

EXHIBIT B  
GENERAL CONDITIONS

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## **GENERAL CONDITIONS**

### **ARTICLE 1 - DEFINITIONS**

In the interpretation of these Contract Documents the following terms shall have the meaning indicated:

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

**CHANGE ORDER** - A written order to CONTRACTOR executed in accordance with City procurement procedures, as amended authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued after the date of Award.

**CITY (OWNER)** - The City of Hollywood, Florida.

**COMMERCIALLY USEFUL FUNCTION** - shall exist when the Local MBE/SBE is responsible for execution of the Work for the Contract and is carrying out the responsibilities by actually performing, managing and supervising the Work involved. The Local MBE/SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, and ordering the material, and installing same. A commercially useful function is not performed if the role of the qualified Local MBE/SBE is that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of qualified local MBE or qualified local SBE participation.

**COMMISSION** - The City Commission of the City of Hollywood, Florida, being the legislative body of the CITY as set forth in the City of Hollywood Charter.

**CONTRACT** - The written agreement between the CITY and the CONTRACTOR covering the Work to be performed in accordance with the other Contract Documents that are attached to the Contract and made a part thereof. May also be referred to as "Agreement."

**CONTRACTOR** - The person, firm, or corporation with whom the CITY has entered into the Contract.

**CONTRACT DOCUMENTS** - The Notice to Bidders, Instruction to Bidders, Proposal, Information Required of Bidders, all Bonds, Agreement, and all supporting documents, these General Requirements and Covenants, the Specifications, Drawings and Permits, together with all Addenda and Change Orders issued with respect thereto.

**CONTRACT PRICE** - Total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Documents.

**CONTRACT TIME** - The number of days agreed to in the Proposal, commencing with the date of the Notice to Proceed for completion of the Work.

**CONTROL** - shall mean having the primary power, direct or indirect, to influence the management of a business enterprise. The controlling party must have the demonstrable ability to make independent and unilateral business decisions on a day-to-day basis, as well as the independent and unilateral ability to make decisions that may influence and chart the future course of the business.

**DATE OF SUBSTANTIAL COMPLETION** - The date when the Work on the project, or specified part thereof, is substantially completed in accordance with the Contract Documents, such that the CITY can occupy or utilize the project or specified part thereof for the use and purpose for which it was intended as determined and accepted by the ENGINEER AND PROJECT MANAGER.

**DAYS** - Calendar days of 24 hours measured from midnight.

**DRAWINGS** - The drawings which show the character and scope of the Work to be performed and which have been prepared by the DESIGN ENGINEER approved by PROJECT MANAGER and are referred to in and are a part of the Contract Documents.

**ENGINEER** - Licensed Design Professional of Record (Engineer, Architect or Landscape Architect).

**EXCUSABLE DELAY** - Delay caused by the CITY, hurricane, tornadoes, fires, floods, epidemics or labor strikes.

**GENERAL CONDITIONS** - That segment of the Contract Specifications incorporating the provisions common to all CITY Construction Contracts.

**INEXCUSABLE DELAY** - Any delay caused by events or circumstances within the control of the CONTRACTOR not specified in the definition of excusable delay.

**INSPECTOR** - The authorized field representative of the PROJECT MANAGER.

**LIQUIDATED DAMAGES** - The amount prescribed in the General Requirements to be paid to the CITY, or to be deducted from any payments due the CONTRACTOR, for each day's delay in completing the whole or any specified portion of the Work beyond the Contract Time. Liquidated damages are not a penalty but rather, a good faith estimate of the damages resulting from delays in completing the Work.

**LOCAL BUSINESS** – shall mean a business that is duly licensed and authorized to engage in the business at issue and that maintains a permanent principal place of operation with full time personnel within the corporate limits of the City of Hollywood, Florida. A Post Office Box (P.O. Box) shall not be sufficient to constitute a “local business.” The business has the burden of demonstrating that it meets this definition.

**MINORITY** – shall mean a person who is a citizen or lawful permanent resident of the United States and who is a Woman, Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American or other minorities found to be disadvantaged by the SBA.

**NOTICE OF AWARD** - The written notice by the CITY to the successful Bidder stating that upon Bidder's execution of the Agreement and other requirements as listed therein within the time specified, the CITY will sign and deliver the Agreement.

**MINORITY BUSINESS ENTERPRISE** – shall mean a currently functioning business enterprise that (a) is an independent for profit business concern that is at least 51% owned by minority group member(s); (b) is independently operated and controlled by the minority group member(s); (c) demonstrates the capability to perform a line of business; (d) provides a commercially useful function according to the customs and practices of the industry, and (e) is qualified by the City of Hollywood, Florida.

**NOTICE TO PROCEED** - A written notice by the PROJECT MANAGER to the CONTRACTOR fixing the date on which the Contract Time will commence to run and on which the CONTRACTOR shall start to perform his/its obligations under the Contract Documents.

**PROJECT MANAGER** - The Director of Design and Construction Management of the CITY of Hollywood, Florida, or his authorized designee.

**"OR EQUAL"** - Equivalent or superior in construction, efficiency and effectiveness to a type, brand, model or process called out in the Contract Documents to establish a basis of quality as determined by the ENGINEER.

**SHOP DRAWINGS** - All certified affidavits, drawings, diagrams, illustrations, schedules and other data that are specifically prepared by CONTRACTOR, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

**SMALL BUSINESS ENTERPRISE** – shall mean a currently functioning business enterprise which (a) is an independent for profit concern that is at least 51% owned by non-minority group member(s); (b) is independently operated and controlled by the non-minority group member(s); (c) demonstrates the capability to perform in a line of business; (d) provides a commercially useful function according to the customs and practices of the industry; and (e) is qualified by the City of Hollywood, Florida.

**NOTE:** In the event 50% of the local business is owned by a minority group member and 50% of the local business is owned by a non-minority group member, the designation selected on the Local Minority Business Enterprise and Local Small Business Enterprise Program application will be accepted.

**SMALL BUSINESS NET WORTH SIZE STANDARD** – The size standard for a minority business enterprise and a small business enterprise that participates in the City of Hollywood's Local MBE/SBE Program shall mean an independently owned and operated business concern that employs 50 or fewer permanent full-time employees and whose annual net worth does not exceed \$2,000,000. To determine the net worth, the City shall consider the most recent annual financial statement for the business or, in the case of sole proprietorships, annual financial statements for the business and the business owner. The applicant must provide documentation to demonstrate that the business employs 50 or fewer permanent full-time employees averaged over a two year period.

**SPECIFICATIONS** - Division 1 through 50 of these Contract Documents, consisting of administrative details and written technical descriptions of materials, equipment, standards and workmanship.

**SUPPLEMENTARY CONDITIONS** - Division 1 of the Contract Specifications incorporating the provisions peculiar to a specific project.

**SUBCONTRACTOR** - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work.

**SURETY** - The person, firm or corporation responsible for the Bidder's acts in the execution of the Contract, or which is bound to the CITY with and for the CONTRACTOR to ensure performance of the Contract and payment of all obligations pertaining to the Work.

**WORK** - All the Work materials or products specified, indicated, shown or contemplated in the Contract Documents to construct and complete the improvements, including all alterations, modifications, amendments or extension thereto made by Change Orders.

## ARTICLE 2 - ORGANIZATIONAL ABBREVIATIONS

Abbreviations of organizations which may be used in these Specifications are:

AASHTO:	American Association of State Highway and Transportation Officials
ACI:	American Concrete Institute
AIA:	American Institute of Architects
AISC:	American Institute of Steel Construction
AITC:	American Institute of Timber Construction
ANSI:	American National Standards Institute
APWA:	American Public Works Association
ASTM:	American Society for Testing and Materials
ASCE:	American Society of Civil Engineers
ASME:	American Society of Mechanical Engineers
ASHRAE:	American Society of Heating, Refrigerating and Air Conditioning Engineers
AWPA:	American Wood Preservers Association
AWWA:	American Water Works Association
AWS:	American Welding Society
BCEQCB:	Broward County Environmental Quality Control Board
CRSI:	Concrete Reinforcing Steel Institute
FDEP:	Florida Department of Environmental Protection
FDNR:	Florida Department of Natural Resources
FDOT:	Florida Department of Transportation
FPL:	Florida Power and Light
IEEE:	Institute of Electrical and Electronic Engineers
NACE:	National Association of Corrosion Engineers
NCPI:	National Clay Pipe Institute
NEC:	National Electrical Code

NEMA: National Electrical Manufacturers Association

NFPA: National Fire Protection Association

OSHA: Occupational Safety and Health Act

PCI: Prestressed Concrete Institute

SFBC: South Florida Building Code, Broward Edition, Latest Revision

SFWMD: South Florida Water Management District

SSPC: Structural Steel Painting Council

UL: Underwriters' Laboratories, Inc.

UNCLE: Utility Notification Center for Location before Excavation (1-800-432-4770)

USEPA: United States Environmental Protection Agency

USGS: United States Geological Survey

WWEMA: Water and Wastewater Equipment Manufacturers Association

### ARTICLE 3 - MISCELLANEOUS PRELIMINARY MATTERS

#### 3.1 Contract Document Discrepancies:

Any discrepancies, conflicts, errors or omissions found in the Contract Documents shall be promptly reported to the ENGINEER who will issue a correction, if necessary, in writing. The CONTRACTOR shall comply with any corrective measures regarding the same as prescribed by the ENGINEER.

#### 3.2 Submissions:

Unless indicated otherwise in the Contract Documents, within seven days subsequent to the CONTRACTOR executing and submitting the required documents of Article 15 in the Instructions to Bidders, the CONTRACTOR shall submit to the PROJECT MANAGER an estimated progress schedule indicating the starting and completion days of the various stages of the Work. A preliminary Schedule of Values and a preliminary schedule of Shop Drawing submissions may also be required by Section 01 34 00 of Division 1 - General Requirements.

#### 3.3 Pre-construction Conference:

The Contractor will be required to attend a mandatory Pre- Construction Conference for review of the above schedules, establishing procedures and establishing a working understanding among the Parties as to the Work.

#### 3.4 Contract Time:

The Contract Time will commence on the date of the Notice to Proceed and shall exist for the total number of days as specified in the Supplemental General Conditions Construction Work Schedule Major milestone 1 and 2 and as modified by any subsequent Change Orders. Unless the CONTRACTOR fails to complete the requirements of the Instructions to Bidders, the additional time in days (including weekends) required to correctly complete the documents will be deducted by CITY from the Contract Time specified by the CONTRACTOR in the Proposal.

#### 3.5 Computation of Time:

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

#### 3.6 Commencement of Work:

The CONTRACTOR shall not perform Work at the site prior to the date of the Notice to Proceed.

#### 3.7 Extension of Contract Time:

Extensions of time shall be based solely upon the effect of delays to the Work as a whole. Extensions of time shall not be granted for delays to the Work unless the CONTRACTOR can clearly demonstrate, through schedule analysis, that the delay to the Work as a whole arose in accordance with Article 11, Changes in Contract Time and that such delays did or will, in fact, delay the progress of Work as a whole. Time extensions shall not be allowed for delays to parts of the Work that are not on the critical path of the Project schedule. Time extensions shall not be granted until all float or contingency time, at the time of the delay, available to absorb specific delays and associated impacts, is used.

3.8                    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.

3.9                    Separate Contract:

The CITY reserves the right to let other Contracts in connection with the Project. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage for their materials and the execution of their work and shall properly connect and coordinate his Work with theirs.

3.10                  Assignments of Contract:

No assignment by the CONTRACTOR of the Contract or of any part thereof, or any monies due or to become due thereunder shall be made.

3.11                  Patents:

It is mutually understood and agreed that without exception, Contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. It is the intent that whenever the Contractor is required or desired to use any design, device, material or process covered by letters, patent, or copyright, the right for such use shall be provided for by suitable legal agreements with the Patentee or Owner, and a copy of this Contract shall be filed with the PROJECT MANAGER. However, whether or not such an agreement is made or filed as noted, the CONTRACTOR and the Surety in all cases shall defend, indemnify and save harmless the CITY from any and all claims for infringement by reason of the use of any such patented design, device, material or process to be performed under the Contract, and shall indemnify the CITY from any costs, expenses, and damages which it may be obliged to pay by reason of such infringement, at any time during the prosecution or after the completion of the Work.

3.12                  Federal Excise Tax:

The forms needed for applying for exemption certificates for materials and equipment, normally subject to the Federal Excise Tax, may be obtained from the Director of Internal Revenue, Jacksonville, Florida.

The CONTRACTOR is solely responsible for obtaining the desired exemption certificate from the federal government.

### 3.13 Savings Due to Excise Tax Exemptions:

The Bidder shall include in the Bid price the estimated cost of all goods, supplies and equipment that will be incorporated in the Work and the taxes that the Bidder would be required to pay if the Bidder were to purchase such goods, supplies or equipment. By subsequent Change Order(s), the Parties shall reduce the Bid price to reflect any goods, supplies and equipment purchased directly by CITY and the resulting tax savings due to CITY'S exemption from Excise Taxes.

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida and its political subdivisions. Consistent with the tax exemption for municipalities provided by state law, CITY and CONTRACTOR shall jointly operate so that CITY may purchase directly, goods, supplies and equipment that will be incorporated into the Work. The goods, supplies and equipment that will be purchased by CITY shall be approved in advance by the Parties.

With respect to all goods, supplies and equipment to be purchased by CITY, CONTRACTOR shall, on behalf of CITY, take all actions necessary and appropriate to cause all purchases to be made and shall be responsible for delivery of all such goods, supplies and equipment, including verification of correct quantities and documents or orders, coordination of purchases and delivery schedules, sequence of delivery, unloading, handling and storage through installation, obtaining warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods, supplies and equipment at the time of delivery, and other arrangements normally required for the particular goods, supplies or equipment purchased. Unless otherwise directed by CITY, such actions shall also include taking the lead in efforts to resolve any and all disputes with the vendor. CONTRACTOR shall ensure that each vendor of goods, supplies and equipment purchased by CITY agrees in writing to the terms and conditions contained in CITY'S standard purchase order, which terms and conditions are set forth in Section 00 80 00 of the Contract Documents. Even though CITY may purchase such goods, supplies and equipment, the goods, supplies and equipment shall be stored at the site in the same manner as goods, supplies and equipment purchased by CONTRACTOR.

CONTRACTOR shall hold CITY harmless from delays in manufacturing, delivery, and other unforeseen conditions that may arise as part of the procurement of CITY-purchased goods, supplies and equipment.

### 3.14 Overtime Work:

The CONTRACTOR shall receive no additional compensation for overtime Work, i.e., Work in excess of eight hours in any one calendar day or 40 hours in any one calendar week, even though such overtime Work may be required under emergency conditions and may be ordered by the PROJECT MANAGER in writing. Additional compensation will be paid the CONTRACTOR for overtime Work only in the event extra Work is ordered by the PROJECT MANAGER 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 CONTRACTOR for overtime Work of a similar nature in the same locality.

### 3.15 Inspections and Testing during Overtime:

The CONTRACTOR shall establish a normal Work schedule that does not exceed eight hours per day in a normal Work day, nor 40 hours per week in a normal Work week. Normal Work days shall be Monday through Friday. Whenever CONTRACTOR'S Work requires scheduled overtime, unless such overtime Work is specifically required by the Contract Documents, CONTRACTOR shall reimburse the CITY for the extra costs incurred for providing Inspectors. Overtime shall be scheduled only after CONTRACTOR obtains written permission from the CITY. A Change Order

shall be prepared to cover the CITY costs. Inspector costs shall be charged to the CONTRACTOR at a rate of \$80.00 per hour, with a minimum of four hours charged for weekends and holidays. If the CONTRACTOR has an overtime Work force size of 50 or more persons, a second Inspector will be required and the costs for two Inspectors will be \$160.00 per hour.

3.16                    Nights, Sunday or Holiday Work:

Except upon specific permission of the PROJECT MANAGER, the CONTRACTOR shall not perform any Work on Sundays or on legal state or municipal holidays. In accordance with CITY of Hollywood Code of Ordinances, Section 21.49, no Work between the hours of 6:00 p.m. and 8:00 a.m. will be permitted, except in case of an emergency, that violates Section 21.49 concerning noise levels. All costs of testing and inspection performed during night, Sunday or holiday Work shall be borne by the CONTRACTOR. The CONTRACTOR shall notify all regulatory agencies, including the CITY Police Department, Fire Department, and Code Enforcement Department.

3.17                    Injury or Damage Claims:

Should CITY or CONTRACTOR suffer injury or damage to their person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage. However, nothing herein shall be deemed to affect the rights, privileges and immunities of CITY as are set forth in Section 768.28, Florida Statutes.

## ARTICLE 4 - CONTRACT DOCUMENTS

### 4.1            Intent:

The Contract Documents comprise the entire Agreement between the CITY and CONTRACTOR concerning the Work. The Contract Documents can be altered only by Change Order. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Contract Documents that the CONTRACTOR, for due consideration, shall furnish all equipment, material, supervision and labor, (except as may be specifically noted otherwise) required or necessary to complete the Work in total accordance with the Contract Documents. It is the intent of the Drawings and Specifications to describe the Project to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Drawings or Specifications as being required to produce the intended result shall be supplied, whether or not it is specifically called for.

### 4.2            Order of Precedence of Contract Documents:

In resolving differences resulting from conflicts, errors or discrepancies in any of the following Contract Documents, the order of precedence shall be as follows:

1.        Permits
2.        Change Orders
3.        Contract Agreement
4.        Specification
5.        Drawings
6.        Invitation For Bid

Within the Specifications, the order of precedence is as follows:

1.        Addenda
2.        Notice to Bidders
3.        Instructions to Bidders
4.        Supplementary General Conditions
5.        General Conditions
6.        Division 1, General Requirements
7.        Technical Specifications
8.        Referenced Standard Specifications

With reference to the Drawings, the order of precedence is as follows:

1.        Figures Govern over Scaled Dimensions
2.        Detail Drawings Govern over General Drawings
3.        Change Order Drawings Govern over Contract Drawings
4.        Contract Drawings Govern over Standard or Shop Drawings

### 4.3            Reference To Standards:

Any reference to standard Specifications, manuals or codes of any organization or governmental authority shall mean the latest edition in effect as of the Bid Opening Date.

## ARTICLE 5 - BONDS AND INSURANCE

### 5.1 Bid Guarantee:

Bidders maybe required to submit a Bid Guarantee in an amount indicated in the NOTICE TO BIDDERS. This Guarantee may be a Certified or Cashier's Check on a solvent national or state bank, or a Bid Bond written by a Surety licensed to do business in Florida and rated at least "A", Class X in the latest edition of "Best's Key Rating Guide" published by A.M. Best Company.

### 5.2 Performance and Payment Bond:

CONTRACTOR shall furnish Performance and Payment Bonds in amounts equal to the Contract Price as Security for the faithful performance and payment of CONTRACTOR'S obligations. The Bond or Bonds shall remain in effect one year after the date of final payment. The Surety must be qualified as specified in Paragraph 5.1. However, the City reserves the right to require additional bonds as set forth in Article 5 of the Contract.

### 5.3 Signatures:

All Bonds signed by an Agent must be accompanied by a Certified copy of the authority to act, with the Certified copy having been signed (not typed nor printed) by an Officer of the Surety and carrying the seal of the Surety.

### 5.4 Insurance Coverage:

Within ten days from Notice of Award, the CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below, which may arise out of or result from the CONTRACTOR'S operations under the Contract or Contract Documents, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims under Workmen's Compensation, Disability Benefit and other similar employer's liability acts;
- B. Claims for damages because of bodily injury, sickness or disease, or death, or death of his employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- D. Claims for damages covered by personal injury liability which are sustained (1) by any person as a result of any offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person;
- E. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

5.5                    Certificates of Insurance:

Within ten days of award, the Contractor shall obtain a Certificate of Insurance reflecting the necessary coverages and endorsements as required by the Contract Documents. Certificates of Insurance shall contain a provision that coverages afforded under the policies will not be canceled until at least 30 days prior written notice has been given to the CITY. The City of Hollywood must be named as additional insured on all coverage with the exception of Workmen's Compensation. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Policyholders and Financial Ratings must be no less than "A" and Class X, respectively, in the latest edition of "Best Key Rating Guide" published by A.M. Best Company.

5.6                    Insurance Limits of Liability:

The insurance required by this Article shall be written for no less than the level of liability specified in "Insurance Requirements", Section 2 of the Supplementary General Conditions, or required by law, whichever is greater. The insurance shall include contractual liability insurance applicable to the CONTRACTOR'S obligations under the Contract Documents.

The level required in Section 2 of the Supplementary General Conditions will not be reduced for any reason.

## ARTICLE 6 - AVAILABILITY OF LAND; REFERENCE POINTS

### 6.1            Rights-of-Way:

Lands or Rights-of-Way for the Work to be constructed under the Contract will be provided by the CITY. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or Rights-of-Way. Any additional lands or Rights-of-Way required for construction operations shall be provided by the CONTRACTOR at his own expense, provided that the CONTRACTOR shall not, and the CITY nor the PROJECT MANAGER shall be liable for any claims or damages resulting from the CONTRACTOR'S unauthorized trespass or use of any such properties.

### 6.2            Permits:

When required by Article 21 of the Instruction to Bidders, the CONTRACTOR shall secure from the agencies having jurisdiction the necessary permits to create obstructions, to make excavations if required under the Contract, and to otherwise encroach upon Rights-of-Way, and to present evidence to the PROJECT MANAGER that such permission has been granted, before Work is commenced. Regulations and requirements of all agencies concerned shall be strictly adhered to in the performance of the Contract. The enforcement of such requirements under the Contract shall not be made the basis for additional compensation.

### 6.3            Lines and Grades:

The CONTRACTOR shall furnish all grades and all other lines required for the proper execution of the Work.

## ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

### 7.1           Laws/Regulations to Be Observed:

The CONTRACTOR shall familiarize himself/itself and comply with all federal, state, county and CITY laws, by-laws, ordinances or regulations controlling the action or operation of those engaged or employed in the Work or affecting material used, and govern himself in accordance with them. He shall defend, indemnify, and save harmless the CITY and all of its officers, agents and employees against any claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, orders or decrees, whether by himself or his employees or Subcontractors.

### 7.2           Indemnification of City:

- (a) CONTRACTOR shall, at all times, indemnify, hold harmless and defend CITY, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, servants or employees in the performance of services under this Contract.
- (b) CONTRACTOR further agrees, at all times, to indemnify, hold harmless and defend CITY, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under the Contract Documents.
- (c) The obligations of the CONTRACTOR above shall not extend to the liability of the City of Hollywood.
- (d) The provisions of (a) and (b) above shall survive the expiration or earlier termination of the Contract Documents.

### 7.3           Guarantee of Payments:

The CONTRACTOR guarantees the payments of all just claims for materials, supplies, tools, own labor and other just claims against him or any Subcontractor in connection with the Contract, and his bond will not be released by final acceptance and payment by the CITY unless and until all such claims are paid or released.

### 7.4           Permits and Licenses:

The CONTRACTOR shall obtain all permits and licenses required by the Contract Documents. A copy of the permit(s) and such conditions and requirements thereon are a part of the Contract Documents. Failure to obtain such permits or licenses shall subject the CONTRACTOR to the provisions of the Florida Building Code, latest edition.

### 7.5           Emergencies:

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from PROJECT MANAGER or CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give PROJECT MANAGER prompt written notice of any significant changes in the Work or deviations from the Contract Documents resulting therefrom.

### 7.6           Substitutes or "Or Equal":

A. Substitutes or "Or-Equal" Materials or Equipment:

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the ENGINEER if sufficient information is submitted by the CONTRACTOR to allow the ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The ENGINEER will be allowed 30 days within which to evaluate each proposed substitute. The ENGINEER will be the sole judge of acceptability, and NO SUBSTITUTE WILL BE ORDERED, INSTALLED OR UTILIZED WITHOUT THE ENGINEER'S PRIOR WRITTEN ACCEPTANCE, which will be evidenced by either a Change Order or an approved set of Shop Drawings. Requests for review of substitute items of material and equipment will not be accepted by the ENGINEER from anyone other than the CONTRACTOR. The procedure for review by the ENGINEER is as follows:

If the CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall make written application to the ENGINEER for acceptance thereof, certifying that the proposed substitute will adequately perform the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified. In addition, the application shall:

1. State that the evaluation and acceptance of the proposed substitute will not prejudice the CONTRACTOR'S achievement of completion on time.
2. State whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents to adapt design to the proposed substitute. The CONTRACTOR shall be responsible for any extra design adaptation costs associated with a proposed substitute.
3. State whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.
4. Provide complete substitute identification and description, including manufacturer's and local distributor's name and address, performance and test data, and reference standards.
5. Provide samples, as required by ENGINEER.
6. Provide name and address of similar projects on which the proposed substitute has been used, and date of installation.
7. Identify all variations of the proposed substitute from that specified.
8. Indicate available maintenance, repair and replacement service.
9. Submit an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change. The CONTRACTOR shall be responsible for the costs of redesign and claims of other contractors.

10. Provide any additional data about the proposed substitute as the ENGINEER may require of the CONTRACTOR.

B. Substitute means, method, technique, sequence or procedure of construction:

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the ENGINEER, if the CONTRACTOR submits sufficient information to allow the ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the ENGINEER will be similar to that provided in Paragraph 7.6 A.

C. The CITY may require the CONTRACTOR to furnish, at the CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute.

D. The ENGINEER will record time required by the ENGINEER and/or the ENGINEER'S consultants in evaluating substitutions proposed by the CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not the ENGINEER accepts a proposed substitute, THE CONTRACTOR SHALL REIMBURSE THE CITY FOR THE CHARGES OF THE ENGINEER AND THE ENGINEER'S CONSULTANTS FOR EVALUATING EACH PROPOSED SUBSTITUTE.

E. Any and all costs resulting from changes to/adaptations of the Work shall be paid by the CONTRACTOR, including but limited to design, materials, installation, etc.

#### 7.7 Shop Drawings:

Shop Drawing submittals shall be as follows:

A. The CONTRACTOR shall submit a sufficient number of copies of each Shop Drawing to enable the ENGINEER to retain three copies unless additional copies are specified in the Contract Documents. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

The CONTRACTOR shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, fabricated structures, manufactured articles and structural components, along with a Manufacturer's Certified Affidavit that the item supplied complies with the design Specifications and all other submittal requirements.

B. Shop Drawings for structural components, electrical or mechanical systems shall be Certified by a Registered Engineer of the discipline involved.

C. The CONTRACTOR shall thoroughly review and check the Shop Drawings and each copy shall show his approval thereon. If the Shop Drawings show or indicate departures from the Contract requirements, the CONTRACTOR shall make specific mention thereof in his letter of transmittal. Failure to point out such departures shall not relieve the CONTRACTOR from his responsibility to comply with the Drawings and Specifications.

D. No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent. It is the CONTRACTOR's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them himself and then make one submittal to the ENGINEER along with his comments as to compliance, non-compliance, or features requiring special attention.

- E. If catalog sheets or prints of manufacturer's standard drawings are submitted as Shop Drawings, any additional information or changes on such Drawings shall be typewritten or lettered in ink.
- F. The CONTRACTOR shall keep one set of Shop Drawings marked with the ENGINEER'S approval at the job site at all times.
- G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved by the ENGINEER.
- H. Approval of the Shop Drawings shall constitute approval of the subject matter thereof only, and not of any structure, material, equipment or apparatus shown or indicated. The approval of the Shop Drawings will be general and shall not relieve the CONTRACTOR of responsibility for the accuracy of such Drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract and not indicated on the Drawings. Approval shall not relieve the CONTRACTOR from responsibility for errors or omissions of any sort on the Shop Drawings.

## 7.8      Personnel:

### A.      Supervision and Superintendence:

- 1. The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the CONTRACTOR shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. The CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 2. The CONTRACTOR shall keep on the Work site at all times during its progress a competent resident Superintendent fluent in both oral and written communication in the English language, who shall not be replaced without written notice to the PROJECT MANAGER except under extraordinary circumstances. The Superintendent will be the CONTRACTOR'S representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR.

### B.      Workforce:

- 1. None but skilled workers shall be employed on Work requiring special qualifications. When required in writing by the PROJECT MANAGER, the CONTRACTOR or any Subcontractor shall discharge any person who is, in the opinion of the PROJECT MANAGER, incompetent, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the consent of the PROJECT MANAGER. Such discharge shall not be the basis of any claim for damages against the CITY or any CITY agents.
- 2. With respect to all skilled, semi-skilled and unskilled workers employed on the Project under the Contract, preference in employment shall be given to persons residing in Hollywood when such persons are available and qualified to perform the Work to which the employment relates. No person shall be employed in violation of the state or

national labor laws. No person under the age of 16 years shall be employed on a Project under the Contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the Project under the Contract, provided that this shall not operate against the employment of physically handicapped persons otherwise employable where such persons may be safely assigned to Work that they can ably perform. No person currently serving sentences in a penal or correctional institution and no inmate of an institution for mentally defective persons shall be employed on a Project under the Contract without specific approval of the PROJECT MANAGER.

3. No discrimination shall be made in the employment of persons on the Work by the CONTRACTOR or by any Subcontractor under him, because of the race, color, sex, age or religion of such persons, and there shall be full compliance with the provisions of applicable state and federal laws in this regard.

## 7.9 Safety and Protection:

### A. Federal Safety and Health Regulations:

The CONTRACTOR and Subcontractors shall comply with the provisions of the Occupational Safety and Health Standards, promulgated by the Secretary of Labor under the "Occupational Safety and Health Act of 1970".

### B. Responsibilities:

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

1. All employees on the Work and other persons who may be affected thereby.
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site.
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocating or replacement in the course of construction.

### C. Designated Safety Officer:

The CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the PROJECT MANAGER.

### D. Protection of the Work:

Until acceptance of the Work by the CITY, it shall be under the charge and in care of the CONTRACTOR, and he shall take every necessary precaution against injury or damage to the Work by action of the elements or from the execution or from the non-execution of the Work. The CONTRACTOR shall rebuild, restore and make good, at his own expense, all injuries or damages to any portion of the Work occasioned by any of the above causes before its completion and acceptance.

#### 7.10            Traffic Control, Public Safety and Convenience:

- A. The CONTRACTOR shall at all times conduct the Work so as to assure the least possible obstruction to traffic and inconvenience to the general public, and provide adequate protection of persons and property in the vicinity of the Work.
- B. WHEN THE NORMAL FLOW OF TRAFFIC WILL BE IMPAIRED OR DISRUPTED IN ANY MANNER ON ANY STREET, THE CONTRACTOR SHALL NOTIFY THE POLICE TRAFFIC SERGEANT AT (954) 921-3610 AT LEAST 48 HOURS IN ADVANCE.
- C. Streets shall not be closed, except when and where directed by the PROJECT MANAGER, and whenever a street is not closed, the Work must be conducted with the provision for safe passageway for traffic at all times. The CONTRACTOR shall make all necessary arrangements concerning maintenance of traffic and selection of detours required.
- D. When permission has been granted to close an existing roadway or portion thereof, the CONTRACTOR shall furnish and erect signs, barricades, lights, flags and other protective devices as necessary subject to the approval of the PROJECT MANAGER. From sunset to sunrise, the CONTRACTOR shall furnish and maintain as many yellow lights as the PROJECT MANAGER may direct.
- E. During working hours, the CONTRACTOR shall furnish watchmen in sufficient numbers to protect and divert the vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new Work. Failure to comply with this requirement will result in the PROJECT MANAGER shutting down the Work until the CONTRACTOR shall have provided the necessary protection.
- F. No separate payment will be made for such signs, barricades, lights, flags, watchmen or other protective devices as required, with all costs thereof deemed to be included in the prices bid for the various items scheduled in the bid.
- G. Sidewalks, gutters, drains, fire hydrants and private drives shall, insofar as practicable, be kept in condition for their intended uses. While the Work is actually going on at any location, as much as half the street width at that location may be barricaded to exclude traffic entirely, but street traffic shall not be obstructed needlessly. Fire hydrants on or adjacent to the Work shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within ten feet of any such hydrant.
- H. Construction material stored upon the public street shall be placed so as to cause as little obstruction to the general public as is reasonably possible.

#### 7.11            Use of Explosives:

When the use of explosives is necessary for the prosecution of the Work, the CONTRACTOR shall observe the utmost care so as not to endanger life or property, and whenever directed, the number and size of charges shall be limited. All explosives shall be stored in a secure manner and all such storage places shall be clearly marked "DANGEROUS EXPLOSIVES" and shall be in care of a competent watchman at all times. The CONTRACTOR must familiarize himself with all laws and ordinances pertaining thereto and govern himself and his employees accordingly.

#### 7.12            Loading of Structures:

The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the Work or

adjacent property to stresses or pressures that will endanger it.

7.13            Concerning Subcontractors:

- A.     The CONTRACTOR, with his own forces, shall perform no less than 25% of the Work as determined by the Contract Price. Each Subcontractor shall be properly licensed for the type of Work he is to perform.
- B.     A copy of each subcontract shall be filed promptly with the PROJECT MANAGER upon request. Each subcontract shall contain a reference to the Contract between the CITY and the CONTRACTOR, and the terms and conditions of the Contract shall be made a part of each subcontract. Each subcontract shall provide for annulment of same by the CONTRACTOR upon written order of the PROJECT MANAGER if the subcontractor fails to comply with the requirements of this Contract.

The CONTRACTOR shall be responsible to the CITY and ENGINEER for the acts and omissions of his subcontractors and their employees to the same extent as he is responsible for the acts and omissions of his own employees. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the CITY or ENGINEER, nor relieve the CONTRACTOR of any liability or obligation under the Contract.

7.14            Materials and Equipment:

- A.     Material for the Work:
  - 1.     The CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
  - 2.     Unless otherwise specified, shown or permitted by the PROJECT MANAGER, all material and equipment incorporated in the Work shall be new and of current manufacture. The PROJECT MANAGER may request the CONTRACTOR to furnish manufacturer's certificates to this effect.
  - 3.     The ENGINEER may require any or all materials to be subjected to test by means of samples or otherwise, at production points or after delivery. The CONTRACTOR shall afford such facilities as the ENGINEER may require for collecting and forwarding samples, which samples shall be furnished by the CONTRACTOR without charge. The CONTRACTOR shall furnish evidence satisfactory to the ENGINEER that the materials and finished articles have passed the required test prior to the incorporation of such materials and finished articles in the Work. Unless otherwise provided, the cost of such inspection and testing shall be as provided in Article 12.2.
  - 4.     All packaged manufactured products for use on the Work shall be delivered to the Work in their original, unopened packages, bearing thereon the manufacturer's name and the brand name of the product.
  - 5.     Wherever any product or material is selected to be used on the Work, all such products or material shall be of the same brand and manufacture throughout the Work.
  - 6.     All equipment, tools and machinery used for handling material or executing any part of the Work shall be maintained in a satisfactory working condition. All equipment utilized on any portion of the Work shall be such that no injury to personnel, the Work, adjacent

property or other objects will result from its use.

7. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

B. Storage of Materials:

All materials and equipment including that ordered by the CITY designed for permanent installation in the Work shall be properly stored by the CONTRACTOR to insure protection against deterioration of any type. These materials shall be placed as to cause a minimum of inconvenience to other contractors on the Work and to the public. The storage piles shall be arranged to facilitate inspections, and any deterioration shall be grounds for rejection.

1. Materials stored in public Rights-of-Way shall be stored in such a manner so as to be compatible with the Traffic Control requirements set forth in Paragraph 7.10. Materials shall be stored so as not to deny access to public or private property. Stored materials shall be adequately marked with barricades and/or flashing warning lights, where necessary, so as to protect the materials from damage and to protect the public health, safety and welfare.
2. Lawns, grass plots or other private property shall not be used for storage purposes without written permission of the Owner or Lessee of that private property. Should the CONTRACTOR desire to store equipment or materials of any kind on the property of the CITY, he must obtain permission from the PROJECT MANAGER. The CITY reserves the right to order materials to be removed or relocated in such approved storage areas, if necessary.
3. The protection of stored materials shall be the CONTRACTOR'S responsibility, and the CITY shall not be liable for any loss of materials, by theft or otherwise, nor for any damage to the stored materials.

C. Salvage of Materials and Equipment:

The CITY reserves the right to retain title to all soil, sand, stone, gravel, equipment, machinery or any other material that was a part of the structure, site or Right- of-Way and which was developed from excavations or other operations connected with the Work. The CONTRACTOR will be permitted to use in the Work, without charge, any such material that meets the requirements of the Contract Documents. For that material that the CITY desires to retain, the CONTRACTOR shall, at his expense, transfer the material to a site within the CITY as designated by the PROJECT MANAGER. That material which the CITY does not wish to retain shall be the property of the CONTRACTOR and removed from the site at CONTRACTOR'S expense.

7.15      Temporary Utilities:

The CONTRACTOR shall provide and maintain at his own expense all water, power, telephone and sanitary facilities as required to comply with state and/or local Codes and Regulations. If water, including that for testing, is required, it is the CONTRACTOR'S responsibility to arrange through the CITY Water Department for a water meter. A deposit to be paid by the CONTRACTOR is required for meter rental and all water shall be purchased at the prevailing rate.

7.16      Review of Records:

The CONTRACTOR shall allow and permit the PROJECT MANAGER or his duly authorized representative to inspect and review all payrolls, records of personnel, conditions of employment, invoice of materials, books of accounts and other relevant data and records pertinent to the Contract and subcontracts.

7.17            Use of Premises:

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits or required by the Contract Documents, and shall not interfere with the premises or operation of the CITY Utilities facilities with construction equipment or other materials or equipment. Construction that interferes with Plant Operations shall be fully coordinated with and approved by the PROJECT MANAGER.

7.18            CONTRACTOR'S Daily Reports:

Except where otherwise provided, the CONTRACTOR shall complete a daily report indicating manpower, major equipment, subcontractors, etc., involved in the performance of the Work. The daily report shall be completed on forms approved by the PROJECT MANAGER, and shall be submitted to the ENGINEER at the conclusion of each work day.

7.19            Record Documents:

The CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, Shop Drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to PROJECT MANAGER for examination and shall be delivered to PROJECT MANAGER upon completion of the Work.

7.20            Cleanliness of the Site:

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

7.21            Dust Control:

It shall be the CONTRACTOR's responsibility to control dust by watering as directed by the ENGINEER. The water used shall be paid for by the CONTRACTOR. Should the CONTRACTOR fail to control dust to the satisfaction of the PROJECT MANAGER, the CITY will control the dust by whatever means the CITY desires and the CONTRACTOR shall pay all expenses incurred by the CITY associated with the control of the dust.

7.22            Continuing the Work:

The CONTRACTOR shall carry on the Work and maintain the Progress Schedule during all disputes or disagreements with the CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the CONTRACTOR and the CITY may otherwise agree in writing.

7.23            Indemnification:

In consideration of the amount listed in the Schedule of Prices Bid and other valuable consideration, the Contractor shall defend, indemnify and save harmless the CITY, its officers, agents, and employees from or on account of any personal injury, loss of life or damage to property received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding

negligence of the CITY) in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the CONTRACTOR or his subcontractor, agents, servants or employees.

CONTRACTOR agrees to defend, indemnify, and save harmless the CITY against any liability arising from or based upon the violation of any federal, state, county or city laws, by-laws, ordinances or regulations by the CONTRACTOR, his subcontractor, agents, servants, or employees. CONTRACTOR further agrees to defend, indemnify and save harmless the CITY 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 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 for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

The indemnification provided above and elsewhere in the Contract Documents shall obligate the CONTRACTOR to defend, at his own expense, or to provide for such defense, at the CITY's option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY that may result from the operations and activities under this Contract, whether the construction operations be performed by the CONTRACTOR, his subcontractors or by anyone directly or indirectly employed by either.

Nothing in this indemnification shall be deemed to affect the rights, privileges or immunities of the CITY set forth in Section 768.28, Florida Statutes or otherwise at law.

The CITY will pay to the CONTRACTOR the specific consideration in the amount stated in the Schedule of Prices Bid. The CONTRACTOR shall acknowledge the receipt of payment and other good and valuable consideration from the CITY that has been paid to him as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06, Florida Statutes.

## ARTICLE 8 - CITY'S RESPONSIBILITIES

### 8.1 Communications:

The CITY shall issue all communications to the CONTRACTOR through the PROJECT MANAGER.

### 8.2 Furnish Contract Documents:

The CITY shall furnish the number of Contract Documents as specified in the Supplementary General Conditions to the CONTRACTOR at no cost. Referenced Standard Specifications Manuals, guidebooks, etc., will not be provided.

### 8.3 Furnish Right-of-Way:

The CITY shall furnish the necessary land or Right-of-Way on which the Work is to be accomplished and will provide lines and grades as specified in Article 6.

### 8.4 Timely Delivery of Materials:

The CITY shall be responsible for the delivery of any CITY furnished material, equipment or labor as specified in the Contract Documents.

## ARTICLE 9 – ENGINEER AND PROJECT MANAGER'S STATUS

### 9.1 Authority of the ENGINEER and PROJECT MANAGER:

- A. The general supervision of the execution of the Contract is vested in the PROJECT MANAGER, who is the CITY's sole representative during the construction period. The instructions of the PROJECT MANAGER are to be strictly and promptly followed in every case. The CONTRACTOR'S representative (Article 7.8 A. 1.) shall be responsible for the execution of any instructions given by the PROJECT MANAGER during the absence of the CONTRACTOR.
- B. The PROJECT MANAGER is the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work. Claims, disputes and other matters relating to the acceptability of Work or requirements of the Contract Documents shall be referred in writing to the PROJECT MANAGER within 15 days of the event, with a request for a formal decision, which the PROJECT MANAGER will render in writing within a reasonable time. This rendering of a decision by the PROJECT MANAGER will be a condition precedent to any exercise by the CITY or CONTRACTOR of rights or remedies as either may otherwise have under the Contract Documents or at law in respect to any such claim, dispute or other matter.
- C. The PROJECT MANAGER will issue with reasonable promptness any written clarifications or interpretations of the Contract Documents as he or she shall deem necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If, as a result of a clarification or interpretation, either the CONTRACTOR or PROJECT MANAGER believes a Change Order is justified, it shall be submitted as provided in the Contract Documents.
- D. The ENGINEER has approval authority over the acceptability of all material or equipment furnished, Shop Drawings, Change Orders, Work performed and the rate of progress of the Work. Verification of the quantities of Work performed for pay purposes is the responsibility of the PROJECT MANAGER.
- E. The ENGINEER also has the authority to disapprove or reject Work that is defective, and may require special inspection or testing of the Work, whether or not it is fabricated, installed or completed.
- F. The PROJECT MANAGER has the authority to suspend the Work wholly or in part for such period or periods as may be deemed necessary due to the unsuitable prosecution of the Work or for such time as is necessary due to failure on the part of the CONTRACTOR to carry out orders given or perform any or all provisions of the Contract. The CONTRACTOR shall not suspend the Work and shall not remove any equipment, tools, lumber or other materials without the written permission of the PROJECT MANAGER.

### 9.2 Access to the Work:

- A. The PROJECT MANAGER is to have free access to the materials and Work at all times for laying out, measuring, or inspecting same, and the CONTRACTOR is to afford him all necessary facilities and assistance for so doing.

### 9.3 Limitations on the ENGINEER and PROJECT MANAGER'S Responsibilities:

Neither the ENGINEERS nor PROJECT MANAGER'S authority to act under this Article or elsewhere in the Contract Documents, nor any decision made by the ENGINEER or

PROJECT MANAGER in good faith either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the ENGINEER or PROJECT MANAGER to the CONTRACTOR, any subcontractor, any manufacturer, fabricator, supplier or distributor or any of their agents or employees or any other person performing any of the Work.

- A. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of the ENGINEER as to the Work, it is intended that such requirement, 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 never indicates that the ENGINEER has authority to supervise or direct performance of the Work.
- B. The ENGINEER will not be responsible for the CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, nor the safety precautions and programs incident thereto, and the ENGINEER will not be responsible for the CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
- C. The ENGINEER or PROJECT MANAGER will not be responsible for the acts or omissions of the CONTRACTOR or of any subcontractors, or of the agents or employees of any CONTRACTOR or subcontractor, or of any other persons at the site or otherwise performing any of the Work.

#### 9.4      Inspectors:

- A. Inspectors employed by the CITY assist the PROJECT MANAGER in ascertaining that the Work conforms to the Contract Documents and are authorized to inspect all Work done and material furnished as representatives of the PROJECT MANAGER. Inspectors shall be stationed at the site of the Work to report to the PROJECT MANAGER as to the progress of the Work and the quality of workmanship and material.
- B. In case of any dispute arising between the CONTRACTOR and the Inspector, the Inspector shall have the authority to reject material or to suspend the Work until the question at issue can be referred to and decided upon by the ENGINEER.
- C. If the CONTRACTOR refuses to suspend operation on verbal order, the Inspector shall issue a written order giving the reason for shutting down the Work. After placing the order in the hands of the supervisor or person in charge, the Inspector shall immediately leave the job. Work done during the absence of the Inspector, after such written notice, will not be accepted nor paid for.
- D. Inspectors are not authorized to revoke, alter, enlarge, relax or release any requirements of these Contract Documents, nor to issue instructions contrary to them. Inspectors shall in no case act as foreman or perform other duties for the CONTRACTOR, nor interfere with management of the Work by the latter. Any instructions that Inspectors may give the CONTRACTOR shall in no way be construed as releasing the CONTRACTOR from fulfillment of the terms of the Contract.
- E. The payment of any compensation, whatever may be its character or form, or the giving of any gratuity, or the granting of any valuable favor, by the CONTRACTOR to any Inspector, directly or indirectly, is strictly prohibited and any such act on the part of the CONTRACTOR will constitute a violation of the Contract and may subject the CONTRACTOR to other penalties provided for by law or ordinance.

9.5

Inspections:

- A. The ENGINEER and PROJECT MANAGER will make, or have made, such inspections and tests as he deems necessary to assure that the Work is being accomplished in accordance with the requirements of the Contract. In the event such Inspections or tests reveal non-compliance with the requirements of the Contract, the CONTRACTOR shall bear the cost of such corrective measures as well as the cost of subsequent reinspection and retesting.
- B. Work done in the absence of a prescribed inspection may be required to be removed and replaced under proper inspection. The entire cost of removal and replacement, including the cost of all material that may be furnished by the CITY and used in the Work thus removed shall be borne by the CONTRACTOR, regardless of whether the Work removed is found to be defective or not. Work covered up without the authority of the ENGINEER and PROJECT MANAGER shall, upon order of the ENGINEER and PROJECT MANAGER, be uncovered to the extent required, and the CONTRACTOR shall similarly bear the entire cost of performing all the Work and furnishing all the material necessary for the removal of the covering and its subsequent replacement.
- C. Unless otherwise provided, the cost of inspection and all inspection fees imposed by public agencies other than the fees associated with the issuance of the Master Building Permit by the CITY shall be paid by the CONTRACTOR.
- D. No inspection nor any failure to inspect at any time or place shall relieve the CONTRACTOR from any obligation to perform all of the Work in strict conformance with the requirements of the Contract Documents.

## ARTICLE 10 - CHANGES IN THE WORK/CONTRACT PRICE

### 10.1 Changes in the Work or Terms of Contract Documents:

- A. Without invalidating the Contract and without notice to any Surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete, fully and acceptably, the proposed construction in a satisfactory manner. Any extra or additional Work within the scope of this Project must be accomplished by means of appropriate Clarifications or Change Orders.
- B. Any changes to the terms of the Contract Documents must be contained in a written document, executed by the Parties, with the same formality and of equal dignity prior to the initiation of any Work reflecting such changes.

This section shall not prohibit the issuance of Change Orders executed only by CITY as provided.

### 10.2 Supplemental Instructions - Clarifications:

- A. The CITY, through the PROJECT MANAGER, shall have the right to approve and issue Clarifications setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Clarifications involve no change in the Contract Price or the Contract Time.
- B. The PROJECT MANAGER shall have the right to approve and issue Clarifications setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Clarifications involve no change in the Contract Price or the Contract Time.

### 10.3 Change Orders:

- A. Changes in the quantity or character of the Work within the scope of the Project that are not properly the subject of Clarifications, including all changes resulting in changes in the Contract Price or the Contract Time, shall be authorized only by or Change Orders approved in advance and issued in accordance with the provisions of the CITY Procurement Code, as amended from time to time.
- B. CONTRACTOR shall not start Work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by the CITY. Upon receipt of an approved Change Order, CONTRACTOR shall promptly proceed with the Work set forth within the document.
- C. Change Orders shall be issued for change in Contract Price related to Cost Allowances specifically included on the Proposal Bid Form. Change Orders shall be issued when required for all other Contract Price Changes. Hereinafter, the term "Change Order(s)" shall be used to include "Change Orders" with the exception that Change Order shall not be used for any Contract Time adjustments.
- D. In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY

reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed Work, or the Work shall be performed on the "cost of work" basis as described in Article 10.4.

- E. On approval of any Contract change increasing the Contract Price, CONTRACTOR shall ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased.
- F. Under circumstances determined necessary by CITY, Change Orders may be issued unilaterally by CITY.

#### 10.4 Value of Change Order Work:

- A. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
  - A.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved, subject to the provisions of Article 10.4.G.
  - A.2 By mutual acceptance of a lump sum which CONTRACTOR and CITY acknowledge contains a component for overhead and profit.
  - A.3 On the basis of the "cost of work," determined as provided in this Article, plus a CONTRACTOR's fee for overhead and profit that is to be determined as provided in Article 10.4.D.
- B. The term "cost of work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Article 10.4.C.
  - B.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by CITY and CONTRACTOR. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include but not be limited to salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by CITY.
  - B.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and

equipment shall accrue to CITY and CONTRACTOR shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY with the advice of PROJECT MANAGER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of the agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

- B.3 Payments made by CONTRACTOR to subcontractors for Work performed by subcontractors, if required by CITY, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to CONTRACTOR and shall deliver such bids to CITY, who will then determine, with the advice of PROJECT MANAGER, which bids will be accepted. If the subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor's cost of the work shall be determined in the same manner as CONTRACTOR'S cost of the work. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
- B.4 Cost of special engineers, including but not limited to engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the Work described in the Change Order.
- B.5 Supplemental costs including the following:  
The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.

Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remains the property of CONTRACTOR.

Sales, use, or similar taxes related to the Work and for which CONTRACTOR is liable, imposed by any governmental authority. Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments and fees for permits and licenses. The cost of utilities, fuel and sanitary facilities at the site. Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

Cost of premiums for additional bonds and insurance required because of changes in the Work.

- C. The term "cost of the work" shall not include any of the following:

- C.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon

schedule of job classifications referred to in this Article, all of which are to be considered administrative costs covered by CONTRACTOR'S fee.

- C.2 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.
  - C.3 Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
  - C.4 Cost of premiums for all Bonds and for all insurance, whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
  - C.5 Costs due to the negligence or neglect of CONTRACTOR, any subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
  - C.6 Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Section.
- D. CONTRACTOR'S fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
- D.1 A mutually acceptable fixed fee or if none can be agreed upon;
  - D.2 A fee based on the following percentages of the various portions of the cost of the Work:
    - For costs incurred under Article 10.4.B.1, CONTRACTOR'S fee shall not exceed ten percent (10%);
    - For costs incurred under Article 10.4.B.3 and B.4, CONTRACTOR'S fee shall not exceed seven and one half percent (7.5%), 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%);
    - No fee shall be payable on the basis of costs itemized under Article 10.4.B.5 and Article 10.4.C.
- E. The amount of credit to be allowed by CONTRACTOR to CITY for any such change that results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in anyone change, the combined overhead and profit shall be figured on the basis of the net increase, if any. However, CONTRACTOR shall not be entitled to claim lost profits for any Work not performed.
- F. Whenever the cost of any work is to be determined pursuant to Articles 10.4.B and 10.4.C, CONTRACTOR will submit in a form acceptable to CONSULTANT an itemized cost breakdown together with the supporting data.

- G. Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than 20% from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.
- H. Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit an initial cost estimate acceptable to ENGINEER and CITY:
  - H.1 Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.
  - H.2 Whenever a change involves CONTRACTOR and one or more subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for CONTRACTOR and each subcontractor shall be itemized separately.
- I. Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

10.5 Notification and Claim for Change of Contract Price:

- A. Any claim for a change in the Contract Price shall be made by written notice by CONTRACTOR to the CITY and to ENGINEER within five calendar days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within 20 calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim, and such notice shall be accompanied by CONTRACTOR'S written notarized statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of such event. All claims for changes in the Contract Price shall be in accordance with Articles 10.3 and 10.4 hereof if CITY and CONTRACTOR cannot otherwise agree. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

10.6 Notice of Change:

If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be CONTRACTOR'S responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. The CONTRACTOR shall furnish proof of such adjustment to the CITY. Failure of the CONTRACTOR to obtain such approval from the Surety may be a basis for termination of the Contract by the CITY.

10.7 Records:

The CONTRACTOR'S representative and the PROJECT MANAGER shall compare records of extra Work done at the end of the day. Such records shall be made in duplicate upon a form provided for such purpose by the PROJECT MANAGER and shall be signed by both the Inspector and the CONTRACTOR'S representative, one copy being submitted to the PROJECT MANAGER and the other being retained by the CONTRACTOR.

10.8 Cancelled Items and Payments Therefore:

The CITY COMMISSION shall have the right to cancel those portions of the Contract relating to the construction of any item provided therein. Such cancellation shall entitle the CONTRACTOR to payment in a fair and equitable amount covering all items of cost incurred by him prior to the date of cancellation or suspension of the Work. The CONTRACTOR shall be allowed a profit percentage on the materials used and on construction Work actually performed at the same rates as provided for "Extra Work", but no allowance will be made for anticipated profits. Acceptable materials ordered by the CONTRACTOR or delivered on the Work, prior to date of such cancellation or suspension, may be purchased from the CONTRACTOR by the CITY at actual cost and shall thereupon become property of the CITY, or may be returned to the manufacturer for a reasonable restocking charge.

10.9 Full Payment:

The Compensation herein provided shall be received and accepted by the CONTRACTOR as payment in full for all extra Work done or costs incurred in the event of cancellation.

## ARTICLE 11 - CHANGES IN THE CONTRACT TIME

### 11.1 Change Order:

The Contract Time may only be changed by a Change Order. A FULLY EXECUTED CHANGE ORDER MUST EXIST PRIOR TO EXTENSION OR SHORTENING OF THE CONTRACT TIME.

### 11.2 Notification and Claim for Change of Contract Time:

- A. Any claim for a change in the Contract Time shall be made by written notice by the CONTRACTOR to the CITY and to PROJECT MANAGER within five calendar days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within 20 calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim, and such notice shall be accompanied by CONTRACTOR's written notarized statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of such event. All claims for changes in the Contract Time shall be determined in accordance with Articles 10.3 and 10.4 hereof if CITY and CONTRACTOR cannot otherwise agree. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**
- B. The Contract Time will be extended an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of CONTRACTOR if a claim is made as provided in Article 11.2. Such delays shall include but not be limited to acts or neglect by any separate contractor employed by CITY, fire, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

### 11.3 Basis for Extension:

Extensions of time shall be considered and will be based solely upon the effect of delays to the Work as a whole. Extensions of time shall not be granted for delays to the Work unless the CONTRACTOR can clearly demonstrate, through schedule analysis, that the delay to the Work as a whole arose in accordance with Article 12.3 or Article 15.1, and that such delays did or will, in fact, delay the progress of Work as a whole. Time extensions shall not be allowed for delays to parts of the Work that are not on the critical path of the project schedule. Time extensions shall not be granted until all float or contingency time, at the time of the delay, available to absorb specific delays and associated impacts is used.

### 11.4 Change of Time Due to Contract Execution Problems:

Refer to Article 3.4 for a decrease in Contract Time when the CONTRACTOR fails to return the correctly executed Contract Documents within the time allowed.

### 11.5 Change of Time Due to Change Order Evaluation:

When evaluating a proposed Change Order, the PROJECT MANAGER shall have access to any available float or contingency time. Extension will only be considered in accordance with Article 11.3.

11.6            Change of Time and Inspection and Testing:

Neither observations by the ENGINEER or PROJECT MANAGER, nor inspections, tests or approvals by others, passing or failing, will be cause for consideration of a time extension.

11.7            Change of Time and Defective Work:

- A.    If WORK is found to be defective, CONTRACTOR shall bear all remedial expenses including any additional costs experienced by CITY due to delays to others performing additional WORK. CONTRACTOR shall further bear the responsibility for maintaining schedule and will be excluded from a time extension, and the recovery of delay damages due to the uncovering.
- B.    If the WORK is found to be defective per the Specifications, but the CITY chooses to accept it at its sole discretion, CONTRACTOR shall bear the responsibility for maintaining schedule, and will be excluded from a time extension and the recovery of delay damages due to the uncovering.

11.8            Liquidated Damages:

All time limits stated in the Contract Documents are of the essence. The provisions of this Article 11 shall not exclude recovery for damages by CITY as indicated in Section 3 of the Supplementary General Conditions.

ARTICLE 12 - WARRANTY AND GUARANTEE;  
TEST AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1      Warranty and Guarantee:

The CONTRACTOR warrants and guarantees to the CITY and the ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to the CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article.

12.2      Tests and Inspections:

- A. The CONTRACTOR shall give the PROJECT MANAGER and, when appropriate, the Building Department and other regulatory authorities that have jurisdiction over the Work, timely notice of readiness of the Work for all required inspections, tests, or approvals.
- B. All inspections performed as a result of the issuance of the Master Building Permit shall be performed by the CITY. All costs associated with such inspections shall be paid by the CITY, EXCEPT THAT should the test or inspection fail to pass, the CONTRACTOR shall pay all costs associated with the rework and the retesting.
- C. When any other regulatory authority, by virtue of its rules or regulations requires specific tests or inspections, the CONTRACTOR shall assume full responsibility for and pay all costs in connection with such tests and inspections.
- D. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the ENGINEER's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to ENGINEER's acceptance thereof for incorporation in the Work and as otherwise specified in the Contract Documents.
- E. Neither observations by the ENGINEER or PROJECT MANAGER nor inspections, tests or approvals by others shall relieve the CONTRACTOR from his obligations to perform the Work in accordance with the Contract Documents.

12.3      Uncovering Work:

- A. If any Work that is to be inspected, tested or approved is covered without written concurrence of the ENGINEER or PROJECT MANAGER, it must, if requested by the ENGINEER and PROJECT MANAGER, be uncovered. Such uncovering and replacement shall be at the CONTRACTOR'Ss expense.
- B. CONTRACTOR must contact all regulatory agencies issuing construction permits to make all necessary inspections. If CONTRACTOR fails to have the necessary inspections performed and such failure results in uncovering of Work already performed, CONTRACTOR shall be responsible for all related time delays and monetary costs.
- C. If the ENGINEER and PROJECT MANAGER considers it necessary or advisable that Work previously covered with his permission or cognizance be observed, inspected or tested, the CONTRACTOR, at the ENGINEER or PROJECT MANAGER'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as the

ENGINEER and PROJECT MANAGER 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 CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services. If, however, such Work is not found to be defective, the CONTRACTOR 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 reconstruction if he makes a claim therefor in accordance with Article 10.2 and Article 11.2.

12.4            City May Stop the Work:

If the Work is defective, or the CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, the CITY may order the CONTRACTOR 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 CONTRACTOR or any other party.

12.5            Correction or Removal of Defective Work:

If required by the ENGINEER or PROJECT MANAGER, the CONTRACTOR shall promptly, without cost to the CITY and as specified by the ENGINEER or PROJECT MANAGER, either correct any defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by the ENGINEER or PROJECT MANAGER, remove it from the site and replace it with non-defective Work or materials.

12.6            One- Year Correction Period:

If within one year after the date of Substantial Completion or Final Completion, as applicable, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, the CONTRACTOR shall promptly without cost to the CITY and in accordance with the ENGINEER's or PROJECT MANAGER'S written instructions, either correct such defective Work, or if it has been rejected by the ENGINEER or PROJECT MANAGER, remove it from the site and replace it with non-defective Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the ENGINEER or PROJECT MANAGER may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by the CONTRACTOR.

12.7            Acceptance of Defective Work:

If instead of requiring correction or removal and replacement of defective Work, the ENGINEER or PROJECT MANAGER prefers to accept it, he may do so. In such case, if acceptance occurs prior to the ENGINEER or PROJECT MANAGER'S recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price, or if the acceptance occurs after such recommendation, an appropriate amount shall be paid by the CONTRACTOR to the CITY.

12.8            City May Correct Defective Work:

If the CONTRACTOR fails within a reasonable time after written notice of the ENGINEER or

PROJECT MANAGER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by the ENGINEER or PROJECT MANAGER in accordance with Paragraph 12.5, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), the CITY may, after seven days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising its rights under this Paragraph, the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR'S services related thereto, take possession of the CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the CITY, the CITY'S representatives, agents and employees such access to the site as may be necessary to enable the CITY to exercise his rights under this Paragraph. All direct and indirect costs of the CITY in exercising such rights shall be charged against the CONTRACTOR in an amount verified by the ENGINEER or PROJECT MANAGER, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR'S defective Work. The CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the CITY of the CITY'S rights hereunder.

## ARTICLE 13 - PAYMENTS TO THE CONTRACTOR

### 13.1 Basis of Payment:

Progress payments shall be based on the aggregate of the unit price amounts listed in the Proposal or in the Schedule of Values, which have been incorporated in the Work acceptable to the PROJECT MANAGER.

### 13.2 Unit Price Inclusion:

The unit prices stated in the Proposal include all costs and expenses for materials, labor, tools, equipment, transportation, commissions, patent fees and royalties, removing crossings or other obstructions, protection or maintaining pipes, drains, railroad tracks, buildings, bridges, or other structures furnishing temporary crossings or bridges, furnishing all supplemental construction stakes, batter boards, templets, common and ordinary labor for handling materials during inspection replacing any property damage, together with any and all costs or expenses for performing and completing the Work as specified.

### 13.3 Schedule of Values: (Lump Sum Price Breakdown)

A Schedule of Values must be submitted within seven days subsequent to the CONTRACTOR executing and submitting the Documents required in Article 16 of the Instructions to Bidders. The schedules shall be satisfactory in form and substance to the PROJECT MANAGER and shall include quantity and unit prices aggregating the Contract Price and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by the PROJECT MANAGER, it shall be incorporated into a form of Application for Payment acceptable to the PROJECT MANAGER.

### 13.4 Changed Conditions: (Unit Price Only)

It is mutually agreed that due to latent field conditions that cannot be foreseen at the time of advertising for bids, adjustments of the Plans to field conditions will be necessary during construction, and therefore, such changes in the plans shall be recognized as constituting a normal and accepted margin of adjustment not unusual and not involving or permitting any change or modification of unit prices, in which case payment will be made for the revised quantities at the unit price bid in the Proposal.

### 13.5 Application for Progress Payment:

On the 20th day of the month or the first working day thereafter, the CONTRACTOR shall submit to the PROJECT MANAGER for review an Application for Payment form filled out and signed by the CONTRACTOR. 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 an updated progress schedule for review and approval of the pay application. The Application for Payment shall be accompanied by a Schedule of Values and any other supporting documentation as the PROJECT MANAGER may reasonably require.

### 13.6 Payment for Materials:

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such data satisfactory to the PROJECT MANAGER as will establish the CITY's title to the material and equipment and protect the CITY's interest therein, including applicable insurance.

13.7            Affidavit Required:

All Applications for Payment shall include an Affidavit of the CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior Applications for Payment. The amount of retainage with respect to progress payments will be 5%.

13.8            Retainage:

The amount of retainage with respect to progress payments will be 5% until 50% completion of the construction services purchased pursuant to the Contract. After 50% completion of the construction services purchased pursuant to the Contract, the CITY shall reduce to 2.5 percent the amount of retainage withheld from each subsequent progress payment made to the CONTRACTOR. For purposes of this paragraph, the term "50% completion" means the point at which the CITY has expended 50% of the total cost of the construction services purchased as identified in the Contract, together with all costs associated with existing Change Orders and other additions or modifications to the construction services provided for in the Contract.

13.9            CONTRACTOR'S Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the CITY at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereinafter in these General Conditions referred to as "Liens").

13.10          Review of Application for Payment:

The PROJECT MANAGER will, within seven days, review the Application for Payment and either approve and submit it for payment or notify the CONTRACTOR of the deficiencies such that the CONTRACTOR may make the necessary corrections and resubmit in time for the month's payment. However, the PROJECT MANAGER may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations. He 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 12.8.
- E. The CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents.
- F. The CONTRACTOR'S failure to make payment to subcontractors, or for labor, materials or equipment.

13.11          Payment to the Contractor:

Payments are made only on the 15<sup>th</sup> day or first workday thereafter of each month.

**ARTICLE 14 - SUBSTANTIAL COMPLETION, PARTIAL UTILIZATION,  
FINAL CLEAN UP, INSPECTION, PAYMENT AND ACCEPTANCE**

**14.1**      **Substantial Completion:**

When the CONTRACTOR considers the entire Work ready for its intended use, the CONTRACTOR shall, in writing to the PROJECT MANAGER, certify that the entire Work is substantially complete and request that the PROJECT MANAGER issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the CONTRACTOR and the ENGINEER and PROJECT MANAGER shall make an inspection of the Work to determine the status of completion. If the ENGINEER and PROJECT MANAGER do not consider the Work substantially complete, the ENGINEER and PROJECT MANAGER will notify the CONTRACTOR, in writing, giving his reasons therefor. If the ENGINEER and PROJECT MANAGER considers the Work substantially complete, the ENGINEER and PROJECT MANAGER will prepare and deliver to the CONTRACTOR a Certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate a proposed Punch List, developed by the CONTRACTOR, of items to be completed or corrected before final payment.

Within 10 days after delivery of the certificate, the CITY shall review the proposed Punch List and either approve it or contact the CONTRACTOR to commence good faith efforts to develop a Punch List that is satisfactory to both parties. If the Parties are unable to resolve any differences they may have in the development of the Punch List, the ENGINEER shall resolve their differences. The Parties shall expedite the process of developing the Punch List with the intent of finalizing the Punch List within 30 days after the date of Substantial Completion.

At the time of delivery of the Certificate of Substantial Completion, the PROJECT MANAGER will deliver to the CONTRACTOR written notice as to division of responsibilities pending final payment between the CITY and the CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, and insurance, which will be binding on the CITY and the CONTRACTOR until final payment. Unless otherwise stated herein or on the Certificate of Substantial Completion, all building, product, equipment, and machinery warranties will commence on the date of Substantial Completion. The CITY shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the CITY shall allow the CONTRACTOR reasonable access to complete or correct items on the Punch List.

**14.2**      **Partial Utilization:**

Use by the CITY of any finished part of the Work that has specifically been identified in the Contract Documents or which the ENGINEER and the CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by the CITY without significant interference with CONTRACTOR'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- A. The PROJECT MANAGER at any time may request, in writing, that the CONTRACTOR permit the CITY to use any such part of the Work that the PROJECT MANAGER believes to be ready for its intended use and substantially complete. If the CONTRACTOR agrees, the CONTRACTOR will certify to the PROJECT MANAGER that that part of the Work is substantially complete and request the ENGINEER and PROJECT MANAGER to issue a Certificate of Substantial Completion for that part of the Work. The CONTRACTOR, at any time, may notify the PROJECT MANAGER, in writing, that the CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete

and request the ENGINEER and PROJECT MANAGER to issue a Certificate of Substantial Complete for that part of the Work. Within a reasonable time after either such request, the CONTRACTOR and the ENGINEER or PROJECT MANAGER shall make an inspection of that part of the Work to determine its status of completion. If the ENGINEER or PROJECT MANAGER does not consider that part of the Work to be substantially complete, the ENGINEER or PROJECT MANAGER will notify the CONTRACTOR, in writing, giving the reasons therefore. If the ENGINEER or PROJECT MANAGER considers that part of the Work to be substantially complete, the provisions of Article 14.1 will apply with respect to the issuance of a Certificate of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto. It shall be understood by the CONTRACTOR that until such written notification is issued, all responsibility for care and maintenance of all of the Work shall be borne by the CONTRACTOR. Upon issuance of a written notice of partial utilization, the CITY will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

14.3      Final Clean-Up:

Upon completion of the Work and before final inspection shall be made, the CONTRACTOR shall clean and remove from the site, the Right-of-Way and adjacent property, all surplus and discarded materials, rubbish, and temporary structures; restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the Work; and shall leave the site and vicinity unobstructed in a neat and presentable condition throughout the entire area or length of the Work under Contract. The placing of materials of every character, rubbish, or equipment on the abutting property, with or without the consent of the property owner(s) shall not constitute satisfactory disposal. If the Work is of such a character as may be done by block or sections, the CONTRACTOR may be required to promptly remove and dispose of accumulated rubbish, debris or surplus materials from blocks or sections as completed or partially completed. No separate payment will be made for final cleaning up and restoration of property, but all costs thereof shall be included in the prices bid for the various scheduled items of Work.

14.4      Final Inspection:

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete and final clean-up has been completed, the ENGINEER or PROJECT MANAGER will make a final inspection with the CONTRACTOR and will notify the CONTRACTOR, in writing, of all particulars in which the inspection reveals that the Work is incomplete or defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

14.5      Final Application for Payment:

After the CONTRACTOR has completed all such corrections to the satisfaction of the ENGINEER and PROJECT MANAGER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in Article 7.19 of the General Conditions and other documents), all as required by the Contract Documents and after the ENGINEER and PROJECT MANAGER has indicated that the Work is acceptable (subject to the provisions of Article 14.9), the CONTRACTOR may make Application for Final Payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete

and legally effective releases or waivers (satisfactory to the CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the CITY, the CONTRACTOR may furnish receipts or releases in full, an affidavit of the CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the CITY or the CITY'S property might in any way be responsible, have been paid or otherwise satisfied, and consent of the Surety, if any, to final payment. If any subcontractor or Supplier fails to furnish a release or receipt in full, the CONTRACTOR may furnish a Bond or other collateral satisfactory to the CITY to indemnify the CITY against any Lien.

14.6            Final Payment and Acceptance:

If on the basis of the ENGINEER and PROJECT MANAGER'S observation of the Work during construction and final inspection, and the ENGINEER and PROJECT MANAGER'S review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the ENGINEER and PROJECT MANAGER are satisfied that the Work has been completed and the CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, the ENGINEER and PROJECT MANAGER will recommend payment. Thereupon, the ENGINEER and PROJECT MANAGER will give written notice to the CITY and the CONTRACTOR that the Work is acceptable, subject to the provisions of Article 14.9.

14.7            Payment of Retainage Without Final Completion:

If through no fault of the CONTRACTOR, final completion of the Work is significantly delayed and if the PROJECT MANAGER so confirms, the CITY shall, upon receipt of the CONTRACTOR'S final Application for Payment and recommendation of the PROJECT MANAGER, and without terminating the Contract, make payment of the balance due for the portion of the Work fully completed and accepted. If the remaining balance to be held by the CITY for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if Bonds have been furnished as required in Article 5.2, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the PROJECT MANAGER with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.8            CONTRACTOR'S Continuing Obligation:

The CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the ENGINEER and PROJECT MANAGER, nor the issuance of a Certificate of Substantial Completion, nor any payment by the CITY to the CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the CITY, nor any act of acceptance by the CITY or any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by the ENGINEER and PROJECT MANAGER pursuant to Article 14.6, nor any correction of defective Work by the CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents (except as provided in Article 14.9).

14.9            Waiver of Claims:

The making and acceptance of final payment will constitute:

- A. A waiver of all claims by the CITY against the CONTRACTOR, except claims arising from unsettled Liens or from defective Work appearing after final inspection pursuant to 14.4 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein. However, it will not constitute a waiver by the CITY of any rights in respect of the CONTRACTOR'S continuing obligations under the Contract Documents.
- B. A waiver of all claims by the CONTRACTOR against the CITY other than those previously made in writing and still unsettled.

#### ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

##### 15.1 City May Suspend Work:

The CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to the CONTRACTOR, which will fix the date on which Work will be resumed. The CONTRACTOR shall resume the Work on the date so fixed. The CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

##### 15.2 City May Terminate:

- A. Upon the occurrence of any one or more of the following events:
  - 1. If the CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if the CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.
  - 2. If a petition is filed against the CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
  - 3. If the CONTRACTOR makes a general assignment for the benefit of creditors.
  - 4. If a trustee, receiver, custodian or agent of the CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the CONTRACTOR'S creditors.
  - 5. If the CONTRACTOR admits in writing an inability to pay its debts generally as they become due.
  - 6. If the CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to failure to supply a qualified superintendent or sufficient skilled workers or suitable materials or equipment, or failure to adhere to the approved progress schedule revised from time to time).

7. If the CONTRACTOR disregards laws or regulations of any public body having jurisdiction.
  8. If the CONTRACTOR disregards the authority of the ENGINEER or PROJECT MANAGER.
  9. If the CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.
- B. The CITY shall provide written notice by CITY to CONTRACTOR of intent to terminate pursuant to Section 15.2(A) and CONTRACTOR shall have sixty (60) days to cure such claimed breach, unless a longer cure period is approved, in writing, by the PROJECT MANAGER, at his or her sole and absolute discretion ("Cure Period"). If the CONTRACTOR fails to cure the claimed breach at the satisfaction of the PROJECT MANAGER's sole and absolute discretion, during the Cure Period, CITY may terminate this Contract under this Provision. Upon termination of this Contract, the CITY may, to the extent permitted by laws and regulations, terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR'S tools, appliances, construction equipment and machinery at the site previously paid for by the CITY (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the CITY may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect, and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and court and arbitration costs), such excess will be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR or CONTRACTOR'S Surety shall pay the difference to the CITY.
- C. Where the CONTRACTOR'S services have been terminated by the CITY, the CITY alone shall determine the scope and description of the Work to be completed and the method and schedule for completing it.
- D. Where the CONTRACTOR'S services have been terminated by the CITY, the termination will not affect any rights or remedies of the CITY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the CITY will not release the CONTRACTOR from liability.
- E. Upon seven days' written notice to the CONTRACTOR, the CITY may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In such case, the CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include but not be limited to direct, indirect, and consequential costs (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs). Provided, nevertheless, that the City's rights under this paragraph shall not be exercised during a Cure Period, should the City have issued a notice of intent to terminate under paragraph B above.

### 15.3 Contractor May Stop Work or Terminate:

If through no act or fault of the CONTRACTOR, the Work is suspended for a period of more than

90 days by the CITY or under an order of court or other public authority, or the CITY fails for 60 days to pay the CONTRACTOR any sum finally determined to be due, then the CONTRACTOR may, upon seven days' written notice to the CITY, terminate the Contract and recover from the CITY payment for all Work performed and any expense sustained. In addition and in lieu of terminating the Contract, if the CITY has failed to make any payment as aforesaid, the CONTRACTOR may upon seven days' written notice to the CITY stop the Work until payment of all amounts then due are paid. The provisions of this paragraph shall not relieve the CONTRACTOR of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

- END OF SECTION -