

Exhibit II

GENERAL CONDITIONS TABLE OF CONTENTS

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GENERAL CONDITIONS

Agreement No.

1. DEFINITIONS

The following words and expressions, shall, wherever they appear in the Agreement Documents, be construed as follows, unless a different meaning is clear from the context in which they are used:

For purposes of the Agreement Documents, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural.

Agreement or Agreement Document(s): The Master Design-Build Agreement between the Design-Build Entity and the City for the Project.

Agreement Price: The amount agreed by the Design-Build Entity and Owner as the compensation to be paid to the Design-Build Entity by Owner for completing the Work (sometimes referred to as the “Not to Exceed Amount”) or GMP.

Agreement Time: The number of Days stated in a Notice to Proceed to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and/ or (iii) achieve Final Completion of such the Agreement.

Amendment: A written order, executed by the Owner and Design-Build Entity, authorizing an addition, deletion or revision to the scope of work.

City or Owner: The City of Boca Raton, Florida.

Completion Date: The date on which all Work in the Agreement is complete in all respects, including cleanup, other than guarantee and maintenance Work defined in the specifications. The Completion Date shall be as noted in the Agreement and the Notice to Proceed for the Construction Phase of the Project.

Construction Change Directive (CCD): A written order from the Owner to the Design-Build Entity authorizing an addition, deletion, or revision to the Work after the date the Notice to Proceed for the Construction Phase of the Project was issued which may also be referred to as a Work Directive Change (WDC).

Construction Phase: That part of the Work requiring physical construction of the Project.

Critical Path: The sequence of events and activities (each of a particular duration) that must be completed on schedule for the Project to be completed on schedule.

Day or Days: A calendar day or calendar days. A calendar day begins at 12:00:00 midnight and ends 24 hours later at 11:59:59 p.m.

Design Services: The professional design services to be utilized to convert the City’s program and Design Criteria Package into construction documents that are to be utilized to build the Project, including “Drawings” which show the character and scope of the construction

work to be performed for the Project and "Specifications" consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Project and certain administrative details applicable thereto, which together shall be the basis of the GMP.

Design Services Phase: That part of the Work providing for Design Services.

Design-Build Entity: The person or entity who is identified in the Agreement and is referred to throughout the Agreement Documents. Design-Build Entity may mean the Design-Build Entity or its authorized representatives, as the context requires.

Drawings: The drawings, or reproductions thereof, prepared by the Owner, which show the locations, character, dimensions, and details of the Work to be done under this Agreement. All working drawings submitted by the Design-Build Entity and approved by the Owner become part of the Drawings.

Engineer: Includes City project manager, or consultant hired by the City.

Final Completion: The point in time when the entire completed construction, or the various separately identifiable parts thereof required to be provided under the Agreement Documents, has been rendered complete, satisfactory, and acceptable. Final Completion for the Agreement includes, and is the result of, performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Agreement.

Final Completion Date: The date on which all Work is complete in all respects and no Work remains, including completion of all guaranteed Work, all maintenance Work and all service Agreement Work, is fully accepted by the City.

Notice to Proceed: A written notice executed by the Owner, or their agent, which shall designate the date upon which the Design Services and the Construction shall commence and be completed.

Open Book Basis: "open book basis" or "open book contracting" is a standard industry term, particularly in the construction industry. It refers to a contractual arrangement where the contractor provides the client with full transparency into the project's costs, including but not limited to materials, labor, and any other project expenses.

Owner: see City in definitions.

Phase: A clearly defined subset of work, isolated for the purpose of completing the entire Project. The sum of all Phases is equal to the Scope of Work of the Project.

Project: The comprehensive design, permitting, and construction services for the extension of Jeffery Street between NW 2nd Avenue and Dixie Highway as a new four-lane roadway segment, approximately 1,200 feet in length as specified in the Design Criteria package, which also includes the widening of the existing portion of Jeffery Street from two lanes to four lanes for approximately 1,000 feet west of NW 2nd Avenue, including a pedestrian underpass connecting the north and south sides of the proposed North Park project west of the Florida East Coast (FEC) Railway.

Schedule of Values: The schedule to be used as a basis for progress payments to be made to the Design-Build Entity by the Owner during performance of the Construction Phase of the Project, based on the then current percentage of progress of construction of the Project, subject to the review of the Engineer.

Site: The area upon which, or in which, the Design-Build Entity's operations are carried on for the Project, and such other areas adjacent thereto, or not adjacent thereto, as may be designated as such by the Owner.

Specifications: The portion of the Agreement Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services, which may also be referred to as Technical Specifications.

Subcontractor: Any individual, partnership, or corporation other than actual employees of the Design-Build Entity, who or which contracts with the Design-Build Entity to furnish, or actually furnishes labor, materials, and/or equipment at the Site.

Substantial Completion: The time at which the Work (or specified part thereof) to be performed under the Agreement has progressed to the point where, in the opinion of Owner, the Work (or specified portion part thereof) is sufficiently complete, in accordance with the Agreement Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work in the Agreement refer to Substantial Completion thereof.

Substantial Completion Date: The date on which the Work (or specified part thereof) is to be performed under in the Agreement as set forth in a Notice to Proceed, in the opinion of the Owner, is sufficiently complete, in accordance with the Agreement Documents, so that the Work (or a specified portion thereof) can be utilized for the purpose for which it was intended.

Surety/Sureties: Any corporation that executes the Design-Build Entity's Payment Bond and Performance Bond or Public Construction Bond securing the payment and performance for this Agreement.

Work: The construction and Design Services required by the Agreement Documents and includes all labor, materials, equipment, and services provided by the Design-Build Entity to fulfill the Design-Build Entity's obligations under the Agreement.

2. DESIGN-BUILD ENTITY'S RESPONSIBILITY

A. The Design-Build Entity expressly undertakes at their own expense:

1. To conduct its operations so as not to damage any other property. If facilities are closed, obstructed, damaged, or rendered unsafe by Design-Build Entity's operations, Design-Build Entity shall, at its own expense, make such repairs and provide temporary guards, lights, and other signals as necessary or required for safety and as will be acceptable to Owner;

2. To store their apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work so that they will not interfere with the progress of the Design-Build Entity's Work, the work of any other contractors, or the use or operation of areas adjoining the Site;
 3. To place upon the Site, or any part thereof, only such materials and equipment necessary to Design-Build Entity's Work, so as to maintain the safety of the Site;
 4. To frequently clean up all refuse, rubbish, scrap materials, and debris caused by operations of the Design-Build Entity or Subcontractors, so that at all times the Site shall present a neat, orderly, and workmanlike appearance;
 5. To affect all curing, repair, fitting or patching or replacement of the Work required to make the same conform to the Drawings and Specifications and, except with the consent of the Owner and the Owner, not to alter the work of any other contractor;
 6. To adhere to, and abide by, Florida Statutes, Title XXXIII Regulation of Trade, Commerce, Investments, And Solicitation – Chapter 556 Underground Facility Damage Prevention and Safety Act. The Design-Build Entity must also keep abreast of any changes, modifications, and amendments that are made to this and related statutes;
 7. To assure that their personnel, and personnel of all Subcontractors, conform with and adhere to all Owner required security procedures and protocols during construction; and to, at all times, safely guard the Owner's property from injury or loss caused by Design-Build Entity's Work in connection with this Contract.
- B. Design-Build Entity shall accept full responsibility for the Work until Final Completion. Design-Build Entity shall protect the Work against all loss or damage sustained during the progress of the Work, and promptly repair any damage done and replace any loss from any cause whatsoever.
- C. Weather Conditions. In the event of a temporary suspension of Work due to inclement weather, or whenever the Owner shall direct, the Design-Build Entity will, and will cause his Subcontractor(s) to, carefully protect the Work and all materials from damage due to the weather. If the Owner determines, in his/her sole discretion, that any Work or materials was damaged by Design-Build Entity's (or any of his Subcontractors) actions or inactions, such Work or materials shall be removed, if necessary, and replaced at the sole expense of Design-Build Entity.
- D. Upon the occurrence of an emergency affecting the safety or protection of; persons, the Work, property at the Site, or property adjacent thereto, Design-Build Entity, without special instruction or authorization from the Owner, is obligated to act to prevent damage, injury, or loss. Design-Build Entity shall give the Owner and Owner prompt written notice of any changes in the Work or deviations from the Agreement Documents caused thereby.

Where Design-Build Entity has not taken action but has notified the Owner of an emergency or damage to the Work or any adjoining property, Design-Build Entity shall act as instructed or authorized by the Owner.

The amount of reimbursement claimed by Design-Build Entity resulting from any

emergency action shall be determined in the manner provided in Article 38, Extra Work.

- E. Site Restoration: The Design-Build Entity shall remove all excess material and shall clean up and restore the Site to its original condition or better. All damage, as a result of Work performed under the Agreement, done to; existing structures, paved or graveled areas, driveways, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipelines, conduits, drains, catch basins, and including all features and improvements not specifically named herein, shall be repaired and restored to a condition acceptable to the Owner.
- F. Liability of Design-Build Entity: All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Build Entity (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or anyone employed by any of them, or anyone for whose acts any of them may be liable).
- G. The Design-Build Entity shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion, or family status with respect to the Work, which shall also include the selection and retention of subcontractors and the procurement of materials and lease of equipment. Any Work performed by Design-Build Entity without proper authorization is performed at Design-Build Entity's own risk, and Owner shall have no obligation to compensate Design-Build Entity for such work.

3. AUTHORIZED REPRESENTATIVES / SUPERINTENDENT

At the preconstruction conference, Design-Build Entity shall provide the names and resumes of key personnel for the Work, including an Authorized Representative as defined below, to Owner for review and approval. Design-Build Entity shall replace any personnel deemed to be unacceptable by the Owner. Design-Build Entity shall keep Owner informed of any subsequent changes in the staffing of the foregoing.

- A. Design-Build Entity Authorized Representative. Design-Build Entity shall designate a competent, authorized representative, to represent and act for Design-Build Entity and shall inform Owner in writing, of the name and address of such representative together with a clear definition of the scope of his/her authority to represent and act for Design-Build Entity and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the Site of Work at all times when work is actually in progress.

When the Design-Build Entity's Authorized Representative is not present on the Site, the Design-Build Entity shall notify the Owner no less than 12 hours in advance and orders will be given to the foremen/forewomen or superintendents who may have immediate charge of the Work, and shall be by them received and strictly obeyed.

During periods when Work is suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency work which may be required. All notices, determinations, instructions and other communications given

to the Authorized Representatives of the Design-Build Entity shall be binding upon Design-Build Entity. Nothing contained herein shall be construed as modifying the Design-Build Entity's duty of supervision and fiscal management as provided for by Florida law.

- B. Approval of Owner. Design-Build Entity's Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the Owner. If, at any time during the term of the Contract, any individual performing any of the positions named above, is, for any reason, unacceptable to the Owner, Design-Build Entity shall replace the unacceptable personnel with personnel acceptable to the Owner.
- C. Owner Authorized Representative. Owner shall designate an authorized representative who will have limited authority to act for Owner. Owner will notify Design-Build Entity in writing of the name of such representative(s).

Owner has the right to assign various responsibilities of the Owner to the Owner Authorized Representative (if available), and can do so at any time during the duration of the Agreement with written notice to Design-Build Entity. The Owner will provide answers to Requests for Information ("RFIs"), questions regarding the Drawings and Specifications, issue Field Orders and Construction Change Directives and other related duties. Design-Build Entity agrees to cooperate with the Owner's Authorized Representative.

4. SUBCONTRACTORS

- A. Design-Build Entity may utilize the services of Subcontractors, provided however, Design-Build Entity shall perform the minimum percentage of Work as identified in the Special Provisions and/or Technical Specifications. Design-Build Entity shall give close attention to the Work completed by Subcontractors.
- B. Design-Build Entity, as soon as practicable after the award of the Agreement and before the Owner shall make any partial payments to Design-Build Entity, shall furnish to the Owner, a list of the names of the subcontractors proposed for the principal portions of the Work. The Owner shall promptly notify Design-Build Entity in writing if either the Owner, after due investigation, has an objection to any Subcontractor on such list and does not accept that Subcontractor. Failure of the Owner to make objection to any Subcontractor on the list within two weeks of the date when the written list of subcontractors was received by the Owner shall constitute acceptance of such subcontractor(s). After acceptance, no Subcontractor shall be changed without the written approval of the Owner.
- C. Design-Build Entity shall be fully responsible to the Owner for the acts and omissions of his/her Subcontractors, and of persons either directly or indirectly employed by them, as Design-Build Entity is for the acts and omissions of persons directly employed by Design-Build Entity.
- D. Design-Build Entity shall cause appropriate provisions to be inserted in all subcontracts, to bind Subcontractors to the Design-Build Entity for and under the terms of the General Conditions and other Agreement Documents, as applicable to the Work of Subcontractors, and to give the Design-Build Entity the same power to terminate any

sub Agreement that the Owner may exercise over the Design-Build Entity under the provisions of the Agreement Documents.

- E. Design-Build Entity shall ensure that all Subcontractors have and maintain proper insurance for the portion of the Work that they will be completing, as well as all workers' compensation and other insurance.

5. EMPLOYEES

All employees of Design-Build Entity shall have; the necessary knowledge and skills, and the required certifications or license for the tasks that they perform.

Any employee of Design-Build Entity on the Site who appears to the Owner to be disorderly, insubordinate, unfaithful, or incompetent, shall upon the order of Owner, be at once removed from the Site and not again employed on any part of the Work. Any interference with, or abusive or threatening conduct toward the Owner, Owner's Authorized Representative employees, Owner, or Owners employees by the Design-Build Entity or Design-Build Entity's employees, subcontractors, or agents, shall be grounds and authority for the Owner to terminate the Contract.

No employees (or independent contractors) of the Design-Build Entity or Subcontractor shall be considered to be employees of the Owner. Design-Build Entity understands and agrees that their employees (and independent contractors) shall have no claim against the Owner as to pension, workers' compensation, unemployment compensation, federal income withholding, insurance, salary, wages or other employees' rights or privileges granted by operation of law.

6. PROTECTION OF WORK AND MATERIALS

Facilities for handling of material and inspecting the Work shall at all times be furnished by the Design-Build Entity, and all costs due to delays in handling of materials, equipment, or supplies, and resulting loss or damage, shall be at the expense of the Design-Build Entity. Design-Build Entity shall provide suitable and adequate storage for materials and equipment during the progress of the Work and be responsible for any loss or damage to the materials, equipment, and supplies furnished under other contracts, as well as those furnished by Design-Build Entity, until Final Completion. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final inspection and acceptance, Design-Build Entity shall replace same without cost to the Owner.

7. ROYALTIES, PATENTS, AND INDEMNITY

- A. If the Design-Build Entity uses any design, device, or materials, covered by letters, patent or copyright, Design-Build Entity shall provide for such use by suitable Agreement with the owner of such patented or copyrighted design, device, or material. Without exception, the Agreement prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the Work.
- B. License and/or Royalty Fees for the use of a process, which is authorized and incorporated into the Project, must be paid to the holder of the patent, or the authorized licensee, directly by Design-Build Entity and the cost for such fees shall be included in the Agreement Price.

- C. Design-Build Entity and/or its Surety shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Agreement Documents.
- D. Design-Build Entity and/or its Sureties shall defend, indemnify and save harmless the Owner, its officials and those working on the project on the Owner's behalf from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under this Agreement and shall indemnify the Owner for any cost, expense or damage, including attorneys and appellate fees, which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work. This provision shall continue indefinitely and survive the cancellation, termination, expiration, lapse, or suspension of the Contract.

8. INSURANCE

Design-Build Entity (and Subcontractors) shall procure and maintain all insurance as set out in, and as required by, the Agreement Documents.

9. SALES TAX

Design-Build Entity shall understand the requirements of the State of Florida pertaining to the exemption from state sales tax as it may apply to the Owner and apply the exemption of sales tax to the procurement of materials only as appropriate.

10. CONTINUING OBLIGATION

Design-Build Entity's obligation to perform and complete the Work in accordance with the Agreement Documents shall be absolute. Neither recommendation of any progress or final payment by the Owner, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Design-Build Entity under the Agreement Documents, nor any use of the Work or any part thereof by the Owner, nor any act of acceptance by the Owner, nor any failure to do so, nor any correction of defective Work by the Owner shall constitute an acceptance of Work not in accordance with a Work Order and the Agreement Documents or a release of the Design-Build Entity's obligation to perform the Work in accordance with the Agreement Documents.

11. TIMES/DAYS OF WORK

- A. Unless otherwise provided for in the Agreement Documents, or approved by the Owner and/, Work may be only prosecuted between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday.
- B. Weekends, Owner Observed Holidays, or hours outside the approved work hours (7am-5pm).

If Design-Build Entity wishes to perform any portion of the Work on a Weekend or Owner Observed Holiday, Design-Build Entity shall first obtain written permission from the Owner, and shall notify him/her each time in advance, giving him/her ample time

in which to procure an Owner and/or Inspector for the Work, if necessary. Design-Build Entity is fully responsible for reimbursement of the Owner's cost for inspection time beyond eight hours per day or forty hours per week.

12. TIME OF STARTING WORK

The Work shall actively begin no later than 14 days after a Notice to Proceed has been issued. The Work shall be carried on regularly and uninterruptedly with sufficient force to ensure its completion within the time limit set out in the Notice to Proceed.

13. PROJECT SCHEDULE/SCHEDULE OF VALUES

Project schedule / schedule of values will be defined within the Agreement Documents at the discretion of the Owner.

14. AGREEMENT TIME / EXTENSION OF TIME/ NO DAMAGES FOR DELAY

Time is an essential condition of the Agreement. All Work shall be completed as specified in the Agreement Documents on or prior to the Completion Date.

A. Agreement Time

The Agreement Time shall be computed to exclude the first day and include the Completion Date. If the Completion Date, or other period of time included, falls on a Saturday or Sunday or on an Owner observed holiday, such day will be omitted from the computation. Agreement time shall be calculated based on calendar days.

B. Change of Agreement Time/Extension of Time

The Agreement Time may only be changed by an Amendment executed by Design-Build Entity and the Owner.

If the Design-Build Entity's performance of this Agreement is delayed, which delay is beyond the reasonable control and without the fault or negligence of the Design-Build Entity or its Subcontractors, or by changes ordered in the Work, and in either event where such delay or change in the Work impacts, schedule, then the Agreement Time may be extended by Amendment as determined by the Owner.

Any claim for an adjustment in the Agreement Time shall be based on written notice submitted by the Design-Build Entity to the Owner

Such claim shall be submitted by the Design-Build Entity to the Owner within seven (7) days of the occurrence of the event giving rise to the claim and shall include the amount of time caused by the hindrance or delay and shall specify the reason for the delay or hindrance. The Design-Build Entity's failure to provide such information shall constitute a waiver of the claim by the Design-Build Entity and a denial of any time extension for change in the Work. Further, upon execution by the Owner of any Amendment, that Amendment shall constitute a complete waiver by Design-Build Entity of all claims for additional money beyond what is contained in the Amendment, if any, or for any greater extension of time beyond what is contained in the Amendment, if any, related to the Work, or any Work impacted by the change.

Design-Build Entity shall not be entitled to an adjustment Agreement Time for delays within the control of Design-Build Entity. Delays attributable to and within the control of a Subcontractor or supplier shall be deemed to be delays within the control of Design-Build Entity.

Any change in the Agreement Time resulting from any such claim shall be incorporated in an Amendment.

C. No Damage for Delays/Exclusive Remedy

1. The Design-Build Entity shall not be entitled to any claim for damages for any hindrances or delay from any cause whatsoever, but such hindrance or delay may entitle Design-Build Entity to an extension of the Agreement Time.
2. The Design-Build Entity shall not be entitled to, and hereby waives, any claim for any direct or indirect financial damages or losses for any delay in the completion of the Work for any reason, whether such delay be avoidable or unavoidable, including, but not limited to, extended corporate overhead impact, extended project overhead impacts, insurance costs, loss of bonding capacity, project support services, mobilization or demobilization, loss of profits on alternate or unperformed contracts, or by whatever other label or legal concept or theory and types of names or labels or basis such claims may have, or any business damages or losses of whatever type or nature for any delay for any reason. Design-Build Entity hereby waives any right to make any such claim or claims.
3. The Design-Build Entity hereby acknowledges and agrees that the Design-Build Entity's sole and exclusive remedy for any delays not caused by the Design-Build Entity shall be an extension in the Agreement Time, as described above. For such delays as; fire, flood, epidemic, abnormal weather conditions, acts of God, acts of others (including Owner) the Design-Build Entity shall only be entitled to an equitable adjustment in Agreement Time and only if such adjustment is essential to Design-Build Entity's ability to complete the Work within the Agreement Time.

15. Section Not Used

16. PROJECT CLOSEOUT

In accordance with Section 218.735(7), Florida Statutes, within thirty (30) days of Design-Build Entity reaching Substantial Completion (or, if Substantial Completion is not defined in the Contract, upon reaching beneficial occupancy or use), the Engineer shall develop a list of items to be completed or corrected by Design-Build Entity and the estimated cost to complete/correct each item, which list must be approved by the Owner. The Engineer shall provide the list to Design-Build Entity within five (5) days of the date of completion of the list, such that it is provided to Design-Build Entity within thirty-five (35) days of the date of Substantial Completion

17. REIMBURSEMENT OF ENGINEERING EXPENSES

Should the Final Completion and acceptance of the Work under the Agreement, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that, aside from any other damage per day for such delay, from such time until the same is completed and accepted as herein provided, all costs of Engineering, Inspection and

other project costs on behalf of Owner will be charged to Design-Build Entity hereunder, and deducted from any estimate or payment otherwise due and payable to Design-Build Entity from time to time.

18. SUSPENSION OF WORK DUE TO WEATHER

During inclement weather, all Work which might be damaged or rendered inferior by such weather conditions, shall be suspended. The orders and decisions of the Owner as to suspensions shall be final and binding. During the suspension of the Work from any cause, it shall be suitably covered and protected so as to preserve it from injury by the weather or otherwise; and, if the Owner shall so direct, the rubbish and surplus material shall be removed. If, in the opinion of the Owner, any of the Work or any materials shall have been damaged or injured by reason of failure on the part of the Design-Build Entity, or any of his subcontractors, to so protect Design-Build Entity's work, such material shall be removed and replaced at the expense of Design-Build Entity.

If Design-Build Entity is delayed in the performance or progress of the Work by abnormal weather conditions, Design-Build Entity shall be entitled to an equitable adjustment in Agreement Time, if such adjustment is essential to Design-Build Entity's ability to complete the Work within the Agreement Time, in accordance with Article 14. Such an adjustment in Agreement Time shall be Design-Build Entity's sole and exclusive remedy for any delay caused by weather.

19. FORCE MAJEURE

No Party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of either party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties arising therefrom and to resume the Work as soon as reasonably possible with the normal pursuit of the Work.

Inclement weather, continuous rain for less than three consecutive (3) days or the acts or omissions of subcontractors, third-party contractors, material suppliers, cost increases from tariffs, or their subcontractors, **shall not be considered** acts of force majeure.

No Party shall be liable for its failure to carry out its obligations under the Agreement during a period when such Party is rendered unable by force majeure to carry out its obligation, but the obligation of the Party or Parties relying on such force majeure shall be suspended only during the continuance of the inability and for no longer period than the force majeure event.

Design-Build Entity further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice to the Owner of its assertion that a Force Majeure delay has commenced. Such notice shall be made within 5 days of the start of the asserted force majeure occurrence. Design-Build Entity shall use its reasonable efforts to minimize such delays. Design-Build Entity shall promptly provide an estimate of the anticipated additional time required to complete the Work to Owner. The Owner will make the determination if a Force Majeure has occurred and if a time extension will be granted at the time of the request.

20. INTERPRETATION OF DRAWINGS AND SPECIFICATIONS

The Owner shall decide all questions concerning the interpretation of the Drawings and Specifications pertaining to the character, quality, amount and value of any Work done and materials furnished for under, or by reason of, this Agreement and the Owner's estimate and decisions shall be final and conclusive.

21. CONTROL OF THE WORK

- A. The Owner shall have full control and direction of the Work in all respects. All explanations, directions, working drawings, sketches, etc., necessary to carry out and complete the Work in a manner satisfactory to the Owner shall be given by the Owner. The Owner, and employees, agents, and authorized assistants, shall at all times have the right to inspect the Work and materials. Design-Build Entity shall furnish all reasonable facilities for obtaining such information as the Owner may require, respecting the quality of the Work and materials and the manner of conducting the Work. Should the Design-Build Entity be directed or permitted to perform night work, or to vary the period which work is ordinarily carried on in the daytime, in accordance with Article 11, Times/Days of Work, Design-Build Entity shall give ample notice to the Owner, so that proper and adequate inspection may be provided. Such work shall be done only under such instructions as are furnished in writing by the Owner, and no extra compensation shall be allowed the Design-Build Entity therefore. In the event of night work, Design-Build Entity shall furnish such lights, which are satisfactory to the Owner and will permit proper inspection. Nothing herein contained shall relieve Design-Build Entity from compliance with any and all City of Boca Raton ordinances relating to noise or work during prohibited hours.
- B. The words "supervise" and "inspect" wherever used herein in connection with the duties or activity of the Owner shall in no way, expressed or implied, relieve the Design-Build Entity from his/her responsibilities for the safety of the workers, the preservation of the Work or proper performance under this Contract. The Owner shall not be responsible for the safety of the workers, the safeguarding of the Work, or the proper performance of the Design-Build Entity.
- C. Copies of the Specifications will be used by the Owner and inspectors employed on the Work, to enforce each and every requirement of the Agreement Documents.

22. LAYOUT SURVEY AND AS-BUILT RECORD DRAWINGS

The Owner will furnish Design-Build Entity with all necessary information relating to lines, grades, benchmarks, control points, and location of the Work. Design-Build Entity shall furnish all necessary labor equipment and supplies to layout the Work and for the establishment of all lines and grades. All layout Work may be checked and verified by the Owner, and Design-Build Entity shall furnish all such necessary material, equipment, labor, and assistance as the Owner may require. Design-Build Entity shall keep an accurate record of the nature, location, and dimensions of all Work, especially such Work as may subsequently become concealed or inaccessible, and transmit this information, properly marked on a set of reproducible construction plans, to the Owner when the Work is complete. Design-Build Entity shall reference and reset all property corners, benchmarks, centerline control points, and section corners, in accordance with the Florida Department of Transportation Location Survey Manual, which may be disturbed during construction. A Land Surveyor registered in the State

of Florida must perform all construction layout Work and prepare As-Built Record Drawings in accordance with FAC Chapter 5J-17, Professional Surveyors and Mappers. Design-Build Entity shall comply with Section 01720, Project Record Documents of the Technical Specifications.

The cost of all such field layout and surveying Work shall be included in the Agreement Price for the appropriate items and shall not result in any additional or separate cost to the Owner.

23. INSPECTION

No Inspector shall have the power to waive the obligations resting upon the Design-Build Entity to furnish good material and do good work as herein prescribed. Any failure or omission on the part of any Inspector or the Owner to condemn any defective material or Work shall not release the Design-Build Entity from the obligation to at once tear out, remove, and properly replace or rebuild the same at any time upon discovery of the defect and upon notice from the Owner to do so. All Work, all materials, and all methods of construction shall be at all times and places subject to the inspection of the Owner who shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should any Work fail to meet the Owner's approval, they shall be forthwith reconstructed, made good, replaced, and/or corrected, as the case may be, by the Design-Build Entity at the Design-Build Entity's own expense. Rejected material shall immediately be removed from the Site. If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Agreement Documents, the compensation to be paid to Design-Build Entity hereunder shall be reduced by such amount as in the judgment of the Owner shall be equitable.

24. NO WAIVER OF LEGAL RIGHTS

- A. Inspection by the Owner, or by any of the Owner's duly authorized representatives, any order, measurement, or certificate by the Owner, any order by the Owner for the payment of money, any payment for or acceptance of any Work or any extension of time, or any possession taken by the Owner shall not operate as a waiver of any provision of the Agreement or any power therein reserved to the Owner or any right to damages therein provided. Any waiver of any breach of the Agreement shall not be held to be a waiver of subsequent breach.
- B. The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet requirements of the Agreement. The Owner further reserves the right, should conclusive proof of defective Work on the part of the Design-Build Entity be discovered after the final payment has been made, to claim and recover by process of the law from DESIGN-BUILD ENTITY such sums as may be sufficient to correct the error or make good the defects in the Work.
- C. Any waiver of any provision or in the Agreement Documents made by Owner shall be approved in advance by Owner in writing and shall be specific, in that it shall apply only to the particular item or matter concerned and shall not apply to other similar or dissimilar items or matters. Such waiver shall not be effective unless and until a written approval of the waiver by Owner is presented to Design-Build Entity.

25. DESIGN-BUILD ENTITY TO CHECK DRAWINGS, DATA, AND CONDITIONS

- A. Design-Build Entity shall verify all dimensions, quantities and details shown on the Drawings, supplementary drawings, schedules, or other data received from the Owner, and shall notify the Owner of all errors, omissions, conflicts, and discrepancies found therein. Failure to discover or correct errors, omissions, conflicts, or discrepancies shall not relieve the Design-Build Entity of full responsibility for unsatisfactory Work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at Design-Build Entity's own expense. Design-Build Entity will not be allowed to take advantage of any error or omissions, as the Owner will furnish instructions, should any error or omission be discovered. All instructions are given for the convenience of Design-Build Entity and are not guaranteed to be complete.
- B. Should Design-Build Entity encounter sub-surface and/or latent conditions at the Site materially differing from those shown on the plans or indicated in the Technical Specifications, Design-Build Entity shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner will thereupon promptly investigate the conditions, and if Owner finds that they materially differ from those shown on the Drawings and/or Technical Specifications, the Owner will at once make such changes in the Drawings and/or Technical Specifications as the Owner may find necessary, and any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Article 36, Changes, Extra and Omitted Work, and Article 38, Extra Work.

26. DISPUTED WORK

If the Design-Build Entity is of the opinion that any Work required, necessitated, or ordered is not within the terms and provisions of the Agreement, the Design-Build Entity must promptly notify the Owner, in writing, of the Design-Build Entity's contentions with respect thereto and request a final determination thereon. If the Owner determines that the Work in question is part of the Work and not extra Work, the Owner will direct the Design-Build Entity to proceed, and the Design-Build Entity must promptly comply.

27. MATERIALS AND MANUFACTURED ARTICLES

- A. Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendor's names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable, provided the material, article, or equipment so proposed, is, in the opinion of the Owner, of equal substance and function. It shall not be purchased or installed by the Design-Build Entity without the Owner's written approval or approved shop drawings.
- B. If two or more brands, makes of material, manufactured articles, devices, or equipment are shown or specified, each should be regarded as the equal of the other. Any other brand, makes of material, manufactured article, device, or equipment which, in the opinion of the Owner, is the recognized equal of that specified considering quality, workmanship and economy of operation, and is suitable for the purpose intended, may be accepted in accordance with subparagraph A, above. All materials and equipment used in the construction of the project shall be subject to adequate inspection and

testing in accordance with accepted standards. The Owner shall select the laboratory or inspection agency.

- C. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.
- D. All material and workmanship shall, in every respect, be in accordance with what, in the opinion of the Owner, is in conformity with approved modern practice.
- E. Wherever, the Drawings, Technical Specifications or other Agreement Documents, or the directions of the Owner, are unclear as to what is permissible and/or fail to note the quality of any Work, that interpretation will be made by the Owner, which is in accordance with approved modern practice, to meet the particular requirements of the Contract.
- F. In all cases, new materials shall be used, unless this provision is waived by notice from the Owner in writing. Any materials or equipment, which, in the opinion of the Owner, have become excessively weathered or damaged since manufacture, shall not be considered as new.

28. ITEMS SPECIFIED ON DRAWINGS

Items of material, equipment, machinery, and the like may be specified in the Drawings and not in the Technical Specifications. Such items shall be provided by the Design-Build Entity in accordance with the specifications on the Drawings.

29. SHOP DRAWINGS, SUBSTITUTIONS AND LIST OF MATERIALS

Design-Build Entity shall comply with Agreement Documents requirements.

30. SUPPLEMENTARY DRAWINGS

- A. When, in the opinion of the Owner, it becomes necessary to explain more fully the Work to be done, or to illustrate the Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto shall be prepared by the Owner.
- B. The supplementary drawings shall be binding upon the Design-Build Entity with the same force as the Drawings. Where such supplementary drawings require either less or more than the estimated quantities or Work, credit to the Owner, or compensation therefore to the Design-Build Entity, shall be subject to the terms of the Contract.

31. PAYMENTS

- A. During the Part 2 Construction , the Owner will make Payments to the Design-Build Entity, based on periodic estimates in accordance with F.S. 218.735. The Owner will withhold from each progress payment 5% of the payment as retainage in accordance with F.S. 218.735. Design-Build Entity will submit a Substantial Completion Pay Request to the Owner in accordance with the requirements of this Section together with its written notification to Owner that the entire Work for payment has met

Substantial Completion ("Substantial Completion Pay Request"). If the Owner agrees that Substantial Completion has been achieved by Design-Build Entity, the provisions in the second paragraph of this subsection A shall apply. As also provided in Section 5, in the event the Owner does not agree that Substantial Completion has been reached by Design-Build Entity, the Owner will notify Design-Build Entity in writing and shall also state the reasons therefor. In such case, Design-Build Entity shall again notify the Owner when the entire Work has reached Substantial Completion together with another Substantial Completion Pay Request.

Within twenty (20) days after Substantial Completion has been reached and the list has been developed as provided for in Article 16 the remaining contract Agreement balance, including retainage, will be paid to Design-Build Entity, less an amount equal to one hundred and fifty percent (150%) of the cost to complete all items on the list developed as provided in Article 16 ("150% Withholding.") If and only if Final Completion is thereafter achieved, as determined in the sole discretion of the Owner, the 150% Withholding will be released to Design-Build Entity.

The Owner shall not be required to pay or process a Substantial Completion Pay Request for the remaining contract Agreement balance and retainage if the Design-Build Entity has, in whole or in part, failed to cooperate with the Owner in the development of the list of items to be completed or corrected by Design-Build Entity, which is described in Article 16, or has otherwise failed to perform its contractual responsibilities with regard to the development of the list, the requirements in this Article 31 for the Substantial Completion Pay Request, or if Section 255.078(3), Fla. Stat. applies.

- B. The Agreement Price shall be a lump sum price and/or a price obtained by applying fixed unit prices to estimated quantities that are subject to adjustment at completion of the Work to reflect actual quantities involved. The Design-Build Entity shall measure Work already in place and shall at once report to the Owner any discrepancy between the executed Work and the Drawings.

Wherever the unit of measure is listed as a lump sum, the Design-Build Entity is responsible for the determination of the quantities for those items constructed within the authorized plan limits or dimensions. The Owner does not assume any responsibility for any incidental information in the Agreement Documents that may be construed as a quantity of Work and/or materials.

Wherever the estimated quantities of Work to be done and materials to be furnished under this Agreement are shown in any of the documents, they are given for use in comparing work and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the Work contemplated by this Agreement and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

Progress payments on the Agreement Price for the value of Work completed and component material on Site will be made upon request at intervals no more frequently than monthly. The request must be made through the Owner on an approved estimate. payment form, showing the component breakdown of the Work totaling the Agreement Price and the amount of Work for each item completed at the time of the request.

- C. All material and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Design-Build Entity from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.
- D. The Design-Build Entity shall, at the Owner's request, furnish satisfactory evidence that all obligations of the Work have been paid, discharged, or waived. If the Design-Build Entity fails so to do, then the Owner may, after having served written notice on the Design-Build Entity, either pay unpaid bills, of which the Owner has written notice, or withhold from the Design-Build Entity as unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished by Design-Build Entity that all obligations have been fully paid, discharged, or waived, as provided above. Thereupon payment to the Design-Build Entity shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Design-Build Entity or the Design-Build Entity's Surety.
- E. In the event the Owner determines, in its sole discretion, to pay any unpaid bills of the Design-Build Entity, the Owner shall be deemed the agent of the Design-Build Entity, and any payment so made by the Owner, shall be considered as a payment made under the Agreement by the Owner to the Design-Build Entity, and the Owner shall not be liable to the Design-Build Entity for any such payment.
- F. Before commencing the Work, the Design-Build Entity shall provide to the Owner a certified copy of the recorded bond. The Owner will not make any payment to the Design-Build Entity until the Design-Build Entity has complied with this requirement for bonded projects.

Payment will be made by the Owner after commodities/services have been received, accepted, and properly invoiced as indicated in the Agreement Documents.

The Owner will, within twenty (20) working days after receipt of each application for payment, either indicate in writing a recommendation of payment or return the application to the Design-Build Entity indicating in writing the Owner's reasons for refusing to recommend payment. In the latter case, the Design-Build Entity shall make all necessary corrections and resubmit the application.

- G. Each application for payment shall be accompanied by the following:
 - 1. A notarized Affidavit of Disbursement of Previous Periodic Payments to "Subcontractors from the Design-Build Entity for the portion of Work up to the date of that particular pay application;
 - 2. An Owner approved construction schedule update;
 - 3. A letter from the Surety acknowledging Partial Release for Bonded Work;
 - 4. Project photographs for the period of Work completed; and
 - 5. Updated red-lined drawings.
- H. The Owner may, in its sole discretion, withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may

be necessary to protect the Owner from loss on account of:

1. Any claims made against the Design-Build Entity by the Owner or third parties, or if reasonable evidence indicates the probability of the making of any such claim;
2. The Design-Build Entity's default of, or noncompliance with, any Agreement condition;
3. A reasonable doubt that this Agreement will be able to be completed within the time specified or for the balance then unpaid;
4. Defective Work or material not yet remedied;
5. The Design-Build Entity's failure to carry out the Work in accordance with the Agreement Documents;
6. The Design-Build Entity's failure to submit the information required by this Contract; or
7. The Design-Build Entity's failure to submit an owner approved updated Schedule with each Application for Payment.

If claims or liens filed against the Design-Build Entity or the Owner connected with performance under this Agreement are not promptly removed by the Design-Build Entity after receipt of written notice from the Owner to do so, the Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due to the Design-Build Entity under the Contract. If the funds due to the Design-Build Entity are insufficient to meet such cost, or if any claim or lien against the Design-Build Entity is discharged by the Owner after final payment is made, the Design-Build Entity and its Surety or Sureties shall promptly pay the Owner all costs (including attorney's fees) incurred thereby regardless of when such claim or lien arose.

In the event any dispute with respect to any payment or pay request cannot be resolved between the Design-Build Entity and the Owner, the Design-Build Entity may, in accordance with the alternative dispute resolution requirements of the Local Government Prompt Payment Act. (Sections 218.76, et. seq, Florida Statutes), demand in writing a meeting with and review by the Department Director overseeing the Project ("Department Director"). The Department Director or their designee will conduct the meeting and review. Such meeting and review shall occur within ten

(10) business days of receipt by the Owner of Design-Build Entity's written demand. The Department Director, or designee, shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the Owner's final decision for the purposes of the Local Government Prompt Payment Act

32. FINAL BILL OF MATERIALS

The Design-Build Entity shall be required to submit a final bill of materials with unit costs line item requiring materials only. This shall be an itemized list of all materials with a unit cost for each material and the total shall be consistent with unit costs established for each item under the Agreement.

33. FINAL PAYMENT

When all Work embraced under this Agreement shall have been fully completed consistent with the Specifications and stipulations herein and in the Work Order, and to the satisfaction of the Engineer (if available) and the Owner, the Design-Build Entity shall cause a final estimate

to be made of the amount and value of said Work according to the prices and terms of this Agreement. The Design-Build Entity shall certify the final estimate to the Owner. From the sum total so found shall be deducted, firstly, all previous payments made to the Design-Build Entity and secondly, all damages and proper charges under, the Agreement, and the Agreement Documents. The Design-Build Entity shall execute a final receipt and release on the form attached in the Agreement, upon the Owner making the final settlement and payment as aforesaid. The acceptance by the Design-Build Entity of final payment shall be and shall operate as a release of the Owner for all claims and all liability to the Design-Build Entity arising from all things done or furnished in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of this Work. No payment, however, final, or otherwise, shall operate to release the Design-Build Entity or the Design-Build Entity's Sureties from any obligations under this Agreement, including, but not limited to, warranties or pursuant to the Performance and Payment Bond or Public Construction Bond.

34. INVOICES FOR MATERIAL ON SITE

To receive approval for progress payment on component material, the Design-Build Entity is required to submit to the Owner copies of the original paid invoices with the monthly estimate for all material to be approved for payment. This requirement applies to both lump sum and unit price items.

35. SALVAGE

Any existing equipment or material, including but not limited to, valves, pipes, fittings, couplings, etc., which is removed or replaced as a result of construction may be designated as salvage by the Owner and if so, shall be excavated, if necessary, and delivered to the Owner at a location directed by the Owner. Any equipment or material not worthy of salvaging shall be disposed of by the Design-Build Entity at a suitable location offsite at no additional cost to the Owner.

36. CHANGES, EXTRA CLAIMS AND OMITTED WORK

- A. It is mutually agreed that no change involving a material change in cost, either to the Owner or the Design-Build Entity, shall be made except upon written permission of the Owner as further detailed in Agreement Modification Procedures, of the Technical Specifications. Extra work shall be paid for as set forth in Article 38, Extra Work. Omitted Work shall be credited against the money due the Design-Build Entity by one of the methods described in Article 39, Omitted Work. The Design-Build Entity shall make no claim for extra Work unless the Owner, in advance of the Work, has approved it in writing, except that the Design-Build Entity may proceed to meet an emergency condition if the Owner's representative is not available.
- B. The Owner shall, in all cases of dispute, determine the amount or quantity of the several kinds of Work which are to be paid for under this Contract, and shall decide all questions relative to the execution of the same, and such estimates and decisions shall be final and binding.
- C. Any Work not herein specified, which may be fairly implied as included in the Contract, of which the Owner shall judge, shall be done by the Design-Build Entity without extra charge.

37. EXTRA QUANTITIES /REDUCTION TO QUANTITIES

- A. Should it be determined by the Owner that it is necessary to increase the quantities of materials above those required to complete the Work as shown on the Drawings or specified herein due to changes in the design or layout of the Work, the Design-Build Entity shall furnish and install such additional materials or make such additional excavation (as ordered by the Owner). The Design-Build Entity will be paid for the extra quantities at the Agreement unit price. Any Agreement Price and/or Agreement Time adjustment will be by written Amendment.
- B. If such changes of plan result in a decrease in quantities, the Design-Build Entity shall allow a credit against the Agreement Price in accordance with the prices bid for the extra quantities.

38. EXTRA WORK

- A. The Owner may, at any time, by a written Amendment and without notice to the Sureties, require the performance of such extra Work as it may find necessary or desirable arising out of the modification of the Specifications or Drawings. All Work so ordered must be performed by the Design-Build Entity. The amount of compensation to be paid to the Design-Build Entity for any Work so ordered shall be determined as follows:
 - 1. By such applicable unit prices, if any, as are set forth in the Agreement;
 - 2. If no such prices are so set forth, then by a lump sum or other unit prices mutually agreed upon by the Owner and the Design-Build Entity; or
 - 3. If no such unit prices are so set forth in the Agreement and if the parties cannot agree upon a lump sum or other unit prices, then by the actual net cost in money to the Design-Build Entity of the extra Work performed. The cost shall be determined as follows and a proposal submitted to the Owner for review:
 - a. For all labor and foremen/forewomen in direct charge of the authorized operations, the Design-Build Entity shall receive the current local rate of wages, to be agreed upon in writing before starting such Work, for each hour that said labor and foremen/forewomen are actually engaged thereon, to which shall be added an amount equal to fifteen percent (15%) of the sum thereof which shall be considered and accepted as full compensation for general supervision and the furnishing of small tools and miscellaneous equipment used, such as picks, shovels, hand tools, work trucks, small pumps, and similar items.
 - b. For all materials used, the Design-Build Entity shall receive the actual cost of such materials delivered at the Site or previously approved delivery point as established by original receipt bills. No percentage shall be added to this cost.
 - c. For special equipment and machinery such as power-driven pumps, concrete mixers, trucks, and tractors, or other equipment, required for the economical

performance of the authorized Work, the Design-Build Entity shall receive payment based on the agreed rental price for each item of equipment and the actual time of its use on the work. No percentage shall be added to this sum.

- d. For Work to be performed by a Subcontractor retained by the Design-Build Entity, the Owner and the Design-Build Entity shall agree on the cost of the Work to be performed by that Subcontractor and the Design-Build Entity shall receive that agreed-upon amount, together with an amount equal to five percent (5%) of the agreed-upon amount (which shall be considered and accepted as full compensation for coordination and Design-Build Entity profit).
 - e. The Design-Build Entity's profit shall be computed by taking ten percent (10%) of the sum of items 3(a) and 3(b) above.
 - f. The total cost of performing this extra Work shall then be the sum of items 3(a), 3(b), 3(c), 3(d), and 3(e).
- B. Records of extra Work done, if any, shall be reviewed at end of each day by the Design-Build Entity or his representative and the Owner, duplicate copies of accepted records shall be made and signed by both the Design-Build Entity and the Owner, and one copy retained by each.
- C. A claim of payment for extra Work shall be submitted by the Design-Build Entity upon a certified statement supported by receipt bills. Such statements shall be submitted for payment in the month in which the Work was done. No claim for extra Work shall be allowed unless the same was ordered, in writing.
- D. Any request for a Time extension, if applicable, shall be submitted at time of the proposed Amendment. Further, upon execution by the Owner of any Amendment where no time extension has been requested and/or granted, that Amendment shall constitute a complete waiver of all claims for dollars or for any extension of time related to that Work or for any Work impacted by the change.

39. OMITTED WORK

The Owner may, at any time, by a written order and without notice to the Sureties, require the omission of any portion of the Work as it may find necessary or desirable. All Work so identified must be omitted by the Design-Build Entity. The amount by which the Agreement price shall be reduced shall be determined as follows:

- A. By such applicable unit prices, if any, as set forth in the Agreement;
- B. By the appropriate lump sum price set forth in the Agreement; or
- C. By reasonable and fair estimated cost of such omitted Work as determined by the Owner.

40. PROTECTION OF PROPERTY AND PUBLIC

- A. The Design-Build Entity shall be required to strictly obey all applicable ordinances in relation to obtaining permits for occupying, excavating or in anywise obstructing the streets and alleys. Design-Build Entity shall erect and maintain barricades and sufficient safeguards around all excavations, embankments, or obstructions.
- B. Where there are telephone, telegraph, light, or power poles; water mains, conduits, pipes, or drains; or other construction either public or private; in or on the streets or alleys; the Work shall be so conducted that no interruption or delay will be caused in the operation or use of the same.
- C. The Design-Build Entity will not be permitted to interfere with public travel and convenience by grading or tearing up streets indiscriminately, but the Work of conducting the various items of this Agreement shall proceed in an orderly, systematic, and progressive manner.

41. LOCATION AND PROTECTION OF UTILITIES

It shall be the Design-Build Entity's responsibility to ascertain the exact location of all utilities prior to construction regardless of information which may be indicated on the Drawings. Utilities shall be located and marked in the field. The Design-Build Entity shall take whatever steps are necessary to protect the utilities from damage. Any damages sustained by any utility as a result of operations under this Agreement shall be promptly repaired or replaced at the sole expense of the Design-Build Entity and no additional money shall be due for this repair or replacement Work under this Agreement.

The Design-Build Entity will plan the Work and conduct the construction operations in cooperation with the various utility companies. The Design-Build Entity will use extreme caution where construction is performed in proximity to utilities, and the Owner will be notified when any Work may conflict with utilities.

Any conflicts found are to be brought to the attention of the Owner for resolution prior to start of Work. Unless otherwise directed, the Design-Build Entity is to support, or otherwise protect, all utility companies' facilities during construction. The Design-Build Entity shall protect all existing utilities throughout the construction and shall contact the offices of the various utility companies at least 48 hours prior to the start of any construction.

42. OVERHEAD UTILITIES

- A. If there are overhead utility lines in the vicinity of the construction area, Design-Build Entity shall conform to Florida Industrial Commission Regulation 185S-4-CB-1958 "Regulation for Use of Cranes, Draglines and Similar Equipment Near Power Lines.", or the most current standard.
- B. It is the responsibility of the Design-Build Entity to ensure that all utility or other poles, the stability of which may be endangered by the close proximity of excavation, are temporarily stayed in position while Work proceeds in the vicinity of the pole and that the utility or other companies concerned are given advance notice of any such excavation by the Design-Build Entity.

43. COORDINATION OF WORK

The Design-Build Entity may expect other construction to occur in the vicinity of the Site during the course of work under the Contract. In such instances, the Design-Build Entity will be required to cooperate fully so as to eliminate or minimize the creation of conflicts. Adjustments from time to time may be required in the Design-Build Entity's Work location and/or schedule provided a reasonable notice is given by the Owner.

44. SANITARY REGULATIONS

The Design-Build Entity shall furnish necessary sanitary conveniences for the use of laborers on the Site. Sanitary facilities shall be delivered and maintained in such manner and at such points as shall be approved by the Owner. Their use shall be strictly enforced. The Design-Build Entity shall supply sufficient drinking water to his employees from such sources as shall be approved by the Owner and shall obey and enforce such sanitary regulations and take such precautions against infectious disease, as the Owner may deem necessary. Should any infectious disease occur among his employees, Design-Build Entity shall arrange for the immediate removal of the employee from the Work and for isolation of all persons who were potentially in contact with such employee.

45. STORAGE FACILITIES

Should the Design-Build Entity build or furnish storage facilities, or other structures for, tools, machinery, and/or supplies, they shall be permitted only at approved places, and their surroundings shall be maintained at all times in a sanitary and satisfactory manner. All such structures shall be removed together with all rubbish and trash on or before the completion of the Work and at the expense of the Design-Build Entity.

46. DEFECTIVE WORK

- A. If at any time, before final acceptance of the Work or materials, defects therein shall be found, the Design-Build Entity shall promptly correct such defects, remove and dispose of all defective or unsatisfactory Work or materials, and supply non defective materials and Work in accordance with the Agreement Documents. Previous construction of such Work will not relieve the Design-Build Entity of the responsibility for good work or materials, although the defects may have been overlooked by the Owner, or Inspector, or may have been the result of damage from any cause.
- B. Should the Design-Build Entity fail or refuse to remove and renew any defective Work performed, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of the Agreement within the time indicated in writing, the Owner shall have the authority to cause the unacceptable or defective Work to be removed or renewed, or such repairs as may be necessary to be made at the Design-Build Entity's expense. Any expense incurred by the Owner in making these removals, renewals, or repairs, which the Design-Build Entity has failed or refused to make, shall be paid for out of any monies due or which may become due to the Design-Build Entity, or may be charged against the Sureties. Continued failure or refusal on the part of the Design-Build Entity to make any or all necessary repairs, promptly, fully, and in an acceptable manner, shall be sufficient cause for the Owner to declare the Agreement in default, in which case the Owner at its option may instruct the Owner to purchase

materials, tools, and equipment and employ labor or may Agreement with any other individual, firm or corporation, or may proceed with its own forces to perform the Work.

C. All costs and expenses incurred thereby shall be charged against the Design-Build Entity and the amount thereof deducted from any monies due, or which may become due Design-Build Entity, or shall be charged against the Agreement as a deductive Amendment. Any special Work performed as described herein, shall not relieve the Design-Build Entity in any way from the Design-Build Entity's responsibility for the Work to be performed by Design-Build Entity pursuant to the Agreement Documents.

- D. At the request of the Owner, the Design-Build Entity shall, at any time before Final Completion of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Design-Build Entity shall restore said portions of the Work to the standard required by the Agreement Documents. Should the Work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for by Amendment, but should the Work so exposed or examined prove unacceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be at the Design-Build Entity's expense.
- E. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect would be discovered or obligate the Owner to final acceptance.
- F. If any other Design-Build Entity or any subcontractor shall suffer loss or damage on the Work alleged to be due to acts of neglect on the part of the Design-Build Entity, the Design-Build Entity agrees to settle with such other Design-Build Entity or subcontractor by Agreement or arbitration if such other Design-Build Entity or subcontractors will so settle. If such other Design-Build Entity or subcontractor asserts a claim against the Owner on account of any damage alleged to have been sustained due to acts of neglect on the part of the Design-Build Entity, the Owner shall notify the Design-Build Entity, who shall defend, indemnify and save harmless the Owner, its officials and employees, against any such claim. This provision shall survive termination or expiration of the Contract.

47. DISTRIBUTION OF WORK

- A. Arrangement of the Specifications in divisions, under general titles descriptive of the principal materials or trades covered, is for convenience. Under many divisions it has seemed proper to include items of other trades or types of materials, the use, or the installation of which is closely related to the principal subject of that division. Such arrangement shall not render the Owner as an arbitrator to establish sub-Agreement or trade limits between Design-Build Entity and subcontractor or trades.
- B. Design-Build Entity and all subcontractors shall study all of the Drawings and Specifications in sufficient detail to assure that all required items are included. It shall be the Design-Build Entity's responsibility to arrange the distribution of the Work such that all required items are provided by the proper trades and at the proper times, without controversy as to Agreement obligation, or as to jurisdiction, and Design-Build Entity shall make all necessary adjustments to this end.

48. SEPARATE CONTRACT

- A. The Owner reserves the right to engage other contractors in connection with the Work. The Design-Build Entity shall afford such other contractors a reasonable opportunity for storage of their materials and the execution of their work, and shall properly connect and coordinate Design-Build Entity's Work with theirs.
- B. If any part of the Design-Build Entity's Work depends, for proper execution or results, upon the work of any other contractor, the Design-Build Entity shall inspect and promptly report to the Owner any defects in such Work that render it unsuitable for such proper execution and results. Failure of Design-Build Entity to inspect and report shall constitute Design-Build Entity's acceptance, at his/her own risk, of the other contractor's work as fit and proper for the reception of his Work.

49. REFERENCE TO STANDARDS

- A. Wherever reference is made to the furnishing of materials or testing thereof to conform to the standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification or tentative specification adopted and published at the date of advertisement for bids, even if reference has been made to an earlier standard. The standards of the following list of technical societies, section B below, are hereby made a part of the Agreement as if they were incorporated by reference therein and repeated in full.

In the event of any conflict between specifications, standards, codes, or tentative specifications, and the Technical Specifications, the latter shall govern. In the event of conflict with another, the decision as to which shall govern will be decided by the Owner, whose judgment will be final.

- B. Reference to a technical society, organization, or body may be made in the Specifications by abbreviations, in accordance with the following list:

AASHTO	for American Association of State Highway and Transportation Officials
ACI	for American Concrete Institute
AGMA	for American Gear Manufacturers' Association
IEEE	for Institute of Electrical and Electronic Engineers
AFBMA	for Anti-friction Bearing Manufacturers' Association
AISC	for American Institute of Steel Construction
ASCE	for American Society of Civil Engineers
ASTM	for American Society for Testing Materials
ASME	for American Society of Mechanical Engineers
AWSC	for American Welding Society Code
AWWA	for American Water Works Association
AWPA	for American Wood Preservers Association
CIPRA	for Cast Iron Pipe Research Association
Fed. Spec.	for Federal Specification
Navy Spec.	for Navy Department Specification
NEC	for National Electric Code
NEMA	for National Electrical Manufacturers Association
NLMA	for National Lumber Manufacturers Association

SAE	for Society of Automotive Engineers Standards
SFBC	for South Florida Building Code
SHBI	for Steel Heating Boiler Institute
FDOT	for Florida Department of Transportation
U.L., Inc.	for Underwriters' Laboratories, Inc.
ANSI	for American National Standards Institute

- C. When no reference is made to a code, standard, or specification, the standard specifications of the ASTM, the ANSI, the ASME, the IEEE, or the NEMA shall govern.

50. MAINTENANCE OF OPERATION

- A. The Design-Build Entity shall fully cooperate at all times with the Owner in order to maintain the operation of the existing utilities with the least amount of interference and interruption possible. Public health and safety considerations shall exceed all others and the Design-Build Entity's Schedule, plans and Work shall at all times be subject to alteration and revision if necessary for public health and safety considerations. The creation of a public nuisance will not be permitted.
- B. It may be necessary for the Design-Build Entity to interrupt or interfere with the operation of the Owner's Utilities system or a portion of the system. In all cases where the Design-Build Entity must cause an interruption, Design-Build Entity shall prepare and submit to the Owner and to the Owner, 48 hours prior to commencing the Work, a complete description and Design-Build Entity's proposed procedure and a time schedule which Design-Build Entity will guarantee. At least twenty-four (24) hours prior to the time proposed for starting the Work the Design-Build Entity will be notified whether or not the Work will be permitted as proposed.
1. The Owner reserves the right to require the Design-Build Entity to work 24 hours per day in all cases where, in their opinion, interference with operation of the system may result in dangerous health hazards or offensive conditions.
 2. In no case will the Design-Build Entity be permitted to interfere with the existing system until all materials, supplies, equipment, tools, and incidentals necessary to complete the Work are on the Site. Back-up equipment on key equipment items shall be required on Work necessitating interference with the existing system.

51. SAFETY AND HEALTH REGULATIONS

- A. Design-Build Entity shall be solely responsible for initiating and maintaining all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws and regulations. Design-Build Entity shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on or off the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Design-Build Entity shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify owners of adjacent properties, of underground facilities, and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Design-Build Entity shall comply with the applicable requirements of Owner's safety programs, if any.
- D. Design-Build Entity shall inform Owner of the specific requirements of Design-Build Entity's safety program with which Owner's employees and representatives must comply with while at the Site.
- E. Design-Build Entity's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Owner has issued a Final Completion Notice to Owner and Design-Build Entity in accordance with Article 14, Substantial/Final Completion, that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- F. Design-Build Entity shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- G. Design-Build Entity shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with all laws and regulations.
- H. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Build Entity is obligated to act to prevent threatened damage, injury, or loss. Design-Build Entity shall give Owner prompt written notice if Design-Build Entity believes that any significant changes in the Work or variations from the Agreement Documents have been caused thereby or are required as a result thereof. If the Owner determines that a change in the Agreement Documents is required because of the action taken by Design-Build Entity in response to such an emergency, a Construction Change Directive or Amendment will be issued.
- I. The Design-Build Entity shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91596) and under Section 107 of the Agreement Work Hours and Safety Standards Act (PL 9154).

52. GUARANTEES/WARRANTIES

Unless otherwise provided elsewhere in the Agreement Documents, all materials and equipment incorporated into any Work covered by the Agreement shall be new and, where not specified, of the highest grade of quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Agreement, Design-Build Entity warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Agreement, in which case the longer periods of time shall prevail) from and after Final Completion of the Work, regardless of whether the same were furnished or performed by Design-Build Entity or by any of its subcontractors of any tier. In the event that the Owner assumes partial utilization of portions of the Work prior to completion of all Work, the Warranty for that portion shall also extend for twelve months from Final Completion of that portion of the Work, if and only if the Owner has exclusive use of the area. If the Owner does not have exclusive use of the area, the warranty period shall extend for twelve months from Final Completion of the last portion of the Work.

Upon receipt of written notice from Owner of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Design-Build Entity at a time and in a manner acceptable to Owner.

Design-Build Entity warrants such redesigned, repaired or replaced Work against defective design, materials, and workmanship for a period of twelve months from and after the date of acceptance thereof. Should Design-Build Entity fail to promptly make the necessary redesign, repair, replacement and tests, Owner may perform or cause to be performed the same at Design-Build Entity's expense. Design-Build Entity shall perform such tests as Owner may require to verify that such redesign, repairs and replacements, and tests comply with the requirements of the Agreement. All costs incidental to such redesign, repair, replacement, and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Design-Build Entity.

Design-Build Entity and its Surety or Sureties shall be liable for the satisfaction and full performance of the warranties as set forth herein and any damage to other parts of the Work caused by the Design-Build Entity's failure to perform pursuant to this general condition.

The Design-Build Entity is required to provide a designated telephone number for warranty-related emergencies which occur outside the normal workday. The Design-Build Entity is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such Agreement shall not absolve the Design-Build Entity of its responsibility.