fact for the Surety Company with a certified copy of his Power of Attorney attached to the Bonds.

The bonding limit of the Surety Company shall not exceed the limits indicated in the U.S. Department of Treasury listing unless the Surety Company submits a "reinsurance agreement form" indicating the amount above the bonding limit is insured by another Surety Company also on the U.S. Department of Treasury listing.

If the Surety Company on any Bond furnished to the City is declared, upon notification of the Insurance Agent, as bankrupt or becomes insolvent or its right or license to do business is terminated in the State of Florida, or it ceases to meet any of the requirements stated herein, the Design-Builder shall within ten (10) working days thereafter substitute another Bond and Surety Company at no cost to the City, both of which must be acceptable to the City. If the project is declared more than 90% complete by the City at the time of the Surety's bankruptcy or insolvency, the Design-Builder may, at the City's option, obtain a Maintenance Bond in the amount of 100% of the project cost, for the one (1) year warranty period after project completion. The Maintenance Bond shall be submitted on the form provided by the City and shall comply with all of the requirements for Public Construction Bond stated herein.

Failure by the Design-Builder to substitute satisfactory Bonds under this Article shall result in any or all of the following actions by the City:

1. Withholding of all applications for payment until satisfactory bonds are received and accepted, and/or;
2. Default in the Agreement and cancellation as provided for in the Agreement's default clause, and/or;
3. Suspension of the Design-Builder's name from the City's bid list for a period of not less than three (3) years from the date of Surety or Agreement default.

18. Design-Builder's Insurance Requirements

18.1 The Contractor will be required and shall require all of its Sub-Consultants and Subcontractors to provide, pay for, and maintain in force at all times during the term of the Contract, such insurance, including Professional Liability Insurance (where applicable), Workers' Compensation Insurance, Comprehensive General or Commercial Liability Insurance, Business Automobile Liability Insurance, and Employer's Liability Insurance, along with required endorsements, as stated below.

18.2 Companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida shall issue such policy or policies. The Contractor shall specifically protect City and the City Commission by naming the City and the City Commission as additional insureds under the Comprehensive Liability Insurance policy hereinafter described.

- a. Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of the Contractor 's employees.
- b. Sub-Consultants not required by Design-Builder to carry Professional Liability Coverage, shall provide Commercial General Liability coverage acceptable to the Contract Administrator and City's Risk Manager. Sub-Consultants and sub-contractors required by Design-Builder to carry professional liability coverage shall be required to provide professional liability coverage acceptable to the contract administrator and City's Risk Manager on a task order by task order basis.
- c. The Contractor shall provide the Risk Manager of the City a certificate of insurance and required endorsements for policies required. All certificates shall state that the City shall be given thirty (30) days prior to cancellation or modification of any stipulated coverage. The insurance provided shall be endorsed or amended to comply with this notice requirement. If the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division. Such policies shall:
 - (1) name the insurance company or companies affording coverage acceptable to the City,
 - (2) state the effective and expiration dates of the policies, and
 - (3) include special endorsements where necessary. Such policies provided shall not be affected by any other policy of insurance that the City may carry in its own name.
- d. Contractor shall as a condition precedent of the Contract furnish to the City of Hollywood, c/o Office of Procurement Services, 2600 Hollywood Blvd, Room 303, Hollywood, FL 33020, certificate(s) of insurance and endorsements upon execution of the Contract indicating that insurance coverage has been obtained that meets the requirements as outlined below understanding the City reserves the right to lower limits:

18.3 The Contractor will be required and shall require all of its Sub-Consultants and Subcontractors to provide, pay for, and maintain in force at all times during the term of the Contract, such insurance, including Professional Liability Insurance, Workers' Compensation Insurance, Comprehensive General or Commercial Liability Insurance, Business Automobile Liability Insurance, and Employer's Liability Insurance, along with required endorsements, as stated below.

18.4 Companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida shall issue such policy or policies. The Contractor shall specifically protect City and the City Commission by naming the City and the City Commission as additional insureds under the Comprehensive Liability insurance policy hereinafter described.

- a) Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of the Contractor 's employees.
- b) Sub-Consultants for whom Professional Liability Coverage is not applicable, by virtue of their trade, shall provide Commercial General Liability coverage acceptable to the Contract

Administrator and City's Risk Manager. Sub-Consultants and sub- contractors eligible for professional liability coverage shall be required to provide professional liability coverage acceptable to the contract administrator and City's Risk Manager on a task order by task order basis.

- c) The Contractor shall provide the Risk Manager of the City an original certificate of insurance and required endorsements for policies required. All certificates shall state that the City shall be given thirty (30) days prior to cancellation or modification of any stipulated coverage. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division. Such policies shall:
- 1) name the insurance company or companies affording coverage acceptable to the City,
 - 2) state the effective and expiration dates of the policies, and
 - 3) include special endorsements where necessary. Such policies provided under Article 2.13.2.d. shall not be affected by any other policy of insurance that the City may carry in its own name.
- d) Contractor shall as a condition precedent of the Contract furnish to the City of Hollywood, c/o Design & Construction Management, 2600 Hollywood Blvd., Hollywood, FL 33020, certificate(s) of insurance and endorsements upon execution of the Contract indicating that insurance coverage has been obtained that meets the requirements as outlined below understanding the City reserves the right to lower limits:

Required by Design-Builder to carry.

Commercial General Liability

i. Limits of Liability:

Prior to the commencement of work governed by this contract, the Contractor shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- ii. Premises Operations**
- iii. Products and Completed Operations**
- iv. Personal & Advertising Injury**
- v. Damages to rented premises**

The minimum limits acceptable shall be:

\$2,000,000 Each Occurrence / \$4,000,000 General Aggregate

vi. Endorsements Required: City of Hollywood shall be named as an Additional Insured in the Description of Operations Box, Employees included as insured Broad Form Contractual Liability Waiver of Subrogation Premises/Operations Products/Completed Operations Independent

Contractors Sub-Contractor as insured Primary and Non-Contributory

The City of Hollywood must be the certificate holder per the following format:

City of Hollywood (Nothing else on this line)

Department Name & Room# (if applicable) Department Address

Department Address

Commercial Automobile Liability

i. Limits of Liability: Bodily Injury and Property Damage Liability Combined Single Limit \$1,000,000

Any Auto Including Hired, Borrowed or Non-Owned Autos

ii. Endorsements Required: Waiver of Subrogation, City Named as Additional Insured in the Description of Operations Box on all Contracts and Subcontracts

The City of Hollywood must be the certificate holder per the following format:

City of Hollywood (Nothing else on this line)

Department Name & Room # (if applicable) Department Address

Department Address

Workers' Compensation / Employers Liability

i. Limits of Liability: Statutory-State of Florida
\$1,000,000 bodily injury by accident
\$1,000,000 bodily injury by disease, each employee
\$1,000,000 bodily injury by disease, policy limit

ii. Endorsements Required: Waiver of Subrogation

Professional Liability/Errors and Omissions Coverage

i. Limits of Liability:

Each Claim \$2,000,000

General Aggregate Limit \$3,000,000

Deductible not to exceed \$250,000

Must be in effect for at least 5 years after project completion.

Pollution Liability, which may be a component of Professional Liability

i. Limits of Liability:

Each Occurrence \$1,000,000 Including Non Owned Disposal Sites

Cyber Liability

i. Limits of Liability: Each Occurrence 1,000,000

Builder's Risk

i. Limits of Liability:

Limit of Total Construction Cost plus Soft Costs on all the Builders Risk Policy. When commercially feasible (e.g. excluding wind or hail), Deductible not to exceed \$100,000. City to be named as Loss Payee. Such insurance shall cover perils, losses, sublimits and deductibles which Design-Builder deems reasonable and necessary.

Design-Builder should list soft costs as part of the Guaranteed Maximum Price.

Owner shall procure and provide permanent property insurance to replace the builder's risk required herein upon Acceptance of the project by the city.

The above insurance requirements are only required to be carried by the Contractor during the term of the assigned Project and provided upon award of the task order, except for Professional Liability/Errors and Omissions insurance which must be in effect for at least 7 years after project completion. The City reserves the right to request additional insurance based on a specific project scope under the agreement.

The City is required to be named as additional insured under the Commercial General Liability insurance policy.

BINDERS ARE UNACCEPTABLE.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for the work contemplated in a contract shall be deemed unacceptable and shall be considered a breach of contract.

All insurance policies required above other than professional, pollution, cyber and builder's risk shall be issued by companies authorized to do business under the laws of the State of Florida and must maintain a minimum financial strength rating of "A-", and no less than "Class X" as to financial size, by the latest edition of A.M. Best's Key Rating Insurance Guide, latest edition.

Compliance with the foregoing requirements shall not relieve the Contractor of its

liability and obligation under this section or under any other section of the Contract.

Note: The City reserves the right to require any other insurance it deems necessary depending on the exposure. The City contract number must appear on each certificate.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of 30 calendar days in advance of such expiration.

19. Design-Builder's & Owner's Responsibility

19.1 Design-Builder's Responsibility

The Design-Builder shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The City and the Design-Builder have agreed to use a partnering cooperative approach to problem solving (See Article 2). The Design-Builder shall be solely and wholly responsible for the means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incidental thereto. The Design-Builder shall be responsible to see that the finished Work complies accurately with the Contract Documents and for the good condition of the Work and materials until Final Acceptance by the City. Article 62 will apply when the City occupies all or a portion thereof after substantial completion. The Design-Builder shall bear all losses insurance or otherwise) resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Substantial Completion.

The Design-Builder shall designate in writing and keep on the Work site at all times during progress of the Work, a technically qualified construction field superintendent, who shall not be replaced without prior written notice to the City. The Design Builder's Representative shall be the Design-Builder's representative at the site and shall have full authority to act on behalf of the Design-Builder. All communications given to the Design Builder's Representative shall be as binding as if given to the Design-Builder. The Design-Builder shall issue all its communications to the City.

The Design-Builder's field superintendent or designee, as approved by the Owner), shall be present at the site of the Work at all times while Work is in progress. Failure to observe this requirement shall be considered as suspension of the Work by the Design-Builder until such time as a field superintendent or designee is again present at the site.

All materials shall be supplied and the Work shall be done in accordance with the rules, requirements, regulations and directives of various Building Departments and such other State, County, or City Departments having jurisdiction over the same and in accordance with the requirements of the representatives of the mortgagee or mortgagees, if any, or any other governmental bureau, agency, or department interested in this job either directly or indirectly.

Design-Builder shall be responsible for making himself aware of any laws or ordinances which may affect Design-Builder's access to the project, the times of day when Design-Builder may perform the work, or in any other way affect Design-Builder's performance of the Work. The City will not be liable to Design-Builder for any action of any other governmental or private entity or agency which impacts Design-Builder's costs or schedule for completing the Work. Design-Builder shall be entitled to schedule relief due to unanticipated permit review periods beyond the time periods shown in Design Builder's contract schedule.

Except as otherwise provided in this Article, the Design-Builder shall receive no additional compensation, for overtime work, i.e., work in excess of eight (8) hours in any one calendar day or forty (40) hours in any one calendar week, even though such overtime work may be required under emergency conditions. Additional compensation will be paid to the Design-Builder for overtime work only in the event extra work is ordered by the Owner and the change order specifically authorizes the use of overtime work and then only to such extent as overtime wages are regularly being paid by the Design-Builder for overtime work of a similar nature in the same locality.

All costs of field observations, inspection and testing performed by the Owner during overtime work by the Design-Builder which is allowed solely for the convenience of the Design-Builder shall be borne by the Design-Builder, based upon Owner's salary rates plus fringe benefits, overhead, profit and indirect costs. The City shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the Design-Builder.

Unless otherwise specified in the Contract Documents or covered by builder's risk insurance, the Design-Builder shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, drainage, sanitary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, startup, and Final Completion of the Work. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Design-Builder, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive or Change Order will be issued to document the consequences of the changes or variations.

19.2 Owner's Services and Responsibilities

19.2.1 Duty to Cooperate.

19.2.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

19.2.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

19.2.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

19.2.2 Furnishing of Services and Information.

19.2.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner may provide, at its own cost and expense, for Design-Builder's information and use the following, all of which shall be verified and validated by Design-Builder is entitled to rely upon in performing the Work:

19.2.2.2 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

19.2.2.3 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

19.2.2.4 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

19.2.2.5 A legal description of the Site;

19.2.2.6 To the extent available, record drawings of any existing structures at the Site; and

19.2.2.7 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

19.2.2.8 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to timely perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

19.3 Financial Information. - Not Used

19.3.1 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

19.4 Owner's Representative

Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

19.5 Government Approvals and Permits.

19.5.1 Owner shall pay for all necessary permits, approvals, licenses (software licenses excluded), government charges and inspection fees. The Design-Builder shall prepare and submit for any required permits on behalf of the Owner. Owner shall be responsible for the payment of permit fees. As set forth in the Scope of Work attached to the Agreement as Attachment A, Design-Builder shall prepare a permitting responsibility matrix informing Owner which payments are required.

19.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

19.6 Owner's Separate Contractors.

Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to reasonably interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

20. Discontinuance of Construction

The Design-Builder agrees and guarantees to perform the above mentioned Work in accordance with the terms stated herein, irrespective of any strikes, lockouts, or stoppages, and the Design-Builder shall not employ men, means, materials, or equipment which may cause strikes, work stoppages, or any disturbances by workmen employed by the Design-Builder.

In the event the City is prevented from proceeding with any or all of this Work as stated in this Agreement, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, City, Town, or County regulations, orders, restrictions, or due to circumstances beyond the City's control, then the City herein reserves the right to either suspend the Work to be done for an indefinite period of time or to cancel this Agreement outright by giving notice by registered mail of such intention to the Design-Builder herein. In the event of any conditions above mentioned occurring after the Work herein has already been commenced,

then the City herein shall be liable for only the cancellation or suspension for the work done by the Design-Builder up to the date of termination, without the addition of prospective profits or other charges whatsoever. Design-Builder shall endeavor to minimize expenses.

21. Warranty

The Design-Builder warrants that the Work and service to be performed under the Agreement and all workmanship, materials, and equipment performed, furnished, used, or installed in the Work shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Contract Documents; that the strength of all parts of all manufactured equipment shall be adequate and as specified; and that performance test requirements of the Agreement shall be fulfilled. The Design-Builder shall remedy all defects in the Work and shall repair, correct, or replace all damage to the other Work, persons or property resulting from failures covered by the warranty. The warranty shall remain in effect for one (1) year from the date of Substantial Completion. The City shall give written notice of observed defects with reasonable promptness. Unremedied defects identified for correction during the warranty period and remaining after its expiration shall be considered as part of the obligations of the warranty, but only if the City has provided Design-Builder with timely written notice during the warranty period. Defects in material, workmanship, or equipment which are remedied as a result of obligations of the warranty shall extend the warranty period for that specific defect for one (1) year after the defect has been remedied. The Surety shall be bound with and for the Design-Builder in the Design-Builder's performance of the warranty obligations.

22. Field Layout of Work

All Work under this Agreement shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the Owner in writing. To the extent such lines and grades are provided by the City, the elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.

All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida with demonstrated experience in the project area who shall be employed by the Design-Builder at his expense. The Design-Builder shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary benchmarks adjacent to the Work. Based upon the information provided by the Contract Drawings, the Design-Builder shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations.

The Design-Builder shall have the responsibility to carefully preserve all benchmarks, reference points and stakes. In case of destruction thereof by the Design-Builder resulting from his negligence, he shall be held liable for any expense and damage proximately resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such benchmarks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal

causes of construction shall be re-established by the Design-Builder; and all reference ties recorded shall be furnished to the Owner. All computations necessary to establish the exact position of the Work shall be made and preserved by the Design-Builder.

23. Specifications

Where any materials, articles, items, equipment, or processes are specified by one or more trade or brand names, the substitution of unnamed materials, articles, items, equipment, or processes will not be allowed. Where the words "equivalent", "proper", "equal to", or "or Equal" are used, they shall be understood to mean that the referred to materials, items, equipment, articles or processes shall be the equivalent of, or equal to some other materials, items, equipment, articles or processes in the opinion or judgment of the Owner. Unless otherwise specified, all materials, items, equipment, articles or processes shall be the best of their respective kinds and shall be in all cases, fully equal to samples acceptable to the Owner. Even though the words "or equal" or other such expressions may be used in the Specifications, unless a substitute is accepted in writing by the Owner, the Owner shall have the right to require the use of such specifically designated material, equipment, items, articles or processes named in the Specifications.

24. Handling and Distribution

The Design-Builder shall, at his own expense as a Cost of the Work, handle, haul and distribute all materials and all surplus materials on the different portions of the Work, as necessary. Suitable and adequate storage room for materials and equipment shall be furnished until the Final Acceptance of the Work.

Storage charges and demurrage charges by transportation companies and vendors, which result from delays in handling, shall be borne by the Design-Builder.

25. Storage and Procurement of Materials

Suitable storage facilities shall be furnished by the Design-Builder. All materials, supplies and equipment intended for use in the Work shall be stored by the Design-Builder in accordance with the recommendations of the associated manufacturer or supplier to prevent damage from exposure, contamination by foreign substances, or vandalism. The Owner may refuse to accept, or sample for testing, materials, supplies, or equipment that have been improperly stored. Materials, supplies and equipment found reasonably unfit for use shall not be incorporated in the Work and shall immediately be removed from the construction or storage site and replaced at no cost to the City.

Should the Design-Builder build temporary structures for housing workers, tools, machinery and supplies, they shall be permitted only at places acceptable under Local codes, Ordinances, Laws, Rules, and Regulations, and their surroundings shall be maintained at all times in a satisfactory and sanitary manner. On or before the completion of the Work, all such structure shall be removed in their entirety, together with all rubbish and trash, at the expense of the Design-Builder.

The Design-Builder shall, at its own expense as a Cost of the Work, handle, haul and distribute all materials and all surplus materials on the different portions of the Work, as necessary.

Suitable and adequate storage room for materials and equipment shall be furnished until the Final Acceptance of the Work.

Storage charges and demurrage charges by transportation companies and vendors, which result from delays in handling, shall be borne by the Design-Builder.

26. Salvaged Materials

In the absence of special provisions to the Agreement, salvaged materials, equipment or supplies that occur are the property of the City and shall be stored as directed by the Owner, or shall be properly disposed of by the Design-Builder at his sole cost, if directed by the Owner.

27. Subcontracts

As soon as practical after execution of the Agreement, the Design-Builder shall notify the Owner and request approval in writing, of the use of Subcontractors proposed for the Work and shall not employ any that the Owner may, within a reasonable time, determine are not performing the work in strict conformance with the Contract Documents, or approved changes thereto.

The Design-Builder agrees that he is as fully responsible to the City for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the City.

The Design-Builder shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Design-Builder by the terms of the General Conditions, the Supplemental General Conditions (if used) and other Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Design-Builder the same power as regards to terminating any subcontract that the City may exercise over the Design-Builder under any provision of the Contract Documents. The Design-Builder shall only contract with bondable Subcontractors if the Subcontractor is performing work.

28. Permits

The Design-Builder shall assist the City in preparing applications for and in obtaining any environmental permits as may be necessary for the prosecution of the Work. The Design-Builder shall obtain all other necessary permits, licenses, royalties, inspections and certificates pertaining to the Work, including having a design professional, licensed in Florida, sign and seal the design drawings, engineering reports, permit applications, record drawings and final certification and shall comply with all Laws and Regulations, whether or not provided by the Drawings, Technical Specifications, General Conditions or other parts of the Contract Documents without additional charge or expense to the City, except as contemplated in Article 19.5.1 hereinabove, and shall also be responsible for and correct at its own cost and expense, any violations thereof resulting from and in connection with its performance of the Work.

29. Employees

All labor described in these Specifications or indicated on the Drawings and the Work specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

Any person employed on the Work who fails, refuses or neglects to obey the instructions of the Design Builder's Representative in anything relating to this Work, or who appears to the Design Builder's Representative to be disorderly, intoxicated, insubordinate, unfaithful or incompetent, shall upon the order of said Construction Manager, be at once discharged and not again employed in any part of the Work. Any interference, including but not limited to, getting involved unwantedly, hindering, obstructing, or preventing work to succeed as planned, or abuse or threatening conduct toward the Owner or his inspectors by the Design-Builder or his employees, shall be authority for the City to terminate for convenience. No intoxicating substance shall be allowed on the Work site.

30. Florida Products and Labor

The Design-Builder's attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

31. Equal Employment Opportunity

The Design-Builder warrants and represents that all of its employees or applicants for employment are treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

32. Sanitary Regulations

The Design-Builder shall provide adequate sanitary conveniences for the use of those employed on the Work. Such conveniences shall be made available when the first employees arrive on the Work, shall be properly secluded from public observation, and shall be constructed and maintained in suitable numbers and at such points and in such a manner as may be required by Local codes, Ordinances, Laws, Rules and Regulations.

The Design-Builder shall maintain the sanitary facilities in a satisfactory and sanitary condition at all times and shall enforce their use. He shall prohibit the committing of nuisances on the site of the Work, on the lands of the City, or on adjacent property.

The City shall have the right to inspect any building or other facility erected, maintained, or used by the Design-Builder, to determine compliance with these Sanitary Regulations.

33. Taxes

The Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by the Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

34. Design-Builder's Use of Premises

The Design-Builder's use of the project site shall be limited to its construction operations, including on-site storage of materials, on-site fabrication facilities, and field offices.

35. Accident Prevention

No laborer or mechanic employed in the performance of this Project shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

The Design-Builder shall appoint a qualified and experienced safety representative and shall exercise proper caution at all times for the protection of persons and property and shall be responsible for all damage to persons or property, either on or off the work site, which occur as a result of his prosecution of the Work. The safety provisions of applicable laws and building and construction codes shall be observed and the Design-Builder shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

The Design-Builder shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on Work under the Agreement. The Design-Builder shall promptly furnish the Local Public Agency with reports concerning these matters upon request.

The Design-Builder shall indemnify and save harmless the City from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Design-Builder and persons employed or utilized by the Design-Builder in the performance of the Work.

36. Precautions During Adverse Weather Prior to Substantial Completion

During adverse weather, and against the possibility thereof, the Design-Builder shall take all necessary precautions to perform the Work in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins (tarps), wood and building paper shelters, or other acceptable means. The Design-Builder shall be responsible for procuring a builder's risk insurance policy to address all changes caused by adverse weather, including unusually high winds and water levels. Impacts from adverse weather

which are not covered by the builder's risk policy may be considered a force majeure condition subject to cost and schedule relief.

The Design-Builder may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather conditions may be, in any season.

37. Indemnification

Pursuant to F.S. Chapters 725.06 and 725.08, Design-Builder shall indemnify and hold harmless the City, its officers and employees, from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Design-Builder and persons employed or utilized by the Design-Builder in the performance of the Work. Design-Builder further agrees to indemnify and save harmless the City and Owner's Representative from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the City or Owner's Representative on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the City or the Owner's Representative for the infringement by the Design-Builder of any and all patents or patent rights claimed by any person, firm, or corporation.

Nothing in this contract shall be construed in any way to affect the sovereign immunity of the City or the rights of the City as set forth in Section 768.28, Florida Statutes.

38. Nonassignable

Neither this Agreement, nor any monies due hereunder, or any part thereof, shall be assigned, transferred, or sublet by Design-Builder, nor shall the City be liable to any assignee or transferee, or sublease, without the written consent of the City, and without consent to the assignment, transfer, or sublease, the City shall not release or discharge Design-Builder from any obligation hereunder. The City shall not consider its approval to an assignment unless the surety on the Public Construction Bond has informed the City in writing that it consents to the assignment.

39. Venue

This Agreement shall be governed by the laws of the State of Florida. as now and hereafter in force. The venue for actions arising out of this Agreement shall be in a state court of competent jurisdiction located in Broward County, Florida.

40. Confidentiality

In the performance of the Work, the Design-Builder may be exposed to the confidential information of the City and others. The Design-Builder shall not disclose to anyone not employed by the City nor use, except on behalf of the City, any such confidential information acquired by it in the performance of the Work except as authorized by the City in writing and, regardless of the term of this Agreement, the Design-Builder shall be bound by this obligation until such time as said confidential information shall become part of the public domain. Information regarding all aspects of the City's business and information concerning the Work (either directly or indirectly disclosed to it or developed by it in the performance of the Work)

shall be presumed to be confidential except to the extent that same shall have been published or otherwise made freely available to the general public without restriction. The Design-Builder also agrees that it will not disclose to the City any information it holds subject to any obligation or confidence to any third persons or parties. Notwithstanding the foregoing, the parties shall comply with Applicable Law, including (without limitation) Chapters 119 and 286, Florida Statutes

41. Work by Others

The City may perform additional Work related to the Project by itself, or he may let other direct contracts which shall contain General Conditions similar to these. The Design-Builder shall afford the other contractors who are parties to such direct contracts (or the City, if it is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work and shall properly connect and coordinate his Work with theirs.

If any part of the Design-Builder's Work depends on proper execution or results upon the Work of any such other contractor (or City), the Design-Builder shall inspect and promptly report to the Owner, in writing, any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. His failure to so report shall constitute an acceptance of the other Work as fit and proper for the reception of his Work except as to defects and deficiencies, which may appear in the other Work after the execution of the Work under this Agreement.

The Design-Builder shall do all cutting, fitting and patching of his 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. The Design-Builder shall not endanger any Work of others by cutting, excavating or otherwise altering their Work and will only cut or alter their Work with the written consent of the Owner and of the other contractors whose Work will be affected.

If the performance of additional Work by other contractors or the City is not noted in the Contract Documents prior to the execution of the Agreement, written notice thereof shall be given to the Design-Builder by the Owner prior to starting any such additional Work.

42. Owner's Responsibility

The supervision of the execution of this Agreement is vested wholly in the Design-Builder. The orders, instructions, directions, or requests of the City are to be given through the City or its agents. The Design-Builder shall designate a representative to receive such instructions, directions or requests in his absence and, failing to do so, will be held responsible for the execution of them.

The Owner shall have the authority to suspend the Work wholly or in part for such period or periods as may be reasonably necessary due to failure on the part of the Design-Builder to carry out orders given to perform any or all provisions of the Agreement. This right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other party. Except as provided in the Contract Documents, the Design-Builder shall not suspend the Work and shall not remove any

equipment, tools, lumber or other materials during such suspension without the written permission of the City.

The City shall have free access to the materials and the Work at all times for measuring or observing the same, and the Design-Builder shall afford him all necessary facilities and assistance for so doing.

After written authorization to proceed with the Work, the Owner shall:

1. Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents; not be responsible for the construction means, methods, procedures, techniques and sequences of construction and will not be responsible for the Design-Builder's failure to perform the construction Work in accordance with the Contract Documents; not be responsible for safety precautions and procedures in connection with the Work; and during such visits and on the basis of on-site observations, as an experienced and qualified design professional, will keep the City informed of the progress of the Work, will endeavor to guard the City against defects and deficiencies in the Work of the Design-Builder and may reject Work as failing to conform to the Contract Documents.
2. Issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the Owner may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.
3. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment and other data, which the Design-Builder is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents, and assemble written guarantees, which are required by the Contract Documents.
4. Consult with and advise the City, act as the City's representative at the project site, issue all instructions of the City to the Design-Builder and prepare routine change orders as required.
5. Based on on-site observations, as an experienced and qualified design professional and on the review of the Design-Builder's applications for payment, determine the amount owing to the Design-Builder and approve in writing payment to the Design-Builder in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review of data comprising such applications, that the Work has progressed to the point indicated and that, to the best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents, subject to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the approval. Such partial and final payments will be as specified elsewhere herein except as modified in this paragraph.
6. Conduct, in the company of the City, a final inspection and an "eleventh month inspection" of the Project for conformance with the design concept of the project and compliance with the information given by the Contract Documents, and recommend

to the City, in writing, acceptance of the Project for ownership and final payment to the Design-Builder in accordance with Article 58 "Final Payment and Acceptance."

The Owner will be the initial interpreter of the requirements of the Contract Documents.

Owner will determine the actual quantities and classifications of Unit Price Work performed by Design-Builder. Owner will review with Design-Builder the Owner's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The Owner has agreed to participate in the use of a partnering cooperative approach to problem solving.

Neither the Owner's authority to act under this Article or other provisions of the Contract Documents nor any decision made by the Owner, in good faith either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the Owner to the Design-Builder, any Subcontractor, any Supplier, any Surety, or any other person or organization performing any of the Work.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as reviewed", "as approved", or terms of the like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review, or judgment of the Owner as to the Work, it is intended that such requirements, direction, review, or judgment will be solely to evaluate the Work for compliance with the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the Owner any duty or authority to undertake responsibility.

The authority and duties of the Resident Project Manager are limited to examining the material furnished, observing the Work done, and reporting their findings to the Owner. The Owner does not underwrite, guarantee or ensure the Work done by the Design-Builder. It is the Design-Builder's responsibility to perform the Work in all details in accordance with the Contract Documents. Failure by the Owner or by any inspectors or other representatives of the City engaged in onsite observation to discover defects or deficiencies in the Work of the Design-Builder shall never, under any circumstances, relieve the Design-Builder from his liability to the City. Inspectors shall have no authority to permit deviations from or to modify any of the provisions of the Drawings or Specifications without the written permission or instruction of the Owner.

The City's instructions, orders, directions and/or orders to the Design-Builder shall be given only through the City's employees or agents.

The Owner shall have the authority to disapprove or reject work which the Owner believes to be defective or that the Owner believes will not produce a completed project that conforms to the Contract Documents or that will prejudice the integrity of the construction of the completed Project as a functioning whole as indicated by the Contract Documents. The Owner shall also have the authority to require special inspections or testing of the Work as provided in Article

50 of these specifications, whether the Work is fabricated, installed or completed.

If any Work (including the Work of Subcontractors) that is to be inspected, tested or approved is covered without written concurrence of the Owner, it must, if requested by the Owner, be uncovered for observation. Such uncovering shall be at the Design-Builder's sole expense unless the Design-Builder has given the Owner timely notice of the Design-Builder's intention to perform such test or to cover the same and the Owner has not acted with five (5) days in response to such notice.

If any Work is covered contrary to the written request of the Owner, it must, if requested by the Owner, be uncovered for the Owner's observation and replaced at the Design-Builder's sole expense.

If the Owner considers it necessary or advisable that covered Work be observed by the Owner or inspected or tested by others, the Design-Builder, at the Owner's request, shall uncover, expose, or otherwise make available for observation, inspection or testing as the Owner 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, the Design-Builder shall bear all direct, indirect and consequential costs and damages of such uncovering, exposure, observation, inspection and testing and of satisfactory re-construction, including but not limited to fees and charges of engineers, attorneys and other professionals. However if such Work is found not to be defective, the Design-Builder shall be allowed 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 re-construction; and if the parties are unable to agree as to the amount or extent thereof, the Design-Builder may make a claim as provided in Articles 44 and 49.

The payment of any compensation, regardless of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Design-Builder to any project representative, is strictly prohibited and any such act on the part of the Design-Builder will constitute a violation of the Agreement.

43. Changes in the Work

Without invalidating the Agreement and without notice to any Surety, City may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

If City and Design-Builder are unable to agree on the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made thereof as provided in Article 44 or Article 49.

Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the

Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided, except in the case of an emergency as provided in Article 19.

City and Design-Builder shall execute appropriate Change Orders (or Written Amendments) covering:

- A. Changes in the Work which are ordered by City, or are required because of acceptance of defective work under Article 50 or correcting defective Work under Article 52, or are agreed to in writing by the parties;
- B. Changes in the Contract Price or Contract Time which are agreed to in writing by the parties; and,
- C. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Owner pursuant to Assistant City Manager, provided that, in lieu of executing any such Change Order, Design-Builder or City may litigate any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such dispute and litigations, Design-Builder shall carry on with the Work and adhere to the Progress Schedule as provided in Article 48.

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a Surety, the giving of any such notice will be Design-Builder's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

All changes to the Agreement must comply to City of Hollywood's Code of Ordinances any revisions thereto and any other policies enacted by the Board of City Commissioners in relation to contract changes.

44. Change of Contract Price

A. General

- 1. The Contract Price constitutes the total compensation (subject to adjustments authorized in writing) payable to Design-Builder for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Design-Builder shall be at his expense without change in the Contract Price.
- 2. The Contract Price may only be changed by a Change Order or Agreement amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to the Owner promptly after the date that Design-Builder was reasonably aware of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered promptly after the initial notice (unless the Owner allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all

known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event, to the extent such amounts are known at such time; provided, however, that if such amounts are not known at such time, Design-Builder shall be permitted to amend the claim as reasonably necessary. Any claim for adjustment in the Contract Price may be determined by the Assistant City Manager when the City and Design-Builder cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Article.

3. The value of any Work covered by a Change Order, Agreement amendment, or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
 - a. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
 - b. By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph C.1.)
 - c. On the basis of the Cost of the Work (determined as provided in paragraphs B.1 and B.2) plus a Design-Builder's Fee for overhead and profit (determined as provided in paragraphs C.1 and C.2).
4. On approval of any contract change increasing the Contract Price, Design-Builder shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total Contract Price as increased and shall provide a copy of the revised bonds to the City.

B. Cost of the Work

1. The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the Work. 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 Article 44 paragraph B.2.
 - a. Payroll costs for employees in the direct employ of Design-Builder in the performance of the Work under schedules of job classifications agreed upon by City and Design-Builder. Payroll costs for employees not employed full time in the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment compensation, excise and payroll taxes, worker's or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation pay, holiday pay, and other costs in accordance with the billing rates set forth in Attachment I, Engineering and Construction Hourly Labor Rates attached to the Agreement. Payroll costs for employees in the direct employ of Design-Builder in the performance of the work described in the contract documents, are as follows: (a) salaries plus labor burden of percent (TBD) as set forth in

the schedule of job classifications agreed upon by City and Design-Builder, subject to audit by City; or (b) at the City's applicable prevailing wage rates. Payroll costs for employees not employed full time on the work covered by the contract shall be appointed on the basis of the time the employees spent on the work. Payroll costs shall include salaries and wages plus the labor burden to cover costs including social security contributions, unemployment, excise and payroll taxes, workers' compensation, health insurance, sick leave, vacation, and holiday pay. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the City.

- b. Costs of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and supplier's field services required in connection therewith.
- c. Payments made by Design-Builder to the Subcontractors for Work performed by Subcontractors including any insurance and bond premiums incurred
- d. Payments made by the Design-Builder to special subconsultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
- e. The proportion of necessary transportation, travel and subsistence expenses of Design-Builder's employees incurred in the discharge of duties connected with the Work.
- f. Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, temporary utilities and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and costs less market value of such items used but not consumed which remain the property of Design-Builder.
- g. Rentals of all construction equipment and machinery and the parts thereof whether rented from Design-Builder or others. The Design-Builder shall receive payment based upon the actual incurred daily, weekly, or monthly rental rate, maintenance, fuel and delivery costs. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for completion of the Work or any portion thereof for which the equipment, machinery or parts are specifically required.

For special equipment and machinery, owned by the Design-Builder, such as power driven pumps, concrete mixers, trucks, frontend loaders, backhoes, and tractors, or other equipment required for the economical- performance of the authorized Work, the Design-Builder shall receive payment based on the weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate Blue Book for Construction Equipment, published by Equipment Guide Book Co., reduced by twenty-five percent (25%). Equipment cost shall be calculated based upon the actual time used on the Work. If said Work requires the use of machinery not on the Work or not to be used on the Work, the cost of transportation, not exceeding

- a distance of one hundred (100) miles, of such machinery to and from the Work shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Agreement.
- h. Sales, consumer, use or similar taxes related to the Work, and for which Design-Builder is liable, imposed by Laws and Regulations.
 - i. The cost of utilities, fuel and sanitary facilities at the site.
 - j. Minor expenses such as telegrams long distance phone calls, broadband and telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - k. Cost of premiums for Bonds and insurance required by the Contract Documents and for premiums for property insurance coverage within the limits of the deductible amounts established by City in accordance with Article 18.
 - l. Costs for permits, royalties, licenses (software licenses excluded, with the exception of software licenses that are made part of and integrated into the Work and transferred to the City at Substantial Completion), tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.
 - m. Accounting and data processing costs related to the Work.
 - n. Warranty related costs related to the Work.
 - o. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
2. The term Cost of Work shall not include any of the following:
- a. Payroll costs and other compensation of Design-Builder's officers, executives, principals (or partnerships and sole proprietorships), general managers, attorneys, auditors, and other personnel employed by Design-Builder whether at the site or in Design-Builder's principal office or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph B.1.a or specifically covered by paragraph B.1.d, all of which are considered administrative costs covered by the Design-Builder's fee.
 - b. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the site.
 - c. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the Work and charges against Design-Builder for delinquent payments.
 - d. Costs due to the negligence of Design-Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for those acts any of them may be liable for, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - e. Other overhead or general expense costs of any kind and the costs of any items not specifically and expressly included in paragraph B.1.

C. Design-Builder's Fee

1. The Design-Builder's Fee allowed for overhead and profit shall be determined as follows:
 - a. A mutually acceptable fixed fee of five percent (5%) of the Cost of the work.
 - b. or if none can be agreed upon, a fee based on the following percentages of the various portions of the Cost of the Work:
 - (i) For costs incurred under paragraphs B.1.a, the Design-Builder's Fee shall not exceed five percent (5%).
 - (ii) For costs incurred under paragraphs B.1.b, the Design-Builder's Fee shall not exceed five percent (5%), 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 not exceed ten percent (10%);
 - (iii) For costs incurred under paragraphs B.1.c, B.1.g, B.1.h, B.1.i, and B.1.j the Design-Builder's Fee shall be five percent (5%).
 - (iv) For costs incurred under paragraphs B.1.k, B.1.e, and B.1.f the Design-Builder's Fee shall be zero percent (0%).
 - (v) No fee shall be payable on the basis of costs itemized under paragraphs B.1.d, B.1.l, B.1.m, and B.1.n.
 - (vi) For costs incurred under paragraphs B.1.o, the Design-Builder's Fee shall be to the extent approved in writing by Owner.
 - (vii) The amount of credit to be allowed by Design-Builder to City for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Design-Builder's Fee by an amount computed on the basis of the net decrease in cost in accordance with paragraphs C.1.b.i through C.1.b.vii, inclusive; and,
 - (v) When both additions and credits are involved in any one change, the adjustment in Design-Builder's Fee shall be computed on the basis of the net change in accordance with paragraphs C.1.b.i through C.1.b.vii, inclusive.
2. Whenever the cost of any Work is to be determined pursuant to paragraph B.1 or B.2, Design-Builder will submit in a form acceptable to the Owner an itemized cost breakdown together with supporting data.
3. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner. Each

Unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.

Where the quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is not a corresponding adjustment with respect to any other item of Work and if Design-Builder believes that Design-Builder has incurred additional expense as a result thereof, Design-Builder may make a claim for an increase in the Contract Price which may be resolved by Assistant City Manager if the parties are unable to agree as to the amount of any such increase.

If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 81 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

D. Change Procedures

A. Minor Changes:

The Owner will advise the Design-Builder, in writing, of what Owner reasonably determines to be minor changes in the Work not involving an adjustment to Contract Price or Contract Time by issuance of a Field Order.

B. Other Changes:

1. The City may, at any time, without notice to the surety, by written order designated or indicated to be a change order, make any change in the Work within the general scope of the Agreement, including but not limited to changes:
 - a. In the Specifications (including drawings and designs);
 - b. In the time, method or manner of performance of the Work;
 - c. In the City furnished facilities, equipment, materials, services, or site; or
 - d. Directing acceleration in the performance of the Work.
2. Any other written order (which terms as used in this paragraph shall include direction, instruction, interpretation, or determination) from the City, which causes any change, shall be treated as a change order under this clause, provided that the Design-Builder gives the City written notice not later than ten (10) calendar days after the date that Design-Builder was reasonably aware of the occurrence of the event giving rise to the claim but prior to incurring any further expense stating the date, circumstances, and source of the order and that the Design-Builder regards the order as a Change Order.
3. Except as provided in this Article, no order, statement, or conduct of the City shall be treated as a change under this clause or entitle the Design-Builder to an equitable adjustment, and this Article shall not allow, nor be construed to allow, a claim otherwise disallowed by the Contract Documents.
4. If any change under this clause causes an increase or decrease in the Design-Builder's cost of, or the time required for, the performance of any part of the Work under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified in writing accordingly; provided however, that no claim for any change under Paragraph 2 above shall be allowed for any costs unless the Design-Builder gives written notice as herein required.
5. If the Design-Builder intends to assert a claim for an equitable adjustment under this clause, it must, within thirty (30) calendar days after receipt of a written Change Order under Paragraph 1 above or the furnishing of a written notice under Paragraph 2 above, submit to the City a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the City. The statement of claim hereunder may be included in the notice under Paragraph 2 above.
6. No claim by the Design-Builder for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

45. Omitted Work

The City may, at any time, by a written order, without notice to the Sureties, require the omission of such Work as it may find necessary or desirable. An order for omission of

Work shall be valid only by an executable change order. All Work so ordered must be omitted by the Design-Builder. The amount by which the Contract Price shall be reduced shall be determined as follows:

- a. By such applicable unit prices, or rates for work of a similar nature or character as set forth in the Agreement; or,
- b. By the appropriate lump sum price set forth in the Agreement; or, By the reasonable and fair estimated cost of such omitted Work as determined by the Design-Builder and the Owner.

46. Changes Not to Invalidate Bonds

It is distinctly agreed and understood that any changes made in the Contract Documents for Work associated with this Project (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the City to the Design-Builder shall in no way annul, release or affect the liability and surety on the Bonds given by the Design-Builder.

If notice of any change is required to be given to a Surety by the provisions of any Bond, the giving of any such notice will be the Design-Builder's responsibility, and the amount of each applicable Bond shall be adjusted accordingly and the added cost shall be paid by the City.

47. Continuing the Work

Design-Builder shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with City. If the Design-Builder and City are unable to agree, all such disputes shall be addressed pursuant to Article 81, below. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Design-Builder and City agree in writing otherwise and the City shall continue to make payments in accordance with the Contract Documents.

48. Change of Contract Time

The Contract Time may only be changed by a Change Order. Any claim for an extension of the Contract Time shall be based on written notice delivered by the Design-Builder to the Owner promptly (but in no event later than 10 calendar days) after the date that Design-Builder was reasonably aware of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) calendar days after the later of (a) such occurrence or (b) the initial notice (unless the Owner allows, in writing, an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the Design-Builder's written statement that the adjustment claimed is the entire adjustment to which the Design-Builder has reason to believe it is entitled as a result of the occurrence of said event to the extent Design-Builder is reasonably aware as of the date of such statement. All claims for adjustment in the Contract Time shall be determined by the Owner., No claim for an adjustment in the Contract Time shall be valid if not submitted as previously specified above.

The Contract Time will be extended in an amount equal to time lost due to delays beyond the

control of Design-Builder if a claim is made as provided in this Article. Such delays shall include, but not be limited to, acts or neglect by City or others performing additional Work as contemplated by Article 41, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, Article 49, or acts of God.

Pursuant to the Agreement's float-sharing requirements, no time extensions will be granted nor delay damages considered until a delay occurs that impacts the project's critical path, consumes all available float, and extends the work beyond the Agreement completion dates.

48.1 Emergencies.

In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 49.

49. Extension of Time on Account of Weather/Inclement Weather

If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within ten (10) calendar days of occurrence and shall be documented by data substantiating that weather conditions where the Design-Builder was unable to perform work, for the period of time required for completion of the Work and could not have been reasonably anticipated and that weather conditions had an adverse effect on the scheduled construction.

The Design-Builder's construction schedule shall be based upon the inclusion of at least fifteen (15) calendar days per calendar year, of inclement weather delays to be prorated over the length of the Agreement. Further, the Design-Builder has the responsibility to take reasonable precautions to mitigate the impact of unfavorable weather conditions.

Failure by the Design-Builder to comply with the proper notice or to supply substantial data within the time limit will result in the Design-Builder waiving its claim for weather delay.

50. Materials, Samples and Inspections

Unless otherwise indicated on the Drawings or specified elsewhere, only new materials and equipment shall be incorporated in the Work. All materials and equipment furnished by the Design-Builder to be incorporated in the Work shall be subject to inspection by the Owner. No material shall be processed for, fabricated for, or delivered to the Site without prior acceptance from the Owner.

If not required by the Proposal, as soon as possible after the formal execution of the Agreement, the Design-Builder shall submit to the Owner, the names and addresses of the manufacturers and suppliers of all materials and equipment he proposes to incorporate into the Work. When shop and supplemental drawings are required as specified below, such information shall be submitted prior to the submission of the drawings so that the Owner may consider the manufacturer, and/or the supplier, to be acceptable or unacceptable, as to his or their ability to furnish a product meeting the Specifications, subject to final acceptance of the particular material or equipment. As requested, the Design-Builder shall also submit data relating to the material and

equipment he proposes to incorporate into the Work, in sufficient detail to enable the Owner to identify the particular product in question and to form an opinion as to its conformity to the Agreement requirements. Such data shall be submitted in a manner similar to that specified for shop drawings.

If the Owner so requires, either prior to beginning or during the progress of the Work, the Design-Builder shall submit samples of materials for such special tests as may be necessary to demonstrate that they conform to the requirements of the Contract Documents. Such samples, excluding concrete test cylinders, shall be furnished, taken, stored, packed, and shipped as directed, at the expense of the Design-Builder and or subcontractor.

All samples shall be packed so as to reach their destination in good condition, and shall be labeled to indicate the material represented, the name of the building or Work and location of which the material is intended, and the name of the Design-Builder submitting the sample. To ensure consideration of samples, the Design-Builder shall notify the Owner by letter that the samples have been shipped and shall properly describe the samples in the letter. In no case shall the original letter of notification be enclosed with the samples.

The Design-Builder shall submit data and samples, or place his orders, sufficiently early to permit consideration, inspection, testing, and acceptance before the materials and equipment are needed for incorporation in the Work. Delay resulting from his failure to do so shall not be used as the basis of a claim against the City.

When required, the Design-Builder shall furnish to the Owner triplicate sworn copies of manufacturer's shop or mill tests (or reports from independent testing laboratories) relative to materials and concrete data. After the samples, data, etc., are considered acceptable to the Owner, the materials and equipment used on the Work shall correspond therewith.

If permitted elsewhere in the Contract Documents and the Work is defective, or the Design-Builder fails to perform the Work in such a way that the completed Work will conform with the Contract Documents, the City may order the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work, shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Design-Builder or any other party.

If permitted elsewhere in the Contract Documents and required by the Owner, the Design-Builder shall promptly either correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Owner, remove it from the site and replace it with non-defective Work. The Design-Builder shall bear all direct, indirect, and consequential costs of such correction or removal, including but not limited to fees and charges of engineers, architects, attorneys, and other professionals made necessary thereby.

If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept the Work, City may do so. Design-Builder shall bear all direct, indirect and consequential costs attributable to City's evaluation of and determination to accept such

defective Work (such costs to be approved by Owner as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Final Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, City may make claim as provided in Article 44. If the acceptance occurs after such recommendation, an appropriate amount will be paid by the Design-Builder to the City.

51. Inspection of Work Away From the Site

If Work to be done away from the construction site is to be inspected on behalf of the City during its fabrication, manufacture, or testing, or before shipment, the Design-Builder shall give notice to the Owner of the place and time where such fabrication, manufacture, testing or shipping is to be done. Such notice shall be in writing and delivered to the Owner in ample time so that the necessary arrangements for the inspection can be made.

52. One Year Correction Period

If within one (1) year after the date of Substantial Completion, any Work which is found to be defective, the Design-Builder shall promptly, without cost to the City, and in accordance with the City's written notification, either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective Work. If the Design-Builder does not promptly commence to comply with such notification, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs of such removal and replacement including but not limited to fees and charges of engineers, architects, attorneys and other professionals will be paid by the Design-Builder.

If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept the Work, the City may do so. The Design-Builder shall bear all direct, indirect, and consequential costs attributable to the City's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price. If the acceptance occurs after final payment, an appropriate amount will be paid by the Design-Builder to the City, as determined by the Owner.

53. Progress Payment Procedures

On the 20th day of the month or the first working day thereafter, the Design-Builder shall submit to the Project Manager for review an Application for Payment form filled out and signed by the Design-Builder. The form shall be notarized and shall cover the Work completed as of the date of the application. The Application for Payment shall be accompanied by a Schedule of Values, a City approved construction schedule update, and any other supporting documentation as the Project Manager may reasonably require.

If the pay estimate and support data are not approved, the Design-Builder is required to submit new, revised or missing information according to the City's instructions. Otherwise, the Design-Builder shall prepare and submit to City an invoice in accordance with the estimate as approved. City will pay Design-Builder, in accordance with Local Government Prompt Payment Act (Section 218.70 et. seq., Florida Statutes) (hereinafter, "the Act"). City shall provide Design-Builder with a written notice of disputed pay request within ten (10) business days after receipt of such pay request which clearly states any and all deficiencies in Design-Builder's pay request that will prevent prompt processing and issuance of payment. To the extent there is an undisputed portion of the pay request that can be paid, the City shall proceed with prompt payment of that portion of the pay request. Retainage, in the amount of 5%, will be withheld on the calculated value of any Work, with the exception of stored materials which may be paid at the supplier's invoiced cost. Notwithstanding the foregoing, in no instance can the amount retained be less than the value of City's good faith claims plus the value of the Work the City determines remains to be put in place or required to be performed as remedial activities.

The Project Manager may also refuse to recommend any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:

- A. The Work is defective, or completed Work has been damaged requiring correction or replacement.
- B. Written claims have been made against the City or Liens have been filed in connection with the Work.
- C. The Contract Price has been reduced because of Change Order.
- D. The City has been required to correct defective Work or complete the Work in accordance with Article 42.
- E. The Design-Builder's unsatisfactory prosecution of the Work in accordance with the Contract Documents.
- F. The Design-Builder's failure to make payment to subcontractors for labor, materials or equipment.

In the event any dispute with respect to any payment or pay request cannot be resolved between the Design-Builder and City's project staff, Design-Builder may, in accordance with the alternative dispute resolution requirements of the Act, demand in writing a meeting with and review by the Department of Design and Construction Management. In the absence of the Design and Construction Management Department Director, the Design and Construction Management Department Deputy Director may conduct the meeting and review. Such meeting and review shall occur within ten (10) business days of receipt by City of Design-Builder's written demand. The Design and Construction Management Department Director, or Deputy Director, shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the City's final decision for the purposes of the Act

Design-Builder must remit undisputed payment due for labor, services, or materials furnished by Subcontractors and Suppliers hired by the Design-Builder,

within ten (10) business days after the Design-Builder's receipt of payment from the City pursuant to the Act. Design-Builder shall provide Subcontractors and Suppliers hired by Design-Builder with a written notice of disputed invoice within five (5) business days after receipt of said invoice which clearly states the reasons for the disputed invoice. In the event of Design-Builder's non-compliance with these payment provisions, Design-Builder shall be subject to any sanctions and penalties available under the terms of the City of Hollywood Equal Opportunity Ordinance, the Equal Business Opportunity Program Policies and Procedures, this Agreement, or by law.

54. No Damages for Delay

No claim for damages or any claim other than for an extension of time, shall be made or asserted against City by reason of any delays. Design-Builder shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, Eichleay Formula Costs, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Design-Builder for hindrance or delays due solely to fraud, bad faith or active interference on the part of City or its agents. Otherwise, Design-Builder shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

The Design-Builder's total liability for Consequential Damages shall in no event exceed one hundred (100%) percent of Fee as set forth in Article 44.C, excluding insurance coverage available which shall be outside of the cap.

55. Substantial Completion

55.1 When the Design-Builder considers the entire Work, or a portion of the Work, ready for its intended or beneficial use, the Design-Builder shall notify the City in writing that the Work or a portion of the Work is substantially complete and request that the City prepare a Certificate of Substantial Completion. Within the time allowed by Chapter 218, Florida Statutes, the City and the Design-Builder shall make an inspection of the Work to determine the status of substantial completion. If the City does not consider the Work substantially complete, the City shall notify the Design-Builder in writing stating the reasons with specificity. If the City considers the Work to be substantially complete, the City will execute the Certificate of Substantial Completion signed by the Design-Builder, which shall fix the Date of Substantial Completion for the Work or that portion of the Work. At the discretion of the City, the City may withhold one- and one-half times the value of outstanding uncompleted items and corrective work on the incomplete punch list, plus retainage per FL Statutes 255.078. The City and Design-Builder shall prepare a punch list of remaining items for Final Acceptance. All such Work shall be completed or corrected to the satisfaction of the City within the time stated on the punch list; otherwise, the Design-Builder does hereby waive any and all claims to all monies

withheld by the City to cover the value of all such uncompleted or uncorrected items.

55.2 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Article 56, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work or punch list items.

56. Final Application for Payment

After the Design-Builder has completed all correction Work referred to in Article 55 "Substantial Completion", and on the final punch lists, and the Design-Builder has delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in these General Conditions) and other documents, all as required by the Contract Documents, and has given the City written notice that the Work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, the Design-Builder may make application for Final Payment following the procedure for progress payments in Article 53 "Applications for Progress Payments." The Final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, including but not limited to the following on forms provided by the City:

1. Design-Builder's Certification of Final Completion
2. Consent of Surety for Final Payment (Payment Bond)

The Design-Builder shall also submit complete and legally effective releases or waivers (satisfactory to the City) of all liens and "Notices to Owner" arising out of or filed in connection with the Work

57. Record Documents

The Design-Builder shall keep one (1) record copy of all Specifications, Drawings, Addenda, modifications and shop drawings at the site in good order and clearly annotated to show all changes made during the construction process. These shall be available to the Owner for inspection and reference and shall be delivered to him upon completion of the Project, prior to Application for Final Payment.

58. Final Payment and Acceptance

Upon receipt of written notice from the Design-Builder that the Work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment and accompanying documentation, the City shall promptly examine the Work and, making such tests as it may deem proper and using all of the care and judgment normally exercised in the examination of completed Work by a properly qualified and experienced professional engineer, shall satisfy itself that the Design-Builder's statement appears to be correct and the Design-Builder's other obligations under the Contract Documents have

been fulfilled, and, if so shall then shall accept the Work for ownership and make Final Payment to the Design-Builder.

However, it is agreed by the City and the Design-Builder that such determination by the City does not in any way relieve the Design-Builder from its responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the City liable for any faulty Work done or defective materials or equipment used by the Design-Builder.

The City will then make a final estimate of the value of all Work done and deduct all previous payments which have been made. After receipt and acceptance by the City of the properly executed Final Warranty of Title and within sixty (60) days after said acceptance, the City will make final payment to the Design-Builder of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items:

1. Liquidated Damages, as applicable.

All prior estimates are subject to correction in the final estimate.

59. Design-Builder's Continuing Obligation

The Design-Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither payment of any Progress or Final Payment by the City, nor the issuance of a Certificate of Substantial completion, for any beneficial use or occupancy of the Work or any part thereof by the City, nor any act of acceptance by the City, nor any failure to do so, nor any review of a Shop Drawing or sample submittals, will constitute an acceptance of Work not in conformance with the Contract Documents or a release of the Design-Builder's obligation to perform the Work in accordance with the Contract Documents.

60. Final Payment Terminates Liability of City

Final Payment is defined as the last Progress Payment made to the Design-Builder for earned funds, less retainage as applicable, less deductions listed in Article 55 "Substantial Completion" or Article 58 "Final Payment and Acceptance". The acceptance of the Final Payment referred to in Article 58, shall be a full release of the City and its agents from any and all claims of liability to the Design-Builder for anything done or furnished for, or relating to, the Work or for any act or neglect of the City, or of any person relating to or affecting the Work, except demands against the City for the remainder, if any, of the amounts kept or retained under the provisions of Article 58.

61. City's Right to Terminate

- (a) If at any time there shall be filed by or against the Design-Builder in any court, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the Design-Builder's property, and within thirty (30) days there from the Design-Builder fails to secure a discharge thereof, or if the Design-Builder makes an assignment for the benefit of creditors or petitions for or enters into an agreement or arrangement with its creditors, or if the Design-Builder admits in writing an inability to pay

its debts generally as they become due, or if the Design-Builder persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under the General Requirements of the Technical Specifications as revised from time to time), or (e) if Design-Builder disregards Laws or Regulations of any public body having jurisdiction, or if Design-Builder otherwise violates in any substantial way any provisions of the Contract Documents, then the City by giving seven (7) days prior written notice of any such default to the Design-Builder and without prejudice to any other remedy it may have, may terminate the employment of the Design-Builder, exclude Design-Builder from the site, and take possession of the Work and all or some of the Design-Builder's materials, tools, equipment and appliances and use the same to the full extent they could be used by the Design-Builder (without liability to the Design-Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which City has paid Design-Builder but which are stored elsewhere and complete the Work by such means as the City deems expedient. In such case, the Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed (1) the expense of completing the Work including compensation for additional managerial and administrative services, plus (2) the City's indirect and consequential losses and damages because of the Design-Builder's default, including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs, such excess shall be paid to the Design-Builder. If such expense, plus the City's losses and damages shall exceed such unpaid balance, the Design-Builder shall pay the difference to the City promptly on demand. Such costs incurred by the City shall be reasonable and incorporated into a Change Order, but when exercising any rights or remedies under this paragraph, City shall not be required to obtain the lowest price for the Work performed.

- (b) The City may terminate this Agreement without cause by giving ten (10) days written notice to the Design-Builder, and in such event, the City will pay the Design-Builder for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed or in process as of the Date of Termination. The City also will reimburse the Design-Builder for all costs necessarily incurred for organizing and carrying out the stoppage of the Work and paid directly by the Design-Builder, not including overhead, general expenses or profit. The City will not be responsible to reimburse the Design-Builder for any continuing contractual commitments to Subcontractors or material suppliers or penalties or damages for canceling such contractual commitments inasmuch as the Design-Builder shall make all subcontracts and other commitments subject to this provision. City will not be liable for, and Design-Builder hereby waives, any claim for lost prospective profits, economic losses, or other consequential damages.
- (c) In the event of termination by the City, the City may require the Design-Builder promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the City, in its sole discretion, chooses to take by assignment, and in such event the Design-Builder shall

promptly execute and deliver to the City written assignments of the same. It is understood that no subcontractor or subconsultant affiliated with or related to Design-Builder shall be obligated to accept such assignment.

- (d) In the event that any termination under subparagraph (a) above is determined to have been effectuated without proper or sufficient cause, then such termination shall be deemed to have been a termination for convenience under subparagraph (b) above.

62. City Remedies

If the Design-Builder defaults or neglects to carry out any of his obligations under this Agreement, including but not limited to the provisions of the General Requirements of the Technical Specifications, or should liens be filed, bills of sale, conditional bills of sale, chattel mortgages, assignments of this Agreement, or orders for the payment of money for materials or labor or either, or should the Design-Builder become insolvent or bankrupt, the City shall have the right, in addition to any other rights and remedies provided herein or by law, to perform and furnish through itself and/or through others any such labor or materials for the Work and to deduct the costs thereof from any money due or to become due to the Design-Builder for all or any portion of the Work; enter upon the premises and take possession, for the purpose of completing the Work, all equipment, scaffolds, tools, appliances, and any other items thereon, and to employ any person or persons to complete the Work and provide all labor services, materials, equipment, and other items required. In case of such termination of the employment of the Design-Builder, Design-Builder shall not be entitled to receive any further payment under this Agreement; however, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by the City in completing the Work, such excess shall be paid by the City to the Design-Builder; but, if such cost and expense shall exceed the unpaid balance, the Design-Builder shall promptly pay the difference to the City on demand. Said cost and expense shall include not only the cost of completing the Work to the satisfaction of the City and of performing and furnishing all labor, services, materials, equipment, and other items required; but all losses, damages, costs and expenses including attorney's fees sustained, incurred, or suffered by reason of or resulting from the Design-Builder's default, or by reason of litigation over this Agreement.

No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the City and/or Design-Builder.

63. Design-Builder's Right to Terminate or Stop Work

This Agreement may be terminated by the DESIGN-BUILDER upon sixty (60) days' prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of this Agreement through no sole fault of the DESIGN-BUILDER or if the Work is stopped for a period of seven (7) days due to Owner's failure to provide financial assurances as required herein or Owner's failure to pay amounts properly due under Design-Builder's application for payment (it being understood that Design-Builder is entitled to stop the work for such reasons with seven (7) days' notice to City) Unless the DESIGN-

BUILDER is in breach of this Agreement, the DESIGN-BUILDER shall be paid for services rendered or in process in conformity with the Contract Documents through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the CITY, in writing, the DESIGN-BUILDER shall:

- a. Stop work on the date and to the extent specified.
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- c. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- d. Continue and complete all parts of the work that have not been terminated.

64. Title to Materials Found on the Work

The City reserves the right to retain title to all suitable soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work. Unless otherwise specified in the Contract Documents, neither the Design-Builder nor any Subcontractor shall have any right, title, or interest in or to any such materials.

The Design-Builder will be permitted to use any such suitable materials in the Work, without charge, provided that such materials meet the requirements of the Contract Documents.

65. Right to Audit

The City shall have the right to audit the Design-Builder's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which a claim for payment has been submitted. The right to audit shall include the right to inspect the Design-Builder's plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The Design-Builder further agrees that the right to audit encompasses all subcontracts and is binding upon all Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the Design-Builder's normal business hours at the office of the Design-Builder. The Design-Builder shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.

The City shall have the Right to Audit for five (5) years after Final Payment or resolution of all claims, whichever occurs last, except that additional time may be required for a state- or federal-funded project.

66. Asbestos

If the Design-Builder during the course of the work observes, uncovers, or otherwise becomes aware of the existence of any suspect asbestos material at the site that was not previously identified by the City, the Design-Builder shall immediately stop work in the affected area and notify the City and confirm any oral notice in writing. In addition, the Design-Builder shall take reasonable precautions to prevent or contain the movement, spread or disturbance of such materials and to protect persons and property. The City shall determine the necessity of City's

retaining special consultants or qualified experts to deal therewith. The Design-Builder shall not perform any work in connection near or in connection with the suspect material until receipt of special written instructions from the City.

A. PROCEDURES FOR DEMOLITION OF STRUCTURES:

1. Notification:

Federal and state asbestos regulations require, prior to demolition of any structure:

- (a) An inspection for asbestos containing- materials (ACM);
- (b) Removal of specific ACM; and,
- (c) An asbestos notification of demolition received at least ten (10) business days prior to demolition.

To meet requirements (a) and (b) above, the City has surveyed the structure(s) in this Agreement for the presence of ACM and every effort has been made to remove National Emission Standard for Hazardous Air Pollutant (NESHAP) Regulated Asbestos Containing Material (RACM) and Category II Nonfriable ACM (e.g. asbestos cement board and shingles) before releasing this project to the Design-Builder. Intact resilient floor coverings with mastic and bituminous roofing materials are classified as NESHAP Category I Non-Friable ACM and may still remain on the structure released for demolition. Verification of this work is attached to this Agreement. If not attached, it is the Design-Builder's responsibility to contact the Project Manager of the City Department overseeing this Agreement, or the City's Risk Management/Loss Control section to obtain:

- 1. A copy of the pre-demolition asbestos inspection report; and,
- 2. A copy of Risk Management/Loss Control's memo of approval to proceed to the next phase of the project addressed to the City department overseeing this project, and

To meet requirement (c) above, the Design-Builder is responsible for submitting a complete and accurate asbestos notification of demolition form using electronic Notice of Demolition or Asbestos or DEP form 62-257.900(1), The form and business portal are available from the Florida Department of Environmental Protection (FDEP) at: <https://floridadep.gov/air/permitting-compliance/content/asbestos> - <https://www.broward.org/ePermits/Pages/Default.aspx>

The Design-Builder must notify FDEP and the project manager of the City Department overseeing the project immediately if the demolition start date changes. No demolition may begin before the start date on the notice to proceed from the City department. It is the responsibility of the Design-Builder to call and submit revised NESHAP notifications to the above listed agency, adhering to required NESHAP time frames.

The Design-Builder will provide a copy of the submitted NESHAP form(s) to the County Department overseeing this project, when requested.

The Design-Builder is responsible for physically checking the structure(s) before submitting

the NESHAP notification to ensure that all RACM and Category II ACM, as identified in the pre-demolition asbestos inspection report, have been removed. If RACM or Category II ACM is discovered or Category I flooring and/or roofing is in poor (friable/not intact) condition, immediately contact the County's Project Manager or Loss Control.

2. **Work Practices:**

The Design-Builder will utilize wet methods to control airborne emissions during the demolition process and during loading onto transport vehicles, regardless of whether NESHAP Category I material is present or not. The Design-Builder is responsible for supplying water meters, hoses, and adequate volume of water to the demolition site.

Intact resilient flooring, floor mastic, and bituminous roofing materials (NESHAP Category I Non-Friable ACM) are not required to be removed prior to wet demolition. Demolition work practices will be conducted in a manner to prevent Category I materials from becoming friable (regulated). It is the demolition contractor's responsibility to ensure Category I materials and their substrates are segregated from non-asbestos debris, kept wet, and disposed properly in a licensed facility.

Recycling and/or salvage of presumed or confirmed asbestos-containing Category I materials and their substrates is strictly prohibited.

Materials containing less than one percent (<1%) asbestos are not mandated to be removed prior to wet demolition under NESHAP, however, the Design-Builder's compliance with OSHA regulations is required.

Materials containing less than one percent (<1%) asbestos and debris mixed in with it cannot be recycled. It is the Design-Builder's responsibility to properly segregate these materials from non-asbestos debris should recycling be considered. The City will require verification of proper disposal of materials containing <1% asbestos to ensure they are not recycled.

3. **Applicable Regulations**

Compliance with the following regulations is the demolition contractor's responsibility:

1. Environmental Protection Agency (EPA) 40 CFR part 61 Subpart M – National Emission Standards for Hazardous Air Pollutants (NESHAP)
2. Occupational Safety and Health Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101
Chapter 469 Florida Statutes
- 3.

In accordance with OSHA (29 CFR 1926.1101) the Design-Builder must have a Competent Person onsite who:

- (a) Is capable of identifying existing asbestos hazards in the workplace;
- (b) Is capable of selecting the appropriate control strategy for asbestos exposure; and
- (c) Has the authority to take prompt corrective action to eliminate hazard.

This person must be trained in accordance with OSHA, EPA, and Florida Statutes as an onsite supervisor (commonly referred to as Asbestos Supervisor/Contractor). Copies of training certificates of the onsite supervisor shall be made available to the City upon request.

B. REMOVAL OF CONFIRMED OR PRESUMED ASBESTOS-CONTAINING BITUMINOUS ROOFING MATERIALS:

The City will provide all known information as to the roofing material used on the existing roof specified in the Contract Documents. This information will include the results of any recent bulk sampling analysis of the existing roof system determining the presence or absence of asbestos by percentage and the location where each sample was taken. In the absence of bulk sampling for asbestos, the roofing materials will be presumed asbestos containing until proven otherwise. It is the Design-Builder's responsibility to determine if the information furnished is adequate to provide a bid.

It is the responsibility of the Design-Builder awarded the Agreement to determine if the roofing materials do not contain asbestos. If the Design-Builder wishes not to sample and analyze for asbestos, the materials will be presumed to contain asbestos and must be handled accordingly. If the Design-Builder elects to sample the roof system, it must first notify the City of the sampling, including date, location, and number of samples to be collected. The bulk sample collection must be conducted by a Florida Licensed Asbestos Consultant and the analyses must be performed by an NVLAP accredited laboratory (NVLAP: National Voluntary Laboratory Accreditation Program). Results, if proven less than one percent (1.0%) asbestos, shall be provided to the City prior to the start of any Work.

The Design-Builder awarded the Agreement will be required to meet all Federal, State, and local regulations pertaining to the handling, removal, and disposal of confirmed or presumed asbestos-containing roofing materials. This includes, but is not limited to:

1. Meeting the requirements listed in Chapter 469 Florida Statutes regarding training of onsite roofing supervisors involved in the removal of asbestos containing bituminous resinous roofing materials; and,
2. Utilizing removal methods that will maintain the roofing material's Category I non-friable status and will not create dust (i.e., employ methods other than sanding, grinding, drilling, abrading, rotary blade, or saw cutting). Suggested methods are slicing, shearing, or punch cutting while using wet methods where feasible.
3. Submitting a NESHAP notification of renovation if greater than 5580 square feet of asbestos-containing roofing will be removed.

To meet requirement #3 above, the Design-Builder is responsible for submitting a complete and accurate asbestos notification titled "Notice of Demolition or Asbestos Renovation " [i.e., NESHAP notification, 40 CFR Part 61.145(b)], to the below listed agency at least ten (10) business days prior to the start of work. The form and business portal are available from the Florida Department of Environmental Protection (FDEP) at:

The Design-Builder will submit upon award of the Agreement the following documentation to the City department coordinating this project:

1. Copies of training certificates of the onsite roofing supervisor in compliance with the current requirements of Chapter 469 Florida Statutes;
2. Approval of a landfill to accept confirmed or presumed asbestos containing roofing material and any conditions associated with its acceptance; and,
3. A plan of action, as specified by OSHA 29 CFR 1926.1101, which addresses:
 - a. Method(s) of removal;
 - b. Worker protection;
 - c. Protection of building occupants and ventilation system;
 - d. Method and location of disposal.

C. HANDLING AND DISPOSAL OF ASBESTOS CEMENT PIPE

1. General

Federal EPA regulations (40 CFR Part 61, Sub-part M “NESHAP”) classify asbestos cement pipe (AC pipe) as Category II nonfriable asbestos containing material. Federal OSHA regulations regarding materials containing asbestos (29 CFR 1926.1101) state handling such materials must be performed in accordance with its regulations, including work practices and training. Florida Statutes (Chapter 469) require adherence to EPA and OSHA regulations. Contractors working on or tying into AC pipe owned by the City or its entities shall comply with these regulations.

The City will make every effort to identify and quantify the location of known AC pipe prior to onset of the work. If during the course of the work Design-Builder observes, uncovers, or otherwise becomes aware of the existence of any AC pipe, AC pipe pieces, or suspect asbestos material at the site that was not previously identified by the City, the Design-Builder shall immediately notify the City and confirm any verbal notice in writing. In addition, the Design-Builder shall take reasonable precautions to prevent or contain the movement, spread or disturbance of such materials and to protect persons and property. The City shall determine the necessity of the City retaining special consultants or qualified experts. The Design-Builder shall not perform any work near or in connection with the suspect material until receipt of special written instructions from the City.

2. Pre-Work Submittals

Prior to any work on AC pipe that could disturb the pipe or expose the worker to possible asbestos fiber release while working on AC pipe, the Design-Builder shall submit the following documentation to the City department overseeing this Agreement and/or the applicable Florida agency:

1. Copy of the current training certificate of the onsite OSHA Competent Person (also known as the Onsite Supervisor or Asbestos Supervisor).

2. Copy of the current training certificate or training documentation for each employee working on the AC pipe. This training shall meet the criteria stated for OSHA Class II special operation.
3. Copy of the Design-Builder's most recent Negative Exposure Assessment or Periodic Monitoring for asbestos.
4. Copy of the plan of action, as specified by OSHA 29 CFR 1926.1101, which addresses:
 - a. Method of removal and/or repair
 - b. Worker protection
 - c. Method and location of AC Pipe disposal
5. Copy of the NESHAP notification, when applicable.

Prior to any work on AC pipe that may render it to become friable or regulated in quantities of 260 linear feet or greater, the Design-Builder will submit a NESHAP "Notice of Demolition or Asbestos Renovation" form to (a) the City department overseeing this Agreement and (b) the below listed agency at least ten (10) business days prior to the start of work. The form and business portal are available from the Florida Department of Environmental Protection (FDEP) at:

<https://floridadep.gov/air/permitting-compliance/content/asbestos>

The Design-Builder will provide a copy of the submitted NESHAP form(s) to the City Department overseeing this project, when requested.

3. Work Practices

Compliance with the following regulations is the Design-Builder's responsibility:

1. Environmental Protection Agency (EPA) 40 CFR part 61 Subpart M – National Emission Standards for Hazardous Air Pollutants (NESHAP)
2. Occupational Safety and Health Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101
3. Chapter 469 Florida Statutes

4. Post Work Submittals

The Design-Builder will submit the following documentation to the City department coordinating this project prior to payment:

1. A Waste Shipment Record (WSR) for each shipment of AC pipe disposed, signed by the disposal facility, within 35 days of shipment. Refer to 40 CFR part 61 Subpart M (NESHAP) for an example of a WSR.

67. Explosives and Hazardous Materials

Design-Builder shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Design-Builder will notify the City immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the City. The Design-

Builder shall maintain and Post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.

In the event that hazardous material is improperly handled or stored by the Design-Builder, its Subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Design-Builder shall immediately notify the City and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Design-Builder's sole cost and expense. Further, Design-Builder shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities

68. Notice and Service Thereof

All notices, demands, requests, instructions, approvals and claims shall be in writing. Notices, demands, etc., 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 business address as defined at the Pre-Construction Conference.

69. Not Used

70. Not used

71. Design-Builder Furnished Drawings, Data and Samples

Review and permission to proceed by City as stated in this Agreement does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Design-Builder and does not relieve Design-Builder from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required to be submitted to the City for review in a pre-decided manner.

All correspondence from the Design-Builder to the City shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Design-Builder for accuracy, completeness and compliance with contract requirements. These drawings and schedules shall be stamped and signed by Design-Builder certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with contract requirements, and it has been coordinated with all other submittals and Contract Documents."

"I certify that I have checked this submittal for accuracy, completeness and compliance

with contract requirements, and it has been coordinated with all other submittals and Contract Documents."

A. Drawings

Where drawings are required for (a) fabrication of Design-Builder furnished equipment; (b) installing Design-Builder furnished material or equipment; or (c) planning and performance of the work under Agreement; such drawings shall be submitted by and at the expense of the Design-Builder before fabrication, installation or performance is commenced. When reasonably practical, submittal shall be made not less than twenty-one (21) calendar days prior to the time that the drawings are required in accordance with the schedule.

When practical, allow at least twenty-one (21) calendar days for review by City. City's review will be accomplished based on the Design-Builder's submittal schedule portion of the CPM schedule, as approved. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the work.

For drawings greater in size than 11" x 17", digital copies must be transmitted to the City. If drawings show variations from the contract requirements, the Design-Builder shall describe such variations in writing, separate from the drawings, at the time of submission. If the City approves any such variation(s), it shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

All drawings submitted by the Design-Builder shall be certified and dated by the Design-Builder on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the specifications. City will conduct a review of Design-Builder's drawings and a drawing marked with one of the following review comments will be returned to the Design-Builder.

1. No exceptions taken.
2. Comments attached. Resubmit.
3. Rejected.

The Design-Builder must incorporate the changes indicated, resubmit and obtain a Code

1 or 2 notation before release for shipment can be granted.

B. Samples

Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged. Samples of all items of related systems (i.e. adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.

Where samples are required, they shall be submitted by and at the expense of the Design-Builder. Such submittal shall be made not less than twenty-one (21) City business by such samples need to be ordered for incorporation into any work in accordance with the schedule. Allow at least 21 calendar days for City's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any work without such review. Each sample shall bear a label showing the Design-Builder's name, date submitted, project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.

Samples which have been reviewed may, at City's option, be returned to the Design-Builder for incorporation into the work.

C. Catalogues, Data and Certificates

Where catalogues, data or certificates are required, five (5) copies of each, or digitally produced at the City's discretion, shall be submitted by and at the expense of the Design-Builder. Such submittal shall be made not less than thirty two (21) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any work in accordance with the CPM schedule. Allow at least 21 calendar days for City's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any work without such review.

Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Design-Builder's name, project name, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Design-Builder shall be certified and dated by the Design-Builder on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specification, on forms provided by the City. City will conduct a review of Design-Builder's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph A, above, will be returned to the Design-Builder.

72. Design-Builder Work-Site Emergency Action Plan

Design-Builder shall be fully and solely responsible for the safety of all on-site contract personnel, including Subcontractors. The Design-Builder shall supply the Department of

Design and Construction Management with names, telephone numbers and/or pager numbers of designated contract/subcontract personnel responsible for implementing Design-Builder emergency action plans.

73. Not Used

74. Safety and Health Regulations

- A. The Design-Builder shall be fully and solely responsible for conducting all operations under this Agreement at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. The Design-Builder shall continually and diligently inspect all work, materials, and equipment to discover any conditions that might involve such risks and shall be solely responsible for discovery and correction of any such conditions.
- B. The Design-Builder shall comply with the Department of Labor Safety and Health Regulations promulgated under the Occupational Safety and Health Act of 1970 to include General Industry Standards (29 CFE 1910) and (29 CFR 1926/1910) for construction, and under Section 107 of the Contract Work Hours and Safety Standards Act.
- C. The Design-Builder shall comply with the Manual on Uniform Traffic Control Devices when working on or off the site.
- D. The Design-Builder shall allow representatives of the Department of Labor and authorized representatives of the Department of Design and Construction Management and the City of Hollywood Risk Management Department full access to the project for inspection.

75. Best Management Practices for the Construction Industry

- A. The Design-Builder shall be responsible for assuring that each Subcontractor evaluates the site before construction is initiated to determine if any site conditions may pose particular problems for the use, handling, production or storage of any regulated substances. For instance, handling regulated substances in the proximity of water bodies or wetlands may be improper.
- B. If any regulated substances are stored on the construction site during the construction process, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons or 440 pounds or more containing regulated substances shall have constructed below it an impervious containment system constructed of material of sufficient thickness, density and composition that will prevent the discharge to the land, groundwater or surface water of any pollutant which may emanate from said storage container. Each containment system shall be able to contain 150% of the contents of all storage containers above or within the containment system.

- C. Each subcontractor shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a regulated substance and shall be thoroughly familiar with procedures required to contain and clean up any releases of the regulated substance. Any tools or equipment necessary to accomplish same shall be available in case of release.
- D. Upon completion of construction, all unused and waste regulated substances and containment systems shall be removed from the construction site by the Design-Builder and shall be disposed of in a proper manner as prescribed by law.

76. Performance During Emergency

By submitting a bid, bidder agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, the City of Hollywood shall be given "first priority" for all goods and services under this Agreement. Bidder agrees to provide all goods and services to the City of Hollywood during and after the emergency/disaster at the terms, conditions, and prices as provided in this solicitation, and with a priority above, a preference over, sales to the private sector. Bidder shall furnish a 24-hour phone number to the City in the event of such an emergency. Failure to provide the stated priority/preference during and after an emergency/disaster shall constitute breach of contract and make the bidder subject to sanctions from further business with the City.

77. Not used

78. Not used

79. Budget Availability

The City's performance and obligation to pay under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of City Commissioners.

80. Not Used

81. Contract Adjustments and Disputes

81.1 Requests for Contract Adjustments and Relief.

Unless otherwise set forth in the Contract Documents, if either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable Articles of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed thirty (30) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

81.2 Dispute Avoidance and Resolution.

81.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

81.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice unless the Owner and Design-Builder mutually agree otherwise.

81.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Representative and Owner's Project Manager, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

81.2.4 If after meeting the Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire. Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

81.3 Notwithstanding anything to the contrary set forth in this Article 81, disputes related to the progress payment procedures set forth in Article 53 shall first be attempted to be resolved through the resolution process set forth therein. If such progress payment dispute is not resolved using the procedures set forth in Article 53, the parties agree this

Article 81 will then apply.

81.4 Duty to Continue Performance.

81.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

82. Hazardous Conditions and Differing Site Conditions

82.1 Hazardous Conditions.

82.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any latent Hazardous Conditions encountered at the Site. Upon encountering any latent Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

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

82.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

82.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of and investigation for Hazardous Conditions.

82.1.5 Notwithstanding the preceding provisions of this Article 82, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

82.2 Differing Site Conditions.

82.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or documents provided by City, and (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work and (iii) are not readily ascertainable from the level of due diligence required by Design-Builder in the Contract Documents, are collectively referred to herein as “Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder’s cost and/or time of performance are adversely impacted by the Differing Site Condition.

82.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) calendar days after Design-Builder is aware that such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

In executing the Contract Documents, Owner and Design-Builder each individually represent that it has the necessary financial resources to fulfill its obligations under the Agreement, and each has the necessary corporate approvals to execute the Contract Documents, and perform the services described herein. This paragraph is not intended to supersede, or otherwise modify, any rights that the City may otherwise have, including, but not limited to, the rights set forth in Article 79 (Budget Availability) above.