

# DRAFT AIA® Document A102™ - 2017

**Modified Standard Form of Agreement Between Owner and Contractor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of May in the year 2022

BETWEEN the Town/Owner:

Town of Surfside  
9293 Harding Avenue  
Surfside, FL 33154

and the Contractor:

[TO BE DETERMINED]

for the following Project:

Construction of the Town of Surfside 96th Street Park

The Architect:

SAVINO & MILLER DESIGN STUDIO, P.A.  
12345 NE 6TH AVE, APT A  
NORTH MIAMI, FL 33161

The Consultant:

[TO BE DETERMINED, IF APPLICABLE]

The Town and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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### ARTICLE 1 THE CONTRACT DOCUMENTS

§1.1 The Contract Documents consist of this Agreement, Modified General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents and exhibits listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

§1.2 Any of the Contract Documents not attached hereto but expressly identified in this Agreement are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto.

§1.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings. Contractor shall attempt to verify measurements at the Project site, but shall not be responsible for the correctness of such measurements.

## ARTICLE 2 THE WORK OF THIS CONTRACT

§2.1 The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### §2.2 RESPONSIBILITY FOR THE CONSTRUCTION OF THE WORK

The Contractor, in full and complete satisfaction of its role as general contractor, hereby accepts responsibility for the completion of the Work as provided by the Contract Documents, and will perform the procurement of materials and equipment required by the Contract Documents, construction coordination, construction, supervision and project management as may be required in order to construct the Work in accordance with the Contract Documents such that the finished Work shall be performed and completed and the Work will be performed in accordance with all required state and local code requirements as are described in the Contract Documents. Notwithstanding, the foregoing shall not be construed to impose any design responsibility on Contractor except where such design responsibility is an existing contractual requirement of the Contractor pursuant to Florida law in performance of the Work or the Contract Documents.

§2.3 The Contractor shall schedule and attend regular meetings with the Town and Architect as required for the timely and proper completion of the Project, but in no event less than weekly (once every week). The following people shall attend the meeting on behalf of Contractor: Project Executive and General Superintendent.

§2.4 The Contractor hereby represents and warrants to the Town that the Contractor has and will continue, to the extent appropriate during the Project: (1) to evaluate the scope, schedule and budget established by the Town, for the Project in order, among other things, (a) to assess the quality and soundness of such program, schedule and budget, (b) to identify and evaluate alternatives to the Town's schedule so as to reduce the time required for construction, (c) to evaluate and recommend alternative materials and systems and methods of achieving the Town's program schedule and cost requirements or other design parameters, and (2) as and when requested by the Town and the Architect and the Town's consultants to discuss and review the cost, scope and schedule any suggested revisions to same.

§2.5 The Contractor hereby represents and warrants to the Town that (a) the Contractor (as a construction professional and not as a design professional) has carefully reviewed and shall continue to review the Drawings (including all notes and specifications contained in the Drawings), designs and other Contract Documents, (b) the responsibilities of the Contractor are properly identified and assigned therein, and (c) the Contractor will timely bring to the attention of Town (via written notification) if it discovers that the Drawing (including all notes and specifications contained in the Drawings) contain any errors, omissions, inconsistencies, or areas of conflict or overlap in the Work to be performed by the Contractor, with sufficient advanced notice so as not to delay the progress of the Work.

§2.6 The Contractor shall coordinate and integrate the activities of the Architect, Contractor, Town, and other persons or entities participating in the construction of the Project.

§2.7 The Contractor hereby represents and warrants that the Contractor has particular expertise and experience in the construction of projects similar to the Project and in the performance of the Work and other services required hereunder.

### §2.8 No recovery for changed market conditions.

In entering into the Contract, the Contractor represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19 and the worldwide pandemic ("COVID-19"); and (2) the current military conflict involving Russia and the Ukraine (the "Ukraine Military Conflict"). Contractor further represents and warrants that in entering into this Contract, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to COVID-19 impacts and the Ukraine Military Conflict impacts. Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into

account these COVID-19 impacts and the Ukraine Military Conflict impacts, and has included all of those factors in the Construction Schedule and Contract Sum.

Contractor will not seek any price increases or time extensions relating to or arising from any COVID-19 impacts or Ukraine Military Conflict impacts.

The Town shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

For purposes hereof "Force Majeure" shall mean only a delay caused by or resulting from acts of God, fire, flood, restrictions or delays by any governmental or utility authority (including, but not limited to, interruption of or unavailability of electric, water, sewer or other utility service, and construction or development moratoria), and such other actions or matters as are beyond Town's control occurring on or affecting the Property or otherwise directly impacting the Property or its development. As COVID 19 and the Ukraine Military Conflict are known as of the time of execution of this Agreement, neither COVID-19 nor the Ukraine Military Conflict shall be considered a Force Majeure and all impacts to pricing and time of performance of work associated with COVID-19 and the Ukraine Military Conflict have been factored into the Contract Sum and the Construction Schedule.

### ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Town to cooperate with the Architect. Further, Contractor acknowledges it shall undertake its obligations to Town in performing the Work and utilizing the Contractor's best efforts, skill and judgment in furthering the Work and the interests of the Project and Town as required by the Contract Documents; to furnish efficient business administration and supervision; to furnish at all times a sufficient supply of workers and skilled personnel, materials and equipment to perform its obligations herein; and to perform the Work in an expeditious and economical manner consistent with the Project's and Town's best interests. The Town agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§4.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Town (the "Commencement Date").
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

§4.2 The Contract Time shall be measured from the Commencement Date.

#### §4.3 Substantial Completion

§4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than **TWO HUNDRED SEVENTY-FIVE (275) DAYS** from the date of commencement of the Work.

§4.3.2 Substantial Completion shall be as defined in § 9.8 of the AIA Document A201™–2017, Modified General Conditions. The Contractor shall achieve Final Completion of the entire Work no later than ninety (90) days after Substantial Completion; provided, however, that if Final Completion is delayed for reasons that are beyond the control of the Contractor and those for whom the Contractor is responsible, the Contractor may request, before expiration of

such ninety (90) day period, additional time (but not an increase in the Contract Sum) to achieve Final Completion, in which event the Town shall not unreasonably deny Contractor's request for such additional time.

§4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.5 below.

#### ARTICLE 5 CONTRACT SUM

§5.1 The Town shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee as set forth below.

§5.1.1 The Contractor's Fee:

The Contractor's Fee for the proper performance of the Work shall be [REDACTED]. Contractor agrees and represents that the level of staffing, administrative resources, and other conditions of General Conditions shall be sufficient to the Project throughout completion of the Work.

§5.1.2 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: As described in Article 6 below.

§5.1.3 Rental rates for Contractor-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§5.1.4 Unit prices, if any, shall be in accordance with the Surfside Park – Price Submittal Schedule of Values Exhibit. Additional unit prices, if any, shall be as follows:

Item	Units and Limitations	Price Per Unit (\$0.00)
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§5.1.5 Liquidated damages.

§5.1.5.1 The parties agree that time is of the essence in all phases of the Work under this Agreement.

§5.1.5.2 Contractor shall achieve Substantial Completion of the Work as set forth in Section 9.8. of the AIA A201 Modified General Conditions, subject to any authorized extensions of time as recognized in properly executed change orders in accordance with the Agreement. In the event the Work is not completed within such number of days and has not been extended by a properly executed change order, if such delay is caused by Contractor or any party for which Contractor is responsible, the Town shall be entitled to collect liquidated damages from Contractor. Contractor and Town agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the sum of One Thousand Five Hundred Dollars (\$1,500.00) shall be assessed for each calendar day of delay in reaching Substantial Completion of the Work. It is hereby agreed that the amounts of the per diem assessment are not a penalty and not excessive in light of the circumstances known to the parties at the time this Contract is executed.

§5.1.5.3 Contractor shall achieve Final Completion of the Work as set forth in this Agreement. In the event Final Completion of the Work is not achieved within the number of days and as set forth in this Agreement, and the time for Final Completion has not been extended by a properly executed change order, and if such delay is caused by Contractor, the Town shall be entitled to collect liquidated damages from Contractor. Contractor and Town agree that because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay, and the difficulty of determining these damages, the following sums shall be assessed for each calendar day of delay Contractor fails to reach Final Completion of the Work after Substantial Completion of the Work a sum of One Thousand Dollars (\$1,000.00) per day. It is hereby agreed that the amount of the per diem assessment is not a penalty and not excessive in light of the circumstances known to the parties at the time the Contract is executed.

§5.1.5.4 The above liquidated damages provision shall not effect Town's right to terminate this Agreement as provided in this Agreement nor shall it limit any of the other remedies as provided in the Contract Documents. The

Town's exercise of its right to terminate this Agreement shall not release Town's claim for liquidated damages in the amount set forth herein or Contractor's defenses thereto.

§5.1.5.5 Assessments of liquidated damages shall be immediately due and payable to the Town or, at the Town's option may be deducted from payments that may be due and owing to Contractor.

§5.1.5.6 Any Subcontract Agreements providing for Liquidated Damages at a per diem amount lower than the per diem amount set forth in this Agreement is subject to Town's prior written approval.

**§5.2 Guaranteed Maximum Price**

§5.2.1 The Contract Sum (including Contractor's Fee) is guaranteed by the Contractor not to exceed « » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Town.

§5.2.2 It is the intent and understanding of Contractor in providing a GMP for this Work, that the Contract Documents provide for the construction of the Work by the Contractor, including all devices, fasteners, materials or other work not shown in the Drawings but which are reasonably inferable therefrom and any and all incidental accessories necessary to complete the Work (even if not specified in the description of the Work, but necessary for proper installation and operation (not arising from a design deficiency in the design criteria of the equipment) of the Work as required by the Contract Documents), all of which shall be included as part of the Cost of the Work. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Work and exercising the care, skill and diligence of the Contractor by the Contract Documents. Notwithstanding, the foregoing shall not be construed to impose any design responsibility on Contractor except where such design responsibility is contractually required or an existing requirement of Florida law in the performance of the Work or the Contract Documents.

§5.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, Contractor shall include in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom as necessary to produce the indicated results (not arising from a design deficiency in the design criteria). Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. Contractor will construct the Project in strict accordance with the Contract Documents.

**§5.2.2 Alternates**

§5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§5.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Town following execution of this Agreement. Upon acceptance, the Town shall issue a Modification to this Agreement.

Item	Price	Conditions for Acceptance

§5.2.3 Allowances, if any, which are included in the Guaranteed Maximum Price are identified on **Exhibit \_\_\_\_\_**, attached hereto. Once an allowance item is fully purchased by Contractor, including all associated Subcontractor Work, and approved by Town as set forth in the Contract Documents, the price will be included within the GMP and the former allowance Work will then be removed from the Allowance list. Change Orders concluding the full Allowance scope in this Agreement shall recite that the affected Allowance is closed as an Allowance and included in the GMP.

§5.2.4 The Town shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Town shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Town and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

### §5.3 SUBCONTRACTOR BUYOUT / VALUE ENGINEERING

§5.3.1 Contractor shall work with the Town to negotiate the most complete and economical deals with the Subcontractors that have not been “bought out” as of the date of this Agreement in order to establish and or achieve the GMP.

§5.3.2 In addition, in order to control costs, the Contractor shall submit to the Town, for the Town’s review for any unbought scope of Work , (i) a bid analysis and list of proposed Subcontractors for the performance of the several portions of the Work, (ii) the scope of Work to be performed under each respective subcontract, (iii) a detailed estimate of the Cost of the Work based on such bids, (iv) a list of alternate selections of persons or entities for each proposed Subcontractor and their respective bids, along with a list of the differences between the alternate bids and those set forth in the bid analysis, and (v) the instructions, clarifications, written responses, and other information given to or submitted by the bidders. The Contractor shall consult with the Town before awarding the subcontract and shall provide the Town with a copy of each proposed subcontract for the Town’s review. The Contractor shall provide the Town with a complete copy of each executed subcontract.

§5.3.3 Until the Subcontractor Buyout is complete, Contractor shall provide Town with written ongoing budget updates on a weekly basis or as requested by Town.

§5.3.4 Value Engineering. Contractor shall participate in Value Engineering the Contract Documents with the Town and the Architect with the goal of finding acceptable means for reducing the Cost of the Work. Upon acceptance by Town of recommendation for Value Engineering, the Contract Documents shall be modified to reflect such changes. All savings in connection with Value Engineering of the Work shall revert to Town.

§5.4 Contractor represents to Town that Contractor has compared and reviewed all general and specific details on the Drawings and that all conflicts, discrepancies, errors and omissions, which are within the commonly accepted knowledge base of a licensed general contractor, subcontractors, but not as a design professional to carry out the Work have been disclosed to the Town to the extent the Contractor has become aware of the same during its review of the Drawings or Contract Documents prior to execution of this Agreement, and therefore Contractor warrants that 1) the GMP includes, without limitation, the cost of correcting all conflicts, discrepancies, errors, or omissions which Contractor identified; 2) that Contractor’s review and comparison of all drawings has been taken into consideration the Project can be constructed in accordance with the Contract Documents and therefore the Contractor represents that the GMP represents the total cost of the Work; 3) that Contractor can complete the Project in the time set forth in the Agreement and the approved Project Schedule; and 4) that Contractor has considered all customary issues that could impact price and time, including the inefficiencies pertaining to the COVID-19 pandemic as well as the Ukrainian Military Conflict.

§5.5 Schedule of Values: The Contractor shall provide to Town, for Town’s written approval, a written Schedule of Values with supporting Subcontractor bids and scope of work used to establish each line item in the GMP, which Schedule of Values shall be used for all payment applications going forward.

## ARTICLE 6 CHANGES IN THE WORK

§6.1 Adjustments to the GMP on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, Modified General Conditions of the Contract for Construction.

§6.2 Adjustments to subcontracts shall either be fixed price, unit price or T&M, as agreed to by Town and Contractor.

§6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017, Modified General Conditions, shall mean the Cost of the Work as defined in Article 7 of this Agreement.

## ARTICLE 7 COSTS TO BE REIMBURSED

§7.1 The Cost of the Work shall include the items listed below, unless specifically stated to be excluded.

§7.1.1 The term the Cost of the Work shall mean costs reasonably incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

§7.1.2 Where, pursuant to the Contract Documents, a cost is subject to the Town’s prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior written approval of the Town.

§7.1.4 The Contractor shall use reasonable efforts to provide a minimum of three (3) bids/proposals for all Work included in Cost of the Work for the Town’s review and consideration, prior to the Contractor procuring the Work for same. The Contractor shall consult with the Town before awarding the subcontract and shall provide the Town with a copy of each Subcontractor bid and proposed subcontract for the Town’s review. The recommendation of the bids, proposals, and Subcontractors for the Work included in the Cost of the Work shall be made solely by the Contractor, with the Town promptly and timely providing final approval of the Contractor’s recommendations in accordance with this Agreement. The Contractor shall provide the Town with a complete copy of each executed subcontract agreement.

### §7.2 Labor Costs

§7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Town’s prior approval, at off-site workshops.

§7.2.2 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are included in the Cost of the Work.

### §7.3 Subcontract Costs

§7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. The subcontract agreements shall provide that Ten Percent (10%) as retention shall be withheld for all payments due Subcontractors.

§7.3.2 Timely and valid claims made by Subcontractors to Contractor may only be considered legitimate Subcontractor costs under this Article 7 to the extent that the entitlement and quantum of each Subcontractor claim have been researched and validated as to amount and that the claim is consistent with this Agreement, the cost are reimbursable pursuant to the Agreement, and the Contractor concurs in writing with the Subcontractor’s position based upon the Subcontractor’s documented representations.

### §7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction. Town must approve all advance payments for Subcontractors deposits and advances for Work deemed “long lead items,” or “special order items” or other selected items pertaining to the Work.

§7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Town’s property at the completion



of the Work or, at the Town's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Town as a deduction from the Cost of the Work.

**§7.4.3** Costs of replacement material but only where replacement material is necessitated by causes other than the negligence of Contractor or its Subcontractors or Suppliers.

**§7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall not be rented at rates in excess of locally prevailing rates. The total rental cost of any Contractor-owned item may not exceed eighty percent (80%) of the value of the equipment.

**§7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§7.5.4** Costs of materials and equipment suitably stored off the site at a mutually acceptable bonded location, subject to the Town's prior written approval.

**§7.6 Miscellaneous Costs**

**§7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Town's prior approval.

**§7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Town's prior approval.

**§7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

**§7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

**§7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017, Modified General Conditions, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Town's consent. However, such costs of legal defenses, judgments, and settlements shall not be included in the calculation of the Contractor's Fee or subject to the

GMP. If such royalties, fees and costs are excluded by the last sentence of § 3.17 of AIA Document A201™–2017, Modified General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§7.6.6 Costs for electronic equipment, and software, directly related to the Work and located at the site, with the Town’s prior written approval.

#### §7.7 Other Costs and Emergencies

§7.7.1 Other costs incurred in the performance of the Work, if and to the extent that it is approved in advance in writing by the Town.

§7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, Modified General Conditions. This provision (§ 7.7.2) is not applicable to expenses and costs related to Hurricane preparation, which costs and expenses are specifically addressed in § 15.13 below.

§7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill an express responsibility of the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### §7.8 Related Party Transactions

§7.8.1 For purposes of § 7.8, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” includes any member of the immediate family of any person identified above.

§7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Town of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Town, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Town fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

### ARTICLE 8 COSTS NOT TO BE REIMBURSED

§8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor’s personnel stationed at the Contractor’s principal office or offices other than the site office, except as may be specifically provided in section 7.2 shall not be separately reimbursable;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Town has provided prior written approval;
- .3 Expenses of the Contractor’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;
- .6 The Costs of the Work shall not include costs due to the fault or negligence of the Contractor, its Subcontractors, or any other person or entity employed by the Contractor or Subcontractors, or under contract with them or performing work on the Project on behalf of them or under their supervision, or for whose acts the Contractor or its Subcontractors may be liable, including, but not limited to the costs of correcting damaged, defective or non-conforming work, disposal and replacement of materials and

equipment incorrectly ordered or supplied, and repairing damage to property not forming party of the Work. The Contractor specifically agrees that it shall receive no compensation, and the Cost of Work shall not include, any costs incurred by the Contractor in repairing or correcting, or supervising the correction or repair of, defective or non-conforming Work performed or supplied by any Subcontractor, material supplier, or any other person or entity employed by the Contractor, under contract with the Contractor, or performing Work on the Project on behalf of or under the supervision of the Contractor or Contractor's personnel and that the Contractor's sole remedy with respect to the recovery of such costs shall be whatever remedies are contained in the Contractor's subcontract agreements with its Subcontractors, suppliers and other persons or entities providing Work on the Project;

- .7 Costs for Subcontractor bonds;
- .8 Any cost not specifically and expressly described in Article 7; and
- .9 Costs, other than costs included in Change Orders approved by the Town or Construction Change Directives that would cause the GMP to be exceeded.

## ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§9.1 Contractor shall endeavor to obtain cash discounts for the benefit of the Town. Cash discounts obtained on payments made by the Contractor shall accrue to the Contractor, unless the Town has provided a cash advance in exchange for the discount, in which case it shall accrue to the Town. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Town, and the Contractor shall make provisions so that they can be obtained.

§9.2 Amounts that accrue to the Town in accordance with the provisions of Section 9.1 shall be credited to the Town as a deduction from the Cost of the Work.

## ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Town may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Town with an indication as to which bids the Contractor intends to accept. The Town then has the right within fourteen (14) business days to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Town, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. It is mutually understood that a "list" may not be complete and the Town and Architect may have to review individual subcontractors on a case by case basis.

§10.2 Unless otherwise stated in the Contract Documents: (a) the Town's Representative shall be permitted to attend and/or participate in all negotiations, including any final meeting, with those Subcontractors selected by the Contractor to bid on portions of the Work, unless otherwise agreed in writing by Town's Representative on a case by case basis. Contractor shall keep the Town and/or Town's Representative advised of the date and time of all such meetings with Subcontractors to facilitate attendance by the Town's Representative; and (b) the Contractor either prior to (if and to the extent reasonably possible) or as soon as practicable after award of this Agreement, shall furnish in writing to the Town and the Town's Representative: (i) the name, address and telephone numbers, trade, and subcontract amount for each recommended Subcontractor; (ii) the Scope of the Work to be performed by such Subcontractor; (iii) the names of all persons or entities proposed as manufacturers of the products identified in the Contract Documents (including those who are to furnish materials or equipment fabricated to a special design); (iv) where applicable, the name of the installing Subcontractor; and (v) the proposed subcontract agreement for each Subcontractor. The Town may reply within seven (7) days to the Contractor in writing stating (1) whether the Town or the Town's Representative has reasonable objection to any such proposed person or entity and/or the Scope of the Work to be performed by such Subcontractor, or (2) that the Town's Representative requires additional time for review.

§10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Town's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Town to receive the same audit rights with regard to the Subcontractor as the Town receives with regard to the Contractor in Article 11.

§10.4 The Contractor agrees to include provisions in any of its subcontracts involving allowance items, cost plus or unit price deals, a provision allowing Town to audit quantities and units and to verify that any billings were properly made for this Work.

## ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Town. The Town and the Town's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of four (4) years after Final Payment, or for such longer period as may be required by law. Such right of access may be exercised at any time during the performance of the Work, after Final Completion, and, if the Contract is terminated for default or convenience, at such time after termination. This Section is applicable to all Change Orders or Claims by or against the Contractor and or a Subcontractor of any tier whether or not they affect the GMP. To the extent Contractor is able, Contractor agrees to include the provisions of this Section in all its contracts and all tier subcontracts with regard to any audits of payments received by the Contractor to verify that such payments were made and that such payments were made for the use required by the Project. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing audit agency. The Contractor agrees to the disclosure of all information and reports resulting from access to records under this Section to the Town. If the Town audits the Contractor's books and records and discovers actual costs or an error in the Contractor's favor by more than one percent (1%) of the Cost of the Work to date, the Contractor shall reimburse the Town for the cost of such audit and the Contractor shall promptly refund the amount overpaid to the Town.

## ARTICLE 12 PAYMENTS

### §12.1 Progress Payments

§12.1.1 Based upon Applications for Payment submitted to the Town and Architect by the Contractor, and Certificates for Payment issued by the Architect, the Town shall make progress payments to the Contractor on account of the Contract Sum, as provided below. The Schedule of Values /Budget shall be the Schedule of Values initially submitted by Contractor and approved by Town in writing, unless modified by Change Order. Each Application for Payment submitted by the Contractor shall be accompanied by substantiating data and lien waivers as provided in the Modified AIA A201 General Conditions to this Agreement.

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

§12.1.3 Provided that an Application for Payment is received by the Town and Architect not later than the last day of a month, the Town shall make payment of the amount certified to the Contractor not later than the 20th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Town not later than twenty-five (25) days after the Architect receives the Application for Payment.

§12.1.4 With each Application for Payment, the Contractor shall submit payrolls hours (subject to fixed labor rates), petty cash accounts, receipted invoices or invoices, and any other reasonable evidence required by the Town or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present

Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee. In addition, as a further condition to payment of each progress payment, Contractor shall submit to Town and/or Town's Representative: (i) a sworn and certified Progress Payment Affidavit, which recites that all laborers, material suppliers and Subcontractors dealing with the Contractor have been paid in full through the date of the prior application for payment which has been received by Contractor from Town, with the exception of disputed payments; (ii) a partial release of lien conditioned upon payment from Contractor for the current Application for Payment, (iii) partial releases of lien from all lienors providing Work on the applicable Application for Payment through the date of the last payment made, (iv) partial releases of lien conditioned only upon payment from all lienors providing Work on the applicable Application for Payment, through the date of the current Application for Payment, (v) any evidence of payment of any indebtedness incurred with respect to the Work of Contractor, as may be required by the Town's Representative and or Architect and such other evidence that Town's Representative and or Architect may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed, and (vi) where required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made.

§12.1.5 Each Application for Payment shall be based on the Schedule of Values approved by Town unless subsequently amended by Change Order in accordance with the Contract Documents. If the Schedule of Values is subsequently amended by Change Order in accordance with the Contract Documents, the each subsequent Application for Payment shall be based on the Amended Schedule of Values. The Schedule of Values shall allocate the entire GMP among the various portions of the Work. As individual subcontracts are executed, the actual subcontract value will be identified separately in the Schedule of Values in place of any estimates that made up the original GMP, with any remaining portion of the line item carried in the same scope of Work, to complete the Work in any particular division, as long as the GMP is not increased. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Town, Town's Representative, or Architect may require. This Schedule of Values and each update approved by the Town and/or Town's Representative shall be used as a basis for reviewing the Contractor's Applications for Payment.

§12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Town or Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§12.1.7 In accordance with AIA Document A201-2017, Modified General Conditions, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Town, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Town;

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to the Contract Documents.

§12.2.7.3 In taking action on the Contractor’s Application For Payment, the Architect and the Town shall be entitled to reply on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Town and/or Architect has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 12.2.4 or other supporting data; that the Architect or the Town has made exhaustive or continuous on-site inspections; or that the Town and/or Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by Town, will be performed by the Town’s auditors acting in the sole interest of the Town.

**§12.1.8 Retainage**

§12.1.8.1 For each progress payment made prior to Substantial Completion of the Work as defined in the Contract Documents, determined and certified by Architect and or Town, the Town may withhold the following amount, as retainage, from the payment otherwise due:

Ten Percent (10%) of all payments until the Work reaches Final Completion as defined in the Contract Documents and determined and certified by Architect and or Town. Contractor shall include a similar retainage provision pertaining to its subcontractors and suppliers.

§12.1.8.1.1 The following items are not subject to retainage:

NA

§12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

NA

§12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

NA

§12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Town shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§12.1.10 Except with the Town’s prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§12.1.11 The Town and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§12.1.12 In taking action on the Contractor's Applications for Payment the Town, Town's Representative, and/or Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and shall not be deemed to represent that (1) the Town, Town's Representative, and/or Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Town, Town's Representative, and/or Architect have made exhaustive or continuous on-site inspections; or (3) that the Town, Town's Representative, and/or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Town, will be performed by the Town's auditors acting in the sole interest of the Town. The Contractor shall make its records available at reasonable times and places for the Town's audit.

§12.1.11 In the event of any default by the Contractor under the Contract Documents for which the Contractor has not cured or commenced to cure, the Town may withhold any payment or part of any payment in the amount of the costs and damages incurred by Town to correct, remedy and/or mitigate any Contractor defaults or the amount costs of damages, including Liquidated Damages (provided the Contract Time has expired), reasonably estimated to be incurred to correct, remedy and/or mitigate any Contractor defaults including, but not limited to: (1) defective Work not remedied; (2) claims or liens filed, unless bonded off; (3) failure of the Contractor to make payments in accordance with the terms of this Agreement and the subcontract agreements for properly performed Work by the Subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all lienors giving notices unless Contractor and/or subcontractor as for lower tiers have a good faith dispute that prevents securing a waiver of lien; (5) damage to the Town's property caused by Contractor, its Subcontractors or anyone working for Contractor, or to the real or personal property of any unit owners or tenants that is not corrected at the time of issuance of a Change Order, notwithstanding insurance coverage as required by the Contract Documents; (6) failure of the Work to progress satisfactorily or according to schedule; and (7) failure to carry out the Work in accordance with the Contract Documents.

## §12.2 Final Payment

§12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Town to the Contractor when:

- .1 the Contractor has fully complied with and performed all of its obligations and/or responsibilities under the Contract Documents, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, Modified General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 all punch list Work has been completed in accordance with the Contract Documents;
- .3 Contractor has obtained all applicable approvals from all governmental and other authorities having jurisdiction over the Work, unless such approvals are being withheld due to causes which are not within the Contractor's responsibility under the Contract Documents;
- .4 Contractor has complied with all other express requirements of the Contract Documents;
- .5 Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .6 Contractor has submitted a certificate of insurance evidencing that the insurance required by the Contract Documents will remain in force after Final Payment, and will continue through the remaining duration of the Project, and thereafter as required by the Contract Documents;
- .7 a final Certificate for Payment has been issued by the Architect and or Town in accordance with § 12.2.2.2 below;

- .8 final lien waivers have been provided by the Contractor and all Subcontractors and material suppliers, conditioned only upon receipt of payments to be made out of the final payment;
- .9 a final affidavit has been delivered to the Town meeting the requirements of Florida Statute 713.06;
- .10 a consent of surety has been delivered to the Town consenting to Town's release of final payment;
- .11 Contractor has submitted a set of final red-line drawings in electronic format for the Project;
- .12 Contractor has provided training to Town's staff on the proper operation, use and maintenance of all equipment and systems for the Project (to the satisfaction of Town);
- .13 Contractor has delivered to Town all warranties, extended warranties and operating manuals for all equipment and components of the Project; and
- .14 all other requirements in § 9.10 of AIA Document A201™-2017, Modified General Conditions have been satisfied.

§12.2.2 Within thirty (30) days of the Town's receipt of the Contractor's final accounting for the Cost of the Work, the Town may conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. Said audit shall be completed within ninety (90) days from submission of Contractor's final accounting.

§12.2.2.1 If the Town conducts an audit of the Cost of the Work, the Town shall, within ten (10) days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§12.2.2.2 Within seven (7) days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Town will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Town a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Town in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017, Modified General Conditions. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017, Modified General Conditions. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§12.2.2.3 If the Town's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017, Modified General Conditions. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Town's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Town shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§12.2.3 The Town's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment and Contractor's strict and full compliance with all conditions precedence to final payment contained throughout the Contract Documents.

§12.2.4 If, subsequent to final payment, and at the Town's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Town shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

§12.2.5 The making of progress payments or final payment shall not constitute or be deemed to be a waiver by the Town of any claims which the Town may have against the Contractor under the provisions of this Agreement or otherwise: and provided, further, that the making of the final payment shall not be deemed a waiver by the Town of



any claims which the Town may have against the Contractor for latent defects or any other defect or an incomplete item which is not readily apparent at the time such final payment is made; and provided further, that the making of final payment shall not be deemed a waiver by the Town of any obligation of the Contractor under the provisions of the Contract Documents or otherwise to repair or correct any Work or materials that prove defective as a result of faulty materials, equipment or workmanship.

§12.2.6 Acceptance of final payment by the Contractor, a Subcontractor or material or equipment supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment or as provided in this Agreement.

## ARTICLE 13 DISPUTE RESOLUTION

### §13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to § 15.2 of AIA Document A201™-2017, Modified General Conditions.

### §13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to § 15.3 of AIA Document A201™-2017, Modified General Conditions, the method of binding dispute resolution shall be subject to and decided by litigation exclusively in the state courts of Miami-Dade County, Florida. Contractor and Town consent to the exclusive venue of the state courts of Miami-Dade County, Florida.

### §13.3 WAIVER OF TRIAL BY JURY

**IN THE EVENT OF LITIGATION, CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, OR IN CONNECTION WITH THE WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ANY ACTIONS OR INACTIONS OF EITHER PARTY.**

## ARTICLE 14 TERMINATION OR SUSPENSION

§14.1 The Contract may be terminated or suspended as provided in Article 14 of AIA Document A201™-2017, Modified General Conditions.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

§15.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017, Modified General Conditions, or another Contract Document, the reference refers to that provision as modified or supplemented by other provisions of the Contract Documents.

§15.2 The Town's representative:

**[TO BE DETERMINED]**

§15.3 The Contractor's representative:

**[INSERT]**

§15.4 Unless otherwise provided in the Contract Documents, the Contractor's representative shall not be changed without ten (10) days' prior notice to the Town.

§15.5 The Contractor represents and warrants the following to the Town (in addition to any other representations and warranties contained in this Agreement and/or the Contract Documents), as a material inducement to the Town to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 The Contractor is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 The Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 The Contractor is authorized to do business in the State of Florida and is properly licensed by all necessary governmental and public authorities having jurisdiction over the Contractor and over the Work and the Project;
- .4 The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly authorized powers;
- .5 The Contractor's duly authorized representative has visited the site of the Project, is familiar with the local conditions under which the Work is to be performed, and has correlated its observations with the requirements of the Contract Documents; and
- .6 The Contractor is a sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of the Work and will perform the Work with the care, skill, and diligence of such a duly licensed Florida General Contractor.

#### §15.6 MODIFICATION

No change or modification of this Agreement shall be valid unless in writing and signed by Town and the duly authorized representative of Contractor. No waiver of any of the provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

#### §15.7 SEVERABILITY AND WAIVER

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

#### §15.8 ATTORNEY'S FEES

In the event that any litigation arises out of or under this Agreement, then the prevailing party in such litigation shall be entitled to recover the cost of such action including reasonable attorneys' fees and paralegal fees for all trial and appellate levels. In any suit, action, or other proceeding, including bankruptcy, arising out of or in any manner relating to the Contract Documents, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Contract Documents (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Contract Documents, the successful or prevailing party, as determined by the court, shall be entitled to recover from the losing party, as determined by the court, reasonable attorneys' fees, paralegal fees, and disbursements (including disbursements which would not otherwise be taxable as cost in the proceeding) and expert witness fees. All references in the Contract Documents to attorneys' fees shall be deemed to include all attorney and paralegal fees as well as through all post-judgment and appellate levels and in connection with collection, and bankruptcy proceedings.

§15.8.1 In addition to the above, the prevailing party shall be entitled to recover from the non-prevailing party, all litigation costs associated with discovery, processing, management, hosting, and production of Electronically Stored Information ("ESI").

#### §15.9 INSURANCE AND BONDS

§15.9.1 The Contractor shall purchase and maintain insurance as set forth in Article 11 of the AIA Document A201™–2017, Modified General Conditions and in the Exhibits to this Agreement and elsewhere in the Contract Documents.

§15.9.2 The Contractor shall provide all requisite payment and performance bonds as set forth in Article 11 of the AIA Document A201™–2017, Modified General Conditions and in the Exhibits to this Agreement and elsewhere in the Contract Documents.

**§15.10 HURRICANE AND TROPICAL STORM PREPARATION**

§15.10.1 Contractor acknowledges that its Work is being performed in South Florida and that the area is prone to Hurricanes and Tropical Storms. Contractor represents that it has anticipated Hurricanes and Tropical Storms and included in its schedule, time impacts associated with Hurricanes and Tropical Storms preparation and agrees not to seek additional time from Town for time impacts associated with Hurricanes and Tropical Storms for preparation. Any delays associated with Tropical Storms and Hurricanes shall be an Excusable, non-compensable Delay, unless covered by Builder’s Risk insurance.

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

§16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Modified Standard Form of Agreement Between Town and Contractor
- .2 AIA Document A201™–2017, Modified General Conditions of the Contract for Construction
- .3 Drawings
  - a. Civil Design Development Plans
  - b. Architectural Design Development Plans
  - c. Electrical Plans
  - d. Landscape Design Plans
  - e. Mechanical Plans
  - f. Plumbing Plans
  - g. Structural Plans
- .4 Technical Specifications
- .5 Other Exhibits:
  - a. E-Verify Affidavit
  - b. Contractor’s Proposal
  - c. Surfside Park – Price Submittal Schedule of Values

Section	Title	Date	Pages
000110	Surfside 96 <sup>th</sup> Street Park Project Manual	May 2022	671

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.  
SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

**TOWN OF SURFSIDE**

**CONTRACTOR**

By: \_\_\_\_\_  
Andrew Hyatt  
Town Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Attest:

Title: \_\_\_\_\_

Entity: \_\_\_\_\_

By: \_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

**Addresses for Notice:**

Andrew Hyatt  
Town of Surfside  
Attn: Town Manager  
9293 Harding Avenue  
Surfside, FL 33154  
305-861-4863 (telephone)  
305-993-5097 (facsimile)  
ahyatt@townofsurfsidefl.gov (email)

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)  
\_\_\_\_\_ (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Lillian Arango, Esq.  
Town of Surfside Attorney  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, FL 33134  
larango@wsh-law.com (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)  
\_\_\_\_\_ (email)

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

**E-VERIFY AFFIDAVIT**

In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

**Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness #2 Print Name: \_\_\_\_\_

Entity Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Florida

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_(name of person) as \_\_\_\_\_(type of authority) for \_\_\_\_\_(name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as  
Commissioned)

- \_\_\_\_\_ Personally known to me; or
- \_\_\_\_\_ Produced identification (Type of Identification: \_\_\_\_\_)
- \_\_\_\_\_ Did take an oath; or
- \_\_\_\_\_ Did not take an oath

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

Construction of Town of Surfside 96th Street Park

THE TOWN OF SURFSIDE/TOWN/OWNER:

TOWN OF SURFSIDE  
9293 HARDING AVENUE  
SURFSIDE, FL 33154

THE ARCHITECT:

SAVINO & MILLER DESIGN STUDIO, P.A.  
12345 NE 6TH AVE, APT A  
NORTH MIAMI, FL 33161

THE CONSULTANT/PROJECT REPRESENTATIVE:

[TO BE DETERMINED, IF APPLICABLE]

The Contractor:

[TO BE DETERMINED]

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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### §1.1 Basic Definitions

#### §1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Town of Surfside, Florida (the “Owner” or the “Town”) and [TO BE DETERMINED] (the “Contractor”) and consist of the Contract, Exhibits to the Agreement, Modified General Conditions, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract (hereinafter the “Agreement” or “Contract”). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Field Directive for a minor change in the Work issued by the Architect or Town. The Contract Documents also include the RFQ issued by Town, Instructions to Bidders, sample forms, other information furnished by the Town in anticipation of receiving bids or proposals. Any of the Contract Documents not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if attached hereto.

#### §1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants, (2) between the Town and a Subcontractor or a Sub-subcontractor, (3) between the Town and the Architect or the Architect’s consultants, or (4) between any persons or entities other than the Town and the Contractor, it being specifically understood and agreed that none of the Contractor’s Subcontractors, Sub-subcontractors, materialmen and equipment suppliers shall be deemed to be a third-party beneficiary of this Contract. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties.

#### §1.1.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all Work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents and fully functioning systems and a fully functioning Project, all in accordance with and as required by all applicable federal, state and local building codes, laws, ordinances, rules and regulations. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

#### §1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Town and by Separate Contractors.

#### §1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### §1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### §1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### §1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Town or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

#### §1.1.9 Knowledge



The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents as used in reference to the Contractor shall be interpreted to mean that which the Contractor reasonably knows, reasonably recognizes, and reasonably discovers or should discover in exercising the reasonable care, skill, and diligence required by the Contract Documents in his capacity as a Contractor. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the reasonable care, skill, and diligence required of the Contractor by the Contract Documents.

§1.1.10 Words such as "provide," "furnish," furnish and install," "supply," "include," and similar terms shall, unless otherwise noted, be directions to Contractor to provide and pay for all labor, materials and services necessary for the proper execution and completion of the relevant Contractor's Work. The term "any" shall be interpreted as any and all whenever more than one item would be applicable for completion of the Work in accordance with the Contract Documents.

## §1.2 Correlation and Intent of the Contract Documents

§1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In case of discrepancy between the Drawings and/or Specifications, or inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. The Contractor must call any such conflict or discrepancy between the Contract Documents and/or between the Contract Documents and applicable standards, codes and ordinances and/or between the Contract Documents and the existing Project it discovers to the Town's attention, in writing, prior to proceeding with the Work. Contractor must verify all grades, elevations, dimensions, locations and quantities indicated on the Contract Drawings prior to the performance of Work. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, locations and quantities. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all grades, elevations, dimensions, locations and quantities relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations and quantities shall be promptly rectified by the Contractor without any additional cost to the Town. Any differences found shall be submitted to the Architect for resolution before proceeding with the Work and in such time so as not to delay the progress of the Work. Whenever a product to be furnished by Contractor requires it to be in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other Association Standard, including the requirement of compliance with any local certifications for products such as a Notice of Acceptance approving the product, the Contractor shall present an affidavit from the manufacturer when provided by the manufacturer and, when requested by the Architect or Town or as set forth in the Specifications certifying that the product complies with the particular Standard or Specification. When provided by the manufacturer and requested by the Architect or Town the specified support test data shall be submitted to substantiate compliance.

### §1.3 Capitalization

Terms capitalized in these Modified General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### §1.4 Interpretation

§1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§1.4.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Claims for additional costs or extensions of time because of the failure of Contractor to familiarize itself with conditions at the Project site will not be allowed. The Contractor shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project and surrounding areas; (2) any limitations as to access associated with the Project; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Town shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

### §1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Drawings provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Drawings. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Drawings on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Town.

§1.5.2 Contractor shall maintain at the Project Site, and shall make available to Town and Architect, one record copy of the Drawings marked to indicate any deviations from the Contract Documents (the "As-Built Drawings") in good order. The As-Built Drawings shall be prepared and updated during the prosecution of the Work. The prints for As-Built Drawing use will be a set of black-line prints provided by Architect to Contractor at the start of construction. Contractor shall maintain said set in good condition and shall use colored pencils to mark-up said set with "as-built information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as either Town or Architect may reasonably request. At the completion of the Work, Contractor shall deliver all As-Built Drawings to Town. Final payment and any retention shall not be due and owing to Contractor until the final As-Built Drawings required above are delivered to Town.

### §1.6 Notice

§1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### §1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## §1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### §2.1 General

§2.1.1 The Town is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Town shall designate in writing a representative who shall have express authority to bind the Town with respect to all matters requiring the Town's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Town" means the Town or the Town's authorized representative.

§2.1.2 Town shall provide Contractor with a copy of the Notice of Commencement, as required by Florida law, that it will file for the Project.

### §2.2 Information and Services Required of the Town

§2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Town shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Fees for temporary certificates of occupancy shall be paid by Contractor and are included in the Contract Sum.

§2.2.2 The Town has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§2.2.3 If the employment of the Architect terminates, the Town shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§2.2.4 The Town shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor may not rely on the accuracy of any information furnished by the Town regarding the location of any utilities or the conditions of the property. Contractor acknowledges that it has investigated the location of utilities and the existing building in its pre-construction investigation and bidding for the Project.

§2.2.5 The Town shall furnish information or services required of the Town by the Contract Documents with reasonable promptness. The Town shall also furnish any other information or services under the Town's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§2.2.6 Unless otherwise provided in the Contract Documents, the Town shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### §2.3 Town's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Town may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Town to stop the Work shall not give rise to a duty on the part of the Town to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

## §2.4 Town's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Town to commence and continue correction of such default or neglect with diligence and promptness, the Town may, without prejudice to other rights and remedies the Town may have, correct such default or neglect. Such action by the Town and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Town for the reasonable cost of correcting such deficiencies, including Town's expenses and compensation for the additional services by the Architect and/or Town's Representative made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Town. If the Contractor disagrees with the actions of the Town or the Architect, or the amounts claimed as costs to the Town, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### §3.1 General

§3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§3.1.3 Contractor represents that it is a properly qualified and licensed Contractor in good standing with the jurisdiction within which the Project is located. Prior to commencement of the Work, Contractor shall provide the Town with copies of the above current licenses. Contractor further represents that it has read, examined and understands the pertinent Contract Documents and that it is qualified and able to perform this Work; that it has a sufficient number of qualified personnel to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work; and that it is financially capable of fully performing the Work under this Contract.

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

### §3.2 Review of Contract Documents and Field Conditions by Contractor

§3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The exactness of grades, elevations, dimensions, conditions, locations and quantities given on any of the Contract Documents, issued by the Architect, Town or the work installed by other contractors, or utilities are not guaranteed by the Architect or Town, and no extra compensation will be allowed on account of differences between actual grades, elevations, dimensions, conditions locations and quantities and grades, elevations, dimensions, locations and quantities indicated on the Contract Documents.

§3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Town pursuant to Article 2, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly, but in no event later than 48 hours, report to the Architect and Town any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly, but in no event later than 48 hours, report to the Architect and Town any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall be liable for damage, loss or expense to the Town, including, without limitation, delays and the cost of correcting

defective construction, resulting from the Contractor's performing any construction activity which it knows or should know involves such errors, inconsistency, omission or variation.

**§3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall not be entitled to any increase in Contract Price or Contract Time and shall pay such costs and damages to the Town, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations.

**§3.2.5** The Contractor represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable, laws, codes, orders and ordinances which bear upon the Contractor's performance of the Work.

**§3.2.6** The Contractor shall coordinate and provide the project schedules in a manner to complete the Project in accordance with the requirements set forth in Section 3.10. The Contractor shall be responsible for the timely and proper finish of the Work and shall not commence any part of it until substrates and surfaces are in proper condition to receive specified portions of the Work.

### **§3.3 Supervision and Construction Procedures**

**§3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Town and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§3.3.2** The Contractor shall be responsible to the Town for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§3.3.4** Contractor has the responsibility to ensure that all material and equipment suppliers, manufacturers, and Subcontractors, and their respective agents and employees adhere to the requirements of the Contract Documents, and that they order and provide all materials, equipment and supplies in a timely manner. Contractor shall coordinate its Work with that of all others under its control or Town's control working on or supplying the Project. Contractor shall be responsible for coordination, locations, and routing of all material and equipment as designed by the Town, Architect, Engineers, and other consultants of the Town. In areas and locations where the proper and most effective location and routing cannot be made as indicated or coordinated, Contractor shall contact Town and Architect in writing and meet with all others involved before proceeding with installations, to plan the most effective and efficient method of overall installation. Contractor shall pay all monthly utilities charges for construction until Substantial Completion.

### **§3.3.5 Contractor's Compliance with Contract Documents.**

The Contractor shall give all notices, and warrants and represents that the Work when completed will be constructed in compliance with the Contract Documents and all applicable federal, state and local laws, codes, regulations, permits, decisions, orders, professional licenses, ordinances, and other legal requirements of the authorities have jurisdiction over the Project. Contractor shall bear responsibility for and bear all costs necessary to insure full compliance with the Contract Documents and all applicable laws, codes and ordinances, including the cost of removing existing Work,

the cost of replacing any Work with Work conforming to the applicable requirements and any attorney's fees or other expenses incurred by Town in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this Section shall survive the completion and final payment or termination of this Contract.

### §3.4 Labor and Materials

§3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the written consent of the Town, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them, or persons not authorized to work in the United States.

### §3.5 Warranty

§3.5.1 The Contractor warrants to the Town and Architect that the Work and materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§3.5.2 Contractor represents and warrants to Town that all labor, materials and/or services furnished, and all Work performed by the Contractor, will be free of defects for a period of five (5) years, unless otherwise provided herein for a longer period, from the date of Final Completion. These warranties are not in lieu of, but are in addition to, any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers. Contractor shall provide to Town all original warranties and guarantees from all Subcontractors, suppliers, manufacturers of equipment and materials installed in connection with the Project, together with any other warranties and guarantees required by the Contract Documents.

§3.5.3 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Town, or shall be transferable to the Town, and shall commence in accordance with Section 9.8.4.

### §3.5.4 Warranty Forms.

The Contractor shall obtain warranties, for a minimum period of five (5) years, from all subcontractors in the form attached as Exhibit "\_\_\_" to the Agreement. Contractor agrees that it shall at no additional cost to Town, secure Extended Warranties for all items having Extended Warranties from the applicable subcontractors, or equipment or material manufacturers, as set forth in the Exhibits to Agreement. Any warranties obtained by the Contractor which deviate from the forms attached hereto must be approved by Town.

§3.5.5 Contractor shall provide to the Town three (3) bound hard-cover books and one (1) electronic copy of same containing the following information:

- .1 All Subcontractor warranties fully executed in the form approved by the Town;
- .2 All Extended Warranties required by the Contract Documents;
- .3 The Contractor's warranty;
- .4 A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities;

The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

**§3.5.6** If the Contractor fails to commence to correct defective or nonconforming Work within three (3) business days from written notice to Contractor, the Town may correct such defective or nonconforming Work. If the Contractor commences to correct such defective or nonconforming Work but fails to diligently and continuously work on such correction, the Town may upon an additional three (3) business days' notice to Contractor, correct such item at Contractor's sole cost and expense. Town may deduct such costs from any monies due Contractor. If the defective or nonconforming Work is discovered after final payment, then Contractor shall pay such cost and expense, including attorney's fees incurred. The Contractor shall bear all costs of correcting such defective Work.

**§3.5.7** The warranty obligations of this Article shall survive completion and final payment or termination of this Contract for the Work performed to the date of termination.

**§3.5.8** In the case of an emergency, Contractor, within twenty four (24) hours of written notice by Town and/or Architect, shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Contract Documents and § 3.5.1. Contractor shall restore surface, subsurface, collateral and primary conditions disturbed during warranty work to their prior condition. Contractor agrees that if Contractor fails to diligently pursue correction of any deficiency in a continuous and expeditious manner until completion, Town may, in its sole discretion, correct such deficiencies at Contractor's sole and exclusive expense and that such action shall not invalidate any conditions of the Contract Documents. Contractor shall indemnify and hold Town harmless from any claims, loss, damage or expense due to defects in the Work.

**§3.5.9** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Town or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents without reimbursement from the Town.

**§3.5.10** If the Town prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Town may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**§3.5.11** Prior to Substantial Completion, Contractor shall obtain all required inspections or other required documentation by the suppliers and Manufacturers' representatives for equipment and supplies during the course of performing the Work and during the warranty period, in order to ensure that all Manufacturer warranties will be honored thorough out the Manufacturer's entire warranty period.

### **§3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§3.7 Permits, Fees, Notices and Compliance with Laws**

**§3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§3.7.3** If the Contractor performs Work it knew or should have known, as a reasonably prudent contractor to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

### **§3.7.4 Investigation of Site**

Prior to the execution of this Agreement, Contractor has performed pre-bid investigations and services of the current Project and conditions. Contractor represents and warrants that its investigation of the site and existing conditions was performed in detail and was sufficient to disclose the condition of the Project Site and all improvements thereon, and the conditions under which the Work is to be performed, including without limitation (i) the location, condition, layout, and nature of the Project Site and surrounding areas, (ii) anticipated labor supply and costs, (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues pertinent to the performance of the Work. By execution of this Contract Contractor warrants that Contractor is familiar with and has taken into account local conditions and all reasonably anticipated things that will have a bearing on performance of Contractor's Work and Contractor's costs, including but not limited to traffic maintenance, disposal, handling and storage of the materials, access and restrictions to the site, the conditions of the character of the Work. Failure on the part of Contractor to properly evaluate any factors of costs prior to signing this Contract shall not form a basis for additional compensation. Execution of this Contract shall be conclusive evidence that Contractor has investigated and is satisfied as to the site conditions to be encountered.

§3.7.5 Town shall not be required to make any adjustment in either the Contract Sum or Contract Time if Contractor fails to comply with the requirements of this Article.

§3.7.6 Town assumes no responsibility or liability for the physical condition or safety at the Project Site or of any improvements thereon during construction. Contractor shall be solely responsible for providing a safe place for the performance of the Work.

### §3.8 Allowances

§3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Town may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances or if they are deleted, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. Where there is a savings on a deletion of any allowance, Town shall receive a proportionate credit of Ten Percent (10%) for Contractor's overhead and profit.

§3.8.3 Materials and equipment under an allowance shall be selected by the Town with reasonable promptness.

### §3.9 Superintendent

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

§3.9.2 Contractor shall assign to the Project team the key employees ("Key Employees") including without limitation engineers, a superintendent, and a project manager, a list of which is attached as Exhibit "\_\_\_" to the Agreement, who shall not be replaced without the Town's prior written consent, which shall not be unreasonably withheld. Unauthorized replacement of the Key Employees by the Contractor may be deemed to be a material breach of this Agreement. If it is necessary to replace the Key Employee(s), the Contractor shall so advise the Town in writing and the replacement individual shall likewise be subject to the Town's approval. The Town may reply within fourteen (14) calendar days of receipt of the information, the Architect may notify the Contractor, stating whether the Town or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Town to provide notice within the 14-day period shall constitute notice of no reasonable objection.



§3.9.3 The Contractor shall not employ a proposed superintendent or Key Employees to whom the Town or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Town's consent, which shall not unreasonably be withheld or delayed.

### §3.10 Contractor's Construction and Submittal Schedules

§3.10.1 Contractor's construction schedule for the Work is attached as Exhibit "\_\_\_\_" to the Agreement. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals, which shall be no less than once per month.

§3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§3.10.3 The Contractor shall perform the Work in strict accordance with the original schedules submitted to the Town and Architect and attached to the Agreement as Exhibit "\_\_\_\_," unless a revision to the schedule is approved in writing by the Town.

§3.10.4 The original construction schedule and all subsequently submitted updated construction schedules shall be in a detailed precedence-style, resource loaded critical path method (CPM) type format satisfactory to the Town and the Architect which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Contractor shall provide Town will the original/planned, resource loaded schedule electronic files in P6 native electronic files (.xer format). Upon review and acceptance by the Town and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as a Exhibit "\_\_\_\_" to be incorporated in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Town of any delays or potential delays. The accepted construction schedule shall be updated one time each month to reflect actual conditions and Contractor shall provide Town with a copy of the updated resource loaded schedule, the electronic files in P6 native electronic files (.xer format), and a list of all changes made to the schedule, at the time Contractor submits its monthly Payment Application. In the event any progress report or schedule update indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the Town and authorized pursuant to properly executed written Change Order. Contractor shall maintain such progress schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available to inspection by Town to substantiate actual activity, duration and completion dates.

§3.10.5 In the event the Town or Architect determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Town shall have the right to order the Contractor, in writing, to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing the Work to avoid the effects of the potential delay; and (4) other similar measures utilizing the most cost effective and reasonable acceleration methods possible to avoid delays and liquidated damages (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and approved construction schedule. The Town's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall be responsible for liquidated damages for delays for failure to meet the construction schedule and to complete the Work within the Contract Time. All Extraordinary Measures required to keep the Project on schedule and to avoid delays shall be a

Cost of the Work but shall not be a basis to increase the Contract Sum. Should Contractor fail to perform the Extraordinary Measures as provided herein the Town shall give the Contractor a three (3) business day notice of default. If the Contractor does not commence and continue to correct the default as provided in this Section, then the Town may supplement Contractor's crews, supply additional manpower, equipment and facilities, and/or other similar measures to avoid delays. Contractor shall be liable to Town for all costs incurred by Town pursuant to this Section. If Contractor does not perform its obligations pursuant to this Section, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost incurred pursuant to this Section. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Town.

§3.10.6 All time limits and obligations are of the essence in the Contract Documents.

§3.10.7 The Town may exercise the rights furnished the Town under or pursuant to this Section as frequently as the Town deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date and/or the Substantial Completion Date set forth in the Contract Documents. Alternatively, Town may exercise termination rights as provided for in the Contract Documents.

### §3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Town, and delivered to the Town upon completion of the Work as a record of the Work as constructed.

### §3.12 Shop Drawings, Product Data and Samples

§3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Town or of Separate Contractors.

§3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Town and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Town and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Town and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Town and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### §3.13 Use of Site

§3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. If the Work requires the use of sidewalks, public ways or other areas outside of the Town's Project site, the Contractor shall be responsible for obtaining all necessary approvals for such work, and Contractor shall pay for and obtain all necessary permits, including but not limited to road closure permits. The Contractor shall also arrange and pay for all local police and fire officers and personnel required to be present at or adjacent to the Project site in connection with the work. The Contractor must secure all materials and equipment that are stored on the Project site and shall take all safety precautions necessary to protect such materials and equipment. The Contractor shall be responsible, as a Cost of the Work included as part of the Contract Sum, for all measures to protect the Project site and property adjacent to the Project, from the Contractor's Work. The Contractor shall be responsible for all damages and costs for failure to comply with this Section 3.13.

§3.13.2 Except for the Contractor, no other entity for whom the Contractor is responsible, including all of its Subcontractors, and any other entity performing work for the Contractor shall erect any sign on the Project site without the prior written consent of the Town.

§3.13.3 Contractor represents that it is familiar with the community in which the Project is being constructed. Contractor has included all adequate security (including but not limited to watchman security guards) measures to protect the site from theft and vandalism in the Contract Sum and Town shall not be responsible for any additional security costs.

### §3.14 Cutting and Patching

§3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Town or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Town or a Separate Contractor except with written consent of the Town and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Town or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### §3.15 Cleaning Up and Repair

§3.15.1 The Contractor shall at all times keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract Documents. At completion of the Work, the Contractor shall, at its sole cost and expense, remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials, from and about the Project.

§3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Town may do so and the Town shall be entitled to reimbursement from the Contractor or Town may deduct the cost of cleanup from any amounts due Contractor.

§3.15.3 Contractor agrees to immediately repair at its sole cost and expense all damages to the Property, including, but not limited to, any damages to real or personal property arising from or relating to Contractor's performance of the Work to the reasonable satisfaction of the Town.

### §3.16 Access to Work

The Contractor shall provide the Town and Architect with access to the Work in preparation and progress wherever located.

### §3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Town and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Town or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### §3.18 Indemnification

§3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Town, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees (at the trial and appellate levels), arising out of or resulting from performance of the Work, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§3.18.2 In any and all claims against the Indemnified Parties by any employee of the Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts.

§3.18.3 The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions.

§3.18.4 The Indemnitors' indemnity obligations under this Section shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), and punitive and consequential damages (if any) arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with any provision of the Contract Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Contract and/or the other the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Moreover, and without limiting the foregoing, the Indemnitor's indemnity obligations under this Section include any and all claims by third parties against Indemnified Parties for consequential damages arising from and/or in connection with this Contract and/or the performance and/or failure of the Work.

§3.18.5 The Contractor shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of the Contractor's defense, indemnity and hold-harmless obligations under this Contract.

§3.18.6 The Contractor shall include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as the Contractor is liable to Town pursuant to this provision.

§3.18.7 Nothing herein is intended to serve as a waiver of sovereign immunity by the Town nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Town is subject to section 768.28, Florida Statutes, as may be amended from time to time.

§3.18.8 The provisions of this Section shall survive final completion and final payment or termination of this Contract.

## ARTICLE 4 ARCHITECT

### §4.1 General

§4.1.1 The Architect is the person or entity retained by the Town pursuant to Section 2.3.2 and identified as such in the Agreement.

§4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Town, Contractor, and Architect. Consent shall not be unreasonably withheld.

### §4.2 Administration of the Contract

§4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Town's representative with the authorities described herein during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Town only to the extent provided in the Contract Documents.

§4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Town, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§4.2.3 On the basis of the site visits, the Architect will keep the Town reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Town (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### §4.2.4 Communications

The Town and Contractor shall be able to communicate with each other, copying the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Town shall promptly notify the Architect of the substance of any direct communications between the Town and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Town. The Contract Documents may specify other communication protocols. Contractor hereby authorizes and consents to direct communications, at any time and in any fashion, between Town and any Subcontractors and Sub-subcontractors on the Project, regarding the Work performed on the Project and the status of payments to said persons or entities for said Work.

§4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§4.2.6 The Town, Town's Representative, and Architect have authority to reject Work that does not conform to the Contract Documents. Whenever the Town, Town's Representative, or Architect consider it necessary or advisable, each of them has authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Town, Town's Representative, or Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§4.2.8 The Architect may prepare Change Orders and Construction Change Directives, and may recommend minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Town, for the Town's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10, which final Certificate for Payment cannot be issued unless all requirements of the Agreement are performed pursuant to Section 9.10.

§4.2.10 If the Town and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Town shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Town or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Town and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§4.2.15 Should the Contractor request information, interpretations of Contract Documents, use of alternates, approval of samples (but not Shop Drawings) or make other similar requests (hereinafter "RFI" or "RFIs"), it shall do so in good faith, in writing, and in a reasonable time and fashion. The Architect's response to RFIs will be made in writing and within five (5) business days except for emergencies which shall be within three (3) business days. The period shall be extended if the Architect is not able to respond due to the failure of Contractor to provide adequate and accurate information to the Architect. Furthermore, should the Architect require compensation to review any Contractor requests which are abusive or unreasonable in number or timing, the Architect shall expedite its review of the RFIs provided Contractor agrees in writing to reimburse Town for any architectural fees necessitated in responding to such RFIs. Contractor agrees that Town may deduct any such architectural fees from any sums otherwise due Contractor.

§4.2.16 With regard to the submission and approval of Shop Drawings or other submittals, the period of time for response is as soon as reasonably possible, but no longer than ten (10) business days, except for emergencies which shall be reviewed by Architect in three (3) business days. It is Contractor's responsibility to determine in advance the amount of time Architect will take to review Shop Drawings or submittals as provided in § 3.10.2, and what information will be required for adequate review. Contractor is further responsible for submitting thorough and complete requests for review or approval in sufficient time so as not to cause any delay to the Contractor's Work. Contractor shall submit Shop Drawings in accordance with the submittal schedule. Contractor will not be entitled to an extension of the Contract Time or increase to the Contract Sum due to any delay on the part of Architect, unless Contractor can demonstrate by clear and convincing documentation that Contractor properly submitted the request in accordance with the approved submittal schedule and Architect failed, due to no fault of Contractor, to respond in accordance with the approved submittal schedule, and was in fact delayed, which delay could not have otherwise been avoided by Contractor.

§4.2.17 Notwithstanding any other provision to the Contract, the Architect or its consultant(s) does not have authority to authorize changes to the Contract Documents. Only Town shall be authorized to execute Change Orders, or otherwise modify these Contract Documents. Should Contractor desire to change any materials, or equipment required by Construction Change Directives, Contractor must first notify the Town and Architect of its intent to deviate from the Contract Documents by preparing a Construction Change Directive and obtain written approval for performance of any Work which changes or deviates from the Contract Documents. Failure to obtain said approval in writing will bar Contractor from any claim for additional compensation, delays or arguing that the Architect or its consultants directed the work.

## ARTICLE 5 SUBCONTRACTORS

### §5.1 Definitions

§5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## §5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Town and Architect the information required by Article 10 of the Contract.

§5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Town or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§5.2.3 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Town or Architect makes reasonable objection to such substitution.

## §5.3 Subcontractual Relations

By written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work that the Contractor, by these Contract Documents, assumes toward the Town and Architect. Each subcontract agreement shall preserve and protect the rights of the Town and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Town. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§5.3.1 Subcontract Agreements. Contractor hereby agrees that each subcontract agreement shall contain provisions granting the Contractor the right to terminate the subcontract at any time for the Contractor’s convenience and without cause. Each subcontract agreement shall preserve and protect the rights of the Town and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Town. Where appropriate, the Contractor shall require each Subcontractor to enter into similar written agreements with Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

§5.3.2 Subcontractor and Material and Equipment Manufacturer Warranties: Contractor shall have each subcontractor performing Work at this Project execute warranties for a minimum period of five (5) years in favor of the Town utilizing forms approved by the Town. Contractor shall also have the subcontractors and material or equipment manufacturers execute Extended Warranties if required by the Contract Documents in favor of the Town utilizing the forms approved by Town.

## §5.4 Contingent Assignment of Subcontracts

§5.4.1 The Contractor hereby assigns to the Town an option to accept assignment of all of Contractor’s contract rights with respect to Subcontractors and material and equipment suppliers that contracted to provide Work, materials and equipment to the Project in accordance with the Contract Documents, provided that Town may elect in writing to exercise that option only after proper termination of the Contractor for Contractor’s default. For those subcontract agreements which the Town accepts by notifying the Subcontractors and Contractor in writing, the option shall include, but not be limited to, all Contractor’s rights to make claims regarding quality of the Work and warranty claims. It is further agreed that all Subcontracts and material and equipment purchase contracts entered into by Contractor or its Subcontractors or material suppliers, shall contain a provision stating that, if after termination of



Contractor for Contractor's default or completion of the Work, the Town may bring any claim directly against any Subcontractor of Contractor, including any surety bond furnished for or on behalf of such Subcontractor, for breach of contract, warranty rights, quality of workmanship, and create third party beneficiary rights of Town in said agreements. It is further agreed and understood that such assignment(s) and third party beneficiary rights are part of the consideration to Town for entering into this Agreement with Contractor and may not be withdrawn. Subcontractor or equipment and material suppliers shall be notified of Town's rights. Additionally, nothing contained in this Agreement shall constitute an assignment of Contractor's rights against the Town or create any third party beneficiary rights in any Subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Town, in addition to Contractor, to make claim for damage or indemnification directly against any Subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment. Additionally, this assignment is for the purpose of permitting Town to require any such Subcontractor or materials and equipment suppliers to complete the unperformed obligations under such Subcontract, should the Contractor be in default or be terminated by Town.

§5.4.2 Nothing in this Article or Agreement shall be deemed to create any contractual relationship between the Town and any Subcontractor, material provider or supplier or to create any rights of any Subcontractor against the Town for any actions, debts, obligations, responsibilities or liabilities occurring prior to any assignment executed pursuant to this Article.

§5.4.3 Upon assignment to the Town under this Section 5.4, the Town may further assign the subcontract to a successor contractor or other entity.

## ARTICLE 6 CONSTRUCTION BY Town OR BY SEPARATE CONTRACTORS

### §6.1 Town's Right to Perform Construction and to Award Separate Contracts

§6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Town under separate agreements. The Town reserves the right to perform construction or operations related to the Project with the Town's own forces and with Separate Contractors.

§6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Town-Contractor Agreement.

§6.1.3 The Contractor shall provide for coordination of the activities of the Town's own forces and of each Separate Contractor with the Work of the Contractor. The Contractor shall participate with any Separate Contractors and the Town in reviewing their construction schedules. The parties acknowledge that the Contractor's schedule has included time for all known separate Town contractors to perform their work, based on Contractor's experience and knowledge. The Contractor shall review those portions of the Contract Documents to be performed by the Town's separate contractors, if any, that may impact Contractor's performance of its Work, and that may be interrelated with the Work to be performed by the Contractor, and shall schedule those separate contractors' work so as to cause no delay to the Work.

§6.1.4 Unless otherwise provided in the Contract Documents, when the Town performs construction or operations related to the Project with the Town's own forces or with Separate Contractors, the Town or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§6.1.5 If any part of the Work depends upon proper execution of work performed by Town or Town's separate contractors, the Contractor, its Subcontractors, and their respective Sub-subcontractors shall, prior to proceeding with the Work, inspect such Work and promptly report to Town any apparent discrepancies or defects in such other Work. Failure of the Contractor, its Subcontractors, or their respective Sub-subcontractors to comply with these requirements shall bar any claims thereafter that defects in Contractor's Work, or delays in the schedule, are due to defects in the Work performed by others. Similarly, if any part of the work performed by Town or Town's separate contractors depends upon proper execution of Work performed by Contractor, its Subcontractors, and their respective Sub-subcontractors, Town's separate contractors shall, prior to proceeding with the work, inspect such Work and promptly report to Contractor any apparent discrepancies or defects in such Work. Failure of Town's separate contractors or utility contractors to comply with these requirements shall bar any claims thereafter that defects in Town's separate contractors' work are due to defects in the Work performed by Contractor.

§6.1.6 Contractor shall provide Town's separate contractors with a reasonable opportunity for the introduction and storage of their materials, equipment and execution of their work.

## §6.2 Mutual Responsibility

§6.2.1 The Contractor shall afford the Town and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Town or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Town or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Town's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable by a contractor with Contractor's knowledge, experience, and skill.

§6.2.3 The Contractor shall reimburse the Town for costs the Town incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Town shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Town or Separate Contractor as provided in Section 10.2.5.

§6.2.5 The Town and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## §6.3 Town's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Town as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Town may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### §7.1 General

§7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or Field Directive for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§7.1.2 A Change Order shall be based upon agreement among the Town, Contractor, and Architect. A Construction Change Directive requires agreement by the Town and Architect and may or may not be agreed to by the Contractor. A Field Directive for a minor change in the Work may be issued by the Architect, subject to authorization by the Town.

§7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### §7.2 Change Orders

§7.2.1 A Change Order is a written instrument signed by the Town and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§7.2.2 All Claims arising out of or relating to a Change Order shall be deemed waived unless expressly reserved in such Change Order. Contractor is specifically prohibited from unilaterally preserving Claims, including Claims for

extension of the Contract Time. Notwithstanding any other provision to the Contract, the Architect or its consultant will not have authority to authorize changes to the Contract Documents.

§7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters which the Contractor knew or should have known relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and all adjustments to the Contract Sum and Contract Time.

§7.2.4 Change Order requests shall not be considered unless and until submitted in writing to the Town and the Architect together with documentation detailing the change and supporting the requested increase or decrease in the Contract Sum and/or Contract Time. Such documentation must show: (i) all materials by quantity and price, (ii) all labor by unit price, (iii) insurance, (iv) permits, (v) payroll taxes and employee benefits, (vi) equipment by quantity and rate, (vii) Subcontractor markup (limited to 10% for overhead and profit) unless otherwise approved in writing by Town, (viii) Contractor's Fee; (ix) a clear and concise statement of the basis for the claim, including dates and names of parties and people involved, with back up information, Contract Documents relied upon, including reference to sections of the Drawings and Specifications, daily reports, weather reports, meeting minutes, correspondence and the like; and (x) an updated schedule meeting the requirements of the Contract Documents, showing the impact of the Change to the agreed upon Project Schedule. Any requested increase to Contract Sum for the Contractor's General Condition costs shall be limited to actual on-site cost increases for General Conditions items incurred as a direct result of the change.

§7.2.5 Under no circumstances shall increase in the cost of materials or labor be considered the basis for a Claims by the Contractor for additional compensation, no matter how severe the increase of the cost of the materials or labor to the Contractor.

§7.2.6 In the event of any dispute between Town and Contractor arising out or relating to the requirements of the Contract, any modification, or the terms of a pending Change Order, the Contractor shall continue to perform the Work, including any Work required by pending Change Orders, and Construction Change Directives and Town shall continue to make payments of undisputed sums in accordance with the Contract Documents, pending final resolution of such dispute.

### §7.3 Construction Change Directives

§7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Town and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Town may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties in writing and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs, provided that Subcontractors may not charge more than ten percent (10%) for overhead and profit on their direct costs of the changed work unless otherwise approved in writing by the Town;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Town of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§7.3.8 The amount of credit to be allowed by the Contractor to the Town for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Town. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net change.

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Town, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§7.3.10 When the Town and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### §7.4 Field Directives for Minor Changes in the Work

The Architect may recommend minor changes in the Work that are not inconsistent with the intent of the Contract Documents and do not require an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's Field Directive for minor changes shall be implemented on in writing issued by the Town. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Town and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### §8.1 Definitions

§8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§8.1.2 The date of commencement of the Work is the date established in the Agreement.

§8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§8.1.5 The term “business day” shall mean any weekday, Monday through Friday, that is not a federal or state holiday. Contractor may work on Saturdays, at Contractor’s cost, as required to meet the Schedule and complete the Work within the Contract Time. Town shall not be responsible for payment of overtime for Work performed on Saturdays without Town’s written prior approval.

## §8.2 Progress and Completion

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

§8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Town in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Town.

§8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## §8.3 Delays and Extensions of Time

§8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Town; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries impacting the South Florida construction industry, unavoidable casualties, or adverse weather conditions documented in accordance with Section 15.1.6.2, or (4) by other causes (unrelated to any act/omission of Contractor or any individuals or entities for which Contractor is responsible) that the Contractor asserts and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§8.3.2 Adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, in whole or in part, by the Contractor, or its Subcontractors and material suppliers; (2) could not be limited or avoided by the Contractor’s timely notice to the Town of the delay; (3) is of a duration not less than one (1) Business day; (4) impacts the critical path of the Project and (5) was mitigated by the Contractor to the maximum extent practicable. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to the Town within five (5) calendar days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

§8.3.3 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§8.3.4 In entering into the Contract, the Contractor represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19 and the worldwide pandemic (“COVID-19”); and (2) the current military conflict involving Russia and the Ukraine (the “Ukraine Military Conflict”). Contractor further represents and warrants that in entering into this Contract, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to COVID-19 impacts and the Ukraine Military Conflict impacts. Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account these COVID-19 impacts and the Ukraine Military Conflict impacts, and has included all of those factors in the Construction Schedule and Contract Sum.

§8.3.4.1 Contractor will not seek any price increases or time extensions relating to or arising from any COVID-19 impacts or Ukraine Military Conflict impacts.

§8.3.4.2 The Town shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

§8.3.4.3 For purposes hereof "Force Majeure" shall mean only a delay caused by or resulting from acts of God, fire, flood, restrictions or delays by any governmental or utility authority (including, but not limited to, interruption of or unavailability of electric, water, sewer or other utility service, and construction or development moratoria), and such other actions or matters as are beyond Town’s control occurring on or affecting the Property or otherwise directly

impacting the Property or its development. As COVID 19 and the Ukraine Military Conflict are known as of the time of execution of this Agreement, neither COVID-19 nor the Ukraine Military Conflict shall be considered a Force Majeure and all impacts to pricing and time of performance of work associated with COVID-19 and the Ukraine Military Conflict have been factored into the Contract Sum and the Construction Schedule.

§8.3.5 No Damage for Delays. Except for delays due to the gross negligence of the Town or active interference by the Town, Contractor's sole and exclusive remedy for delays shall be an increase to the Contract Time. Contractor shall not be entitled to an increase in the Contract Price or to payment of any other additional monies from Town for costs incurred as a result of such delay, including additional or extended General Conditions costs or General Requirements costs. Town's exercise of its rights under this Contract shall in no way be considered active interference.

§8.3.6 All schedule float is the property of Town and may not be used by Contractor.

#### §8.4 Town's Delay and Entitlement to Liquidated Damages

§8.4.1 The Contractor acknowledges that the Contract Time for the Substantial Completion of the Work requires that the Substantial Completion of the entire Work occur on or before specified date(s) as provided in Article 4 of the Contract, subject to any extensions of the Contract Time. "Substantial Completion" is defined in § 9.8.1 of these Amended General Conditions. The Contractor acknowledges and agrees that the Town will suffer severe financial loss in the event of delay and Town shall be entitled to liquidated damages as provided in the Contract Documents.

### ARTICLE 9 PAYMENTS AND COMPLETION

#### §9.1 Contract Sum

§9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Town to the Contractor for performance of the Work under the Contract Documents.

§9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Town or Contractor, the applicable unit prices shall be equitably adjusted.

#### §9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit a schedule of values to the Architect and Town, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

#### §9.3 Applications for Payment

§9.3.1 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Architect and Town an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Town or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retention if provided for in the Contract Documents.

§9.3.1.1 Along with the Contractor's Application for Payment, Contractor shall submit to Architect and Town the following:

- .1 a sworn and certified progress payment affidavit which recites that all laborers, material suppliers and subcontractors dealing with the Contractor have been paid in full up through the date of the affidavit;
- .2 partial releases of lien from Contractor, material suppliers and subcontractors and any lienors serving a Notice to Town as required by this section 9.3, and evidence of proof of payment of any indebtedness incurred with respect to the Work of Contractor as may be required by Town;
- .3 evidence that all Work has been fully performed as required pursuant to the Contract Documents up to the time of the request for payment, and the Work has been inspected and

- accepted by the Architect and any governmental authorities required to inspect the Work, and such other evidence that the Town may reasonably require;
- .4 an updated construction schedule meeting the requirements of section 3.10.4;
  - .5 all other requirements of section 12.1 of the Agreement; and
  - .6 Any other document or information required elsewhere in the Contract Documents as a condition precedent to payment.

#### §9.3.1.2 Release of Liens.

Each release of lien given to the Town shall waive and release any lien rights and claims of the lienors to the extent payment is made with respect to any Work performed through the date of that progress payment. Contractor shall submit a partial release of lien for the current Application for Payment, submit partial releases of lien from all lienors through the date of the last previous payment made, and submit a partial release of lien conditioned only upon payment from Contractor, through the date of the current Application for Payment. For Final Payment, Contractor must submit a Final Release of Lien for itself and for all lienors. Each Final Release of Lien shall include a provision for the release of all Claims and causes of action.

In addition, as Contractor is fully responsible for obtaining the Manufacturers' Warranties, Contractor shall be responsible for obtaining inspections or other acceptable documentation by the Manufacturers' representative for equipment and supplies prior to payment, and delivering, together with the final application for payment and supporting documentation all warranties required by the Contract Documents.

§9.3.1.3 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§9.3.1.4 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Town, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing and provided that Contractor has complied with the Contract Documents related to stored materials. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Town to establish the Town's title to such materials and equipment or otherwise protect the Town's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Town no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Town shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### §9.4 Certificates for Payment

§9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Town a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Town a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Town of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Town of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Town, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract

Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Town to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### §9.5 Decisions to Withhold Certification

§9.5.1 The Architect or Town may withhold or reject a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Town, if in the Town's or Architect's opinion the representations to the Town required by Section 9.4.2 cannot be made. If the Town or Architect is unable to certify payment in the amount of the Application, the Town or Architect will notify the Contractor as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Town. The Town or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Town's or Architect's opinion to protect the Town from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims of lien filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Town is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Town or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay;
- .7 failure of the Work to progress satisfactorily or according to schedule;
- .8 repeated failure to carry out the Work in accordance with the Contract Documents;
- .9 failure to provide releases of lien for each Application for Payment in accordance with the Contract Documents; or
- .10 any other failure to perform a material obligation contained in the Contract Documents

§9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Town makes payments by joint check, the Town shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

#### §9.6 Progress Payments

§9.6.1 After the Architect has issued a Certificate for Payment, the Town shall make payment in the manner and within the time provided in the Contract Documents, subject to Paragraph 9.5.1 of the Amended General Conditions, and shall so notify the Architect.

§9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Town, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.



**§9.6.3** The Town has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Town to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Town shall have the right to withhold payment and contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Town nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§9.6.4** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3.

**§9.6.5** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Town shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

**§9.6.6** Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Town.

**§9.6.7** Town may, in its discretion, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, and deduct said sum from the balance then due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor. In making such payments to lienors/subcontractors, the Town shall require such lienor to execute the waiver of lien form in accordance with §713.06, Fla. Stat.

**§9.6.8 Transfer of Lien.**

In the event any liens should be filed against the Property by any subcontractors or material suppliers in connection with labor or services performed under this Agreement, the materials incorporated into or delivered to the Property, Contractor shall defend, indemnify and hold the Town harmless against all such liens and suits or other proceedings pertaining thereto including any and all costs and attorneys' fees, at both the trial and appellate level. If any such liens are recorded then Contractor must immediately transfer such lien, and in no event no later than seven (7) calendar days after it receives written notice from Town of the filing of the lien, by (a) depositing in the office of the Clerk of the Circuit Court an amount sufficient to transfer said lien; or (b) by filing with the Clerk's office a bond executed by a surety licensed to do business in the State of Florida in accordance with the provisions of Section 713.24, Florida Statutes, and its successors or (c) recording a notice of bond reflecting the prior existence of the Section 713.23, Florida Statutes Payment Bond, to the extent one was provided at the time of execution of the Contract Documents. Should Contractor fail to transfer such lien, the Town may, at its option, do so and deduct the amount expended, including all costs and attorney's fees incurred from any payment then due Contractor.

**§9.6.9 Payments to Subcontractors by the Town.**

**§9.6.9.1** If the Town fails to approve an application for payment for a cause which is the fault of the Contractor and not the fault of a particular subcontractor, or if the Contractor fails to make a payment which is properly due to a particular subcontractor, the Town may after ten (10) calendar days' written notice to Contractor, pay such subcontractor and Contractor jointly, less the amount to be retained under his subcontract.

**§9.6.9.2** The Town shall have no obligation to pay, or to see to the payment of, any monies to any subcontractor. Nothing contained in herein shall be deemed to create any contractual relationship between the Town and any subcontractor or to create any rights in any subcontractor against the Town.

**§9.6.10** No payments made under this Contract shall be evidence of performance of this Contract, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use of the Work by the Town constitute acceptance of the Work hereunder or any part thereof or a waiver of any of the Town's claims..

**§9.6.11** If the Town is entitled to reimbursement or payment from the Contractor or Surety under or pursuant to the Contract Documents, such payment shall be made promptly upon written demand by the Town. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor or Surety fail to promptly make any undisputed payment due the Town after such written notice, the Town shall have an absolute right to offset such amount against the Contract Sum and may, in the Town's reasonable discretion, elect either to: (1) deduct an amount

equal to that which the Town is entitled from any payment then or thereafter due the Contractor from the Town; or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Town is entitled. Nothing contained herein shall be deemed an admission of liability by Contractor nor limit Contractor's right to contest same. Nothing contained in this Section requires consent of Surety or notice to surety of Town's intent to take such action.

**§9.6.12** Provided the Town has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Town from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Town shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### **§9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Town does not pay the Contractor all undisputed amounts within thirty (30) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon fourteen (14) additional days' notice to the Town and Architect, suspend the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### **§9.8 Substantial Completion**

**§9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Town can occupy or utilize the Work for its intended use and obtain all permits, licenses, and certificates required for such use. Specifically, and in addition to the foregoing, in order to achieve Substantial Completion for the Work, Contractor must achieve the following additional, minimum requirements:

1. Site cleanup and restoration of all exterior elements including roof surfaces, ledges, gutters, windows, exterior facades (including without limitation removal of all excess materials, debris, supplies, equipment, temporary structures, ladders, scaffolding, staging and/or trailers) has been completed;
2. All parking areas, all landscaping, all exterior building finishes, all interior building finishes, all interior spaces, all structural, mechanical, and technical systems required by the Contract Documents, all fire and life safety systems, are completed and ready for use or occupancy;
3. The Work is ready for occupancy, completed in accordance with the Drawings and Specifications and the Contract Documents including, but not limited to: (1) low voltage system, if any; (2) MEP trim out, if any; (3) security systems, if any; (4) finish painting, if any; (5) designated flooring, if any; (6) millwork, if any; and (7) cabinets, if any; all as applicable, are complete.
4. The Contractor has submitted the Contractor's Punch List with respect to such items and they have been completed, inspected and approved by the Architect and Town as to scope, number, quality and content;
5. Completion of the those items on the Substantial Completion Punch List the Architect deems necessary for Substantial Completion;
6. The Work is ready for occupancy, completed in accordance with the Plans and Specifications and the Contract Documents and, to the extent it is within the Contractor's scope of Work, all persons or entities having jurisdiction over the Project have issued the appropriate permits, and authorizations for the construction and use of the Work and the Work has received a temporary or final Certificate of Occupancy; and

7. Contractor has complied with the turnover obligations set forth in § 9.9 (including subparts) below.

**§9.8.2** The Contract Time and liquidated damages will continue to run and until all Substantial Completion Punch List items are complete and other conditions for Substantial Completion as set forth above and elsewhere in the Contract Documents are fully satisfied.

**§9.8.3 Substantial Completion List.** When the Contractor considers that the entire Work is Substantially Complete, the Architect, Contractor and Town and/or Town's Representative shall inspect the Work within fifteen (15) days of Town's receipt of written notice from Contractor. Based upon the Substantial Completion Inspection, the Architect shall prepare, coordinate, and submit to the Town and Contractor a detailed list of all remaining Work to be completed or corrected in the Work (the "Substantial Completion List"). The Architect will identify all work necessary to be completed or corrected prior to issuance of the Substantial Completion Certificate, and the remaining items the Contractor shall correct prior to final payment. The Contractor shall, within five (5) days complete and correct all items listed as Substantial Completion items on the Substantial Completion List as a condition to the Architect's Certification of Substantial Completion. The Contractor shall notify Town and Architect when all items in the Substantial Completion List necessary for Substantial Completion are complete and correct, and request inspection by the Town and Architect. The Architect will make an inspection to determine whether the Substantial Completion List is complete. If the Architect's inspection discloses any item, which is not sufficiently complete in accordance with the Contract Documents so that the Town can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. After the second inspection, the Contractor shall be responsible for all costs incurred by Town and Architect to re-inspect the Work a third, or fourth time to determine Substantial Completion. The Contractor's obligation to complete all Work in accordance with the Contract Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify any incomplete or defective Work in any Punch List, completion list, or inspection report, including without limitation the Substantial Completion List.

**§9.8.3.1** Town may retain out of any payments that are due Contractor, any amounts necessary to complete and correct all work listed on the Substantial Completion List in addition to the retainage being held until all of the Work identified on the Contractor's Substantial Completion List has been fully and adequately completed and corrected and Architect has issued a Certificate of Substantial Completion.

**§9.8.3.2** When the Work or designated portion thereof is Substantially Complete, and the Contractor has completed the items listed on the Substantial Completion List as necessary for the issuance of the Certificate of Substantial Completion, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and responsibilities of the Town and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion.

**§9.8.3.3** The Certificate of Substantial Completion shall be submitted to the Town and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

**§9.9 Partial Occupancy or Use or Turnover of the Project to Town**

**§9.9.1** The Contractor shall be responsible for operating and maintaining the Work and all systems and equipment that are part of the Work until Substantial Completion as defined in Paragraph 9.8 of the AIA A201 Modified General Conditions above or until a mutually agreed upon earlier Turnover as set forth herein.

**§9.9.2** The Town may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy, use, or turnover is consented to by the insurer as may be required and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use or turnover may commence whether or not the portion is substantially complete, provided the Town and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under this section. Consent of the Contractor to partial occupancy or use or turnover

shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Town and Contractor or, if no agreement is reached, by decision of the Architect.

§9.9.2 Immediately prior to such partial occupancy or use or turnover, the Town, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§9.9.3 Unless otherwise agreed upon, partial occupancy or use or turnover of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§9.9.4 Prior to the time of Substantial Completion, Turnover or any partial occupancy or use may occur from Contractor to Town, the following minimum requirements must be met by Contractor and submitted to Town:

1. Contractor's installers and operation and regular maintenance personnel have met with Town's representative and the property manager(s) for the Project or other individuals as may be designated by Town, at the Project site, to provide complete instructions and training needed for proper start-up, operation, shut-down and maintenance of that part of Work. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds;
2. Contractor has provided Town with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information related to all equipment and systems on the Project:
  1. Training, maintenance and operating manual information;
  2. emergency instructions;
  3. spare part listings;
  4. wiring diagrams;
  5. recommended "turn around" cycles;
  6. inspections procedures;
  7. shop drawings, product data, and any other applicable information;
  8. detailed information and records for maintenance performed on all equipment and systems on the Project, operated and maintained by Contractor prior to Substantial Completion
3. Contractor has provided Town with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information:
  1. All Subcontractor warranties fully executed in the form approved by the Owner;
  2. All Extended Warranties required by the Contract Documents;
  3. The Contractor's warranty; and
  4. A list of all Subcontractors, Sub-subcontractors and suppliers who performed Work on the Project or who furnished equipment or materials for use in the Project, such list to include the name, address, email address, and telephone number of the responsible person at all such entities.
4. Contractor has provided Owner the Red Line drawings as required by the Contract Documents.

§9.9.5 The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

## §9.10 Final Completion and Final Payment

§9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Town will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§9.10.2 Final payment, including any remaining retention shall not become due until the Contractor satisfies the requirements of the Contract Documents. As used in the Contract Documents, "Final Completion" shall mean such time after Substantial Completion and the following express conditions precedent to Final Payment have been met:

- .1 the Architect has issued a Certificate of Final Completion;
- .2 all "punch list" items have been fully completed to the reasonable satisfaction of Town and Architect, unless the failure of the same to issue is not due to the failure of Contractor to complete its scope of Work;
- .3 the final certificate of occupancy and all final governmental and utility authority permits have been issued, unless the final certificate of occupancy is delayed for reasons that are beyond the control of the Contractor and those for whom the Contractor is responsible;
- .4 Contractor has fully cleaned and restored the site with respect to all of the final punch list work; and
- .5 all temporary utilities are disconnected;

§9.10.3 In addition to the above, Contractor shall have performed and or submitted (as applicable) to the Architect and Town the following:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Town or the Town's property might be responsible or encumbered (less amounts withheld by Town) have been paid or otherwise satisfied, or shall be paid out of Contractor's final payment;
- .2 consent of surety, if any, to final payment;
- .3 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties;
- .4 all previously undelivered manufacturer and Subcontractor guarantees, warranties and manuals and documents;
- .5 final and or conditional releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Town to assure a lien-free and claim-free completion of the Work; Where Contractor is in a dispute with a Subcontractor and or supplier, consent of surety to Final Payment is acceptable.
- .6 To the extent Architect in missing any shop drawings and or submittals, Contractor will provide any such items requested in writing;
- .7 evidence that all temporary utilities have been disconnected;
- .8 the Contractor has fully cleaned and restored the site, including removal of all rubbish and construction debris;

- .9 all final governmental permits for which Contract is responsible under the Contract Documents have been issued and all permits have been closed out,
- .10 Contractor has complied with all partial occupancy or Turnover obligations set forth in Paragraph 9.9.6 of the AIA A201 Modified General Conditions above; and
- .11 Contractor has complied with all other requirements of the Contract Documents.

§9.10.4 The Contractor's obligation to complete all Work in accordance with the Contract Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify any incomplete or defective Work in any punch list, completion list, or inspection report, including without limitation the Substantial Completion Punch List, or any further punch lists.

§9.10.5 Final payment may be withheld on account of (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Town's property caused by Contractor, its subcontractors or anyone working for Contractor, in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected, (6) failure to carry out the Work in accordance with the Contract Documents.

§9.10.6 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Town shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§9.10.7 The making of final payment shall not constitute a waiver of Claims by the Town.

§9.10.8 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§9.10.10 Prior to final payment, Contractor shall (1) organize maintenance and operating manual information into suitable sets of manageable size, and bind into individual binders properly identified and indexed; (2) include as applicable emergency instructions, spare part listing, warranties, guarantees or wiring diagrams, recommended "turn around" cycles, inspections procedures, shop drawings, product data, and any other applicable information; (3) Bind each manual of each set in heavy-duty, three-ring vinyl cover binders, and include pocket folders for folded sheet information; and (4) mark identification on both the front and the spine of each binder.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### §10.1 Safety Precautions and Programs

§10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall comply with all OSHA requirements and shall have a safety program in accordance with OSHA requirements.

§10.1.2 If the Contractor fails to maintain the safety precautions required by law or directed by the Town, the Town may take such steps as necessary and charge the Contractor therefore. The Contractor shall be responsible for payment of any fines or penalties levied by OSHA or other similar entities relating to its Subcontractors violation of safety or health standards.

§10.1.3 The failure of the Contractor to take any such action shall not relieve the Subcontractor of his obligations in Section 10.1.1.

## §10.2 Safety of Persons and Property

§10.2.1 In any area where Contractor is working the Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable 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 and equipment to be incorporated therein, (3) invitees, licensees, employees and reasonably anticipated visitors of the Project; and (4) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Contractor shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. A damage or loss to any property to the extent caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor at his sole cost and expense.

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

§10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§10.2.5 The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under the Contract Documents. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable in whole or in part to the grossly negligent acts or omissions of the Town or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable in whole or in part to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18, which shall govern this Section

§10.2.6 Any damage to adjacent property or improvements shall be promptly repaired by the Contractor, if caused in whole or in part by Contractor or its Subcontractors, any Sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing is not intended to prevent the Contractor from making claim against any insurance that may provide coverage to the Contractor.

§10.2.7 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and theft. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Town and Architect.

§10.2.8 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### §10.2.9 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven (7) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

## §10.3 Hazardous Materials and Substances

§10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. Contractor shall not bring any hazardous materials onto the Project site unless specifically required by the Contract Documents. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable

bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area, take precautions not to exacerbate the conditions, and notify in writing the Town and Architect of the condition. Contractor shall comply with all applicable federal, state and local environmental laws, codes, ordinances and regulations including, but not limited to, all OSHA requirements and regulations.

§10.3.2 Upon receipt of the Contractor's notice, the Town shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Town shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Town in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Town. If either the Contractor or Architect has an objection to a person or entity proposed by the Town, the Town shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Town and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§10.3.3 The Town shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§10.3.4 The Town shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to or causes to be at the site.

§10.3.5 The Contractor shall reimburse the Town for the cost and expense the Town incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site or negligently handles, (2) Contractor's willful misconduct; or (3) where the Contractor fails to perform its obligations under Section 10.3.1.

#### §10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Within ten (10) days of executing the Agreement, the Contractor shall furnish a hurricane preparedness plan to secure the site and prevent damage to the Project, which shall be attached as an exhibit to the Agreement as Exhibit "\_\_\_\_\_".

### ARTICLE 11 INSURANCE AND BONDS

#### §11.1 Contractor's Insurance and Bonds

§11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and having an A.M. BEST's rating of "A-X" or better. The Architect, Town, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§11.1.2 The Commercial General Liability Insurance policy shall be on a occurrence basis with limits of One Million (\$1,000,000.00) Dollars per occurrence and Two Million (\$2,000,000.00) Dollars aggregate dedicated to this Project. Minimum coverage shall include the following and the coverages and requirements set forth in this Agreement:

- .1 personal injury;
- .2 broad form property damage;



- .3 blanket contractual liability;
- .4 XCU coverage; and
- .5 products and completed operations for 10 years.

§11.1.3 The insurance required by Section 11.1 shall be the primary insurance and shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater and shall name Town, Architect and Architect's consultants as additional and named insureds covering bodily injury, death, property damage and personal injury and Town as an additional insured for claims to the extent caused by the Contractor's negligent acts or omissions during the Contractor's completed operations. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment except for completed operations coverage, which shall be maintained for four (4) years after the completion of the Project.

§11.1.4 The Contractor shall not commence any portion of the Work under the Contract until it has obtained all insurance required under this Article 11 or the Agreement and, except for completed operations insurance or except as otherwise provided herein, shall maintain all such insurance policies for a period of not less than four (4) years after completion of this Contract.

§11.1.5 The deductible on all insurance required of Contractor under this Article 11 or the Agreement shall not exceed ten thousand dollars (\$10,000.00) and shall in all events be paid by the Contractor.

§11.1.6 Certificates of insurance, Additional and Named Insured Endorsements, and actual copies of the Insurance Policies in accordance with this Article shall be delivered to the Town prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance, and the certificates of insurance and endorsements are attached hereto as an exhibit to be incorporated in the Contract Documents. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 60 days' prior written notice has been given to the Town. Contractor shall not commence Work and shall not be entitled to any payments under the Contract Documents until the required policies have been delivered to Town and reviewed by Town's insurance professional and found to be in compliance with the Contract Documents.

§11.1.7 An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§11.1.8 Contractor's failure to provide and maintain the insurance required by this Contract shall be grounds for termination, and Contractor shall be liable for all losses, damages, costs and expenses associated with the failure to maintain the required insurance.

§11.1.9 Town, Architect, and such other parties listed on Exhibit "\_\_\_" attached to the Agreement shall be identified as "additional insureds" and "named insured" on all general liability and other policies identified in this Section 11.1, including without limitation all policies covering completed and ongoing operations. The Contractor, Subcontractors and Sub-subcontractors comprehensive general liability policies shall also provide the following ISO endorsements: ISO CG 20 10 1185 or its equivalent. Contractor shall include provisions in subcontracts requiring subcontractor insurance as set forth herein to name Town as an additional insured. Contractor shall also furnish copies of such subcontractor insurance certificates to Town upon request.

§11.1.10 Except to the extent covered by and paid by insurance, the Contractor shall be responsible for all loss or damage Contractor or its Subcontractors cause to the Work, including the Contractor's materials delivered to site for incorporation therein and all property issued to the Contractor by the Town for use or incorporation in the Work.

§11.1.11 The Contractor shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanic, any tools, equipment, stagings, towers and forms owned or rented by its subcontractors or agents under this Contract. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the

Town or its agents and employees for any losses of owned or rented equipment or for any Work damaged. If the Contractor secures such insurance, the insurance policy shall include a waiver of subrogation as follows: "It is agreed that in no event shall this insurance company have any right of recovery against the Town." The Contractor agrees to cooperate fully with the insurance company or companies in carrying out the provisions and conditions of all policies applicable to Work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports and audits. The Contractor further agrees that notice of every accident will not only be reported immediately to the Town, and also to such insurance company or companies.

§11.1.12 Every subcontract shall contain complete insurance provisions identical to Sections included herein for the benefit, protection, and indemnification of the Contractor and the Town.

## §11.2 Town's Insurance

§11.2.1 The Town shall be responsible for maintaining the Town's usual liability insurance and Builder's Risk coverage. The parties agree and acknowledge that, should any insurance maintained by the Town not provide coverage for losses and/or damages arising from any acts, errors, omissions, or negligence on the part of the Contractor and/or its subcontractors, the Contractor and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Contractor should be covered for such losses by the Contractor's general liability or other insurance policies.

§11.2.2 The Town's Builder's Risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until completion of the Project.

- .1 Deductibles: The Town's Builder's Risk insurance shall have a reasonable deductible, with such deductible amount to be determined at the sole discretion of the Town. The Contractor shall pay for any deductibles on the Town's insurance policies for claims to the extent they arise in whole or in part as a result of the Contractor's, or third parties for which Contractor is responsible, acts, errors, or omissions under this Agreement.
- .2 Any Town's Builder's Risk insurance policy shall extend only to materials actually installed in the Project or at the premises ready for installation (unless otherwise agreed by the insurer). Any plant, materials, equipment, tools or fixtures forming a part of the capital assets of the Contractor or belonging to any of its employees shall not be covered by the builders risk insurance maintained by Town. Any such Builder's Risk insurance policy shall be subject to the usual limitations and exclusions normally contained in such policies of insurance, including, without limitation, a reasonable deductible at the discretion of the Town. In the event of any loss or damage paid by the Builder's Risk policy, such proceeds shall be accepted and used by Town at Town's sole discretion.
- .3 Unless otherwise provided in the Contract Documents, the Builder's Risk insurance shall cover portions of the Work stored off the Site after written approval of the Town at the value established in the approval, and also portions of the Work in transit.

## §11.3 Waivers of Subrogation

§11.3.1 Except for losses due to the negligence or breach of contract of a, subcontractor, sub-subcontractor or persons they are responsible for, the Town and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other for compensation for damages caused by fire or other perils to the extent paid for by the Town's Builder's Risk insurance, Town's property insurance, or by the Contractor's liability insurance obtained pursuant to this Article, except such rights as they have to proceeds of such insurance held by the Town and the Contractor. This shall not act as a waiver of any other rights or remedies under the Contract Documents.

§11.3.2 A loss insured under the property or Builder's Risk insurance for the Property shall be adjusted by the Town, using reasonable discretion and not as a fiduciary for Contractor or any other interested party, and made payable to the Town for the insureds, as their interest may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate written agreements where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§11.3.3 The Town shall not be required to give bond for performance of the Town's duties. The Town may deposit in a separate account insurance proceeds so received, which the Town shall distribute in accordance with the terms of any settlement reached with the Builder's Risk insurer. If after such loss no other special agreement is made and unless the Town terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor in accordance with this Agreement and paid for by Town.

#### §11.4 Performance of Bond and Payment of Bond

§11.4.1 Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§11.4.3 To the extent required by the Contract, Contractor shall provide the Town with a 100% performance bond in the amount of the Contract Sum utilizing the form provided with these Contract Documents which shall incorporate the obligation of Surety referenced in this Contract and an unconditional payment bond in accordance with Fla. Stat. § 713.23 in the amount of the Contract Sum covering the faithful performance of the Contract and payment of all obligations thereunder. The bonds shall be executed by a surety that is licensed in Florida and shall remain in effect as required by law and the Contract Documents. The bonds shall be effective as of the Commencement Date as defined in the Contract and shall cover all Work and obligations under the Contract Documents.

§11.4.4 The Contractor shall, upon approval of the bonds by the Town, record the bonds with the County Clerk's Office of the county in which the work is to be performed and promptly furnish the Town with a certified copy of the recorded bonds.

§11.4.5 Both the payment bond and the performance bond under this Article shall display the Surety's bond number, and attach a rider containing the following provisions:

- .1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any other addition, alteration, change, extension of time, backcharge, or other modification of the Contract Documents, or forbearance on the part of either Town or Contractor to the other, shall not release Surety of its obligations hereunder, and notice to the surety of such matters is hereby waived.
- .2 Surety hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed or any moneys due or to become due thereunder. Surety expressly consents to the payment provisions as provided in this Contract. In any event, even if the Surety fails to include such language in its bond, by incorporating this Contract into the Payment and Performance Bonds furnished for this Project, Surety agrees to the provisions of this Article and the provisions of § 11.4.4.
- .3 Surety hereby agrees that if, after the 14 day Notice to the Contractor and Surety, the Contractor and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Contractor, without the need to terminate the Contractor, shall be liable to Town for any damages the Town may sustain and be entitled to pursuant to the Contract and the bonds. No further Notices shall be required by Town.

§11.4.6 Should Contractor fail to perform any of its obligations under this Contract, the Town shall give the Contractor and Surety a fourteen day (14) Notice of Default. After receipt of the 14 day Notice provided herein, the Contractor and Surety shall have the right and opportunity to cure the default(s). If, after the 14 day Notice, the

Contractor and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Contractor, without the need to terminate the Contractor, shall be liable to Town for any damages the Town may sustain and be entitled to pursuant to this Contract and the bonds. No further Notices shall be required by Town.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### §12.1 Uncovering of Work

§12.1.1 If a portion of the Work is covered contrary to the Architect's or Town's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Town, be uncovered for the Architect's or Town's examination and be replaced at the Contractor's expense without change in the Contract Time.

§12.1.2 If a portion of the Work has been covered that the Architect or Town has not specifically requested to examine prior to its being covered, the Architect or Town may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### §12.2 Correction of Work

#### §12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, including any attorneys' fees incurred by the Town, shall be at the Contractor's expense. The obligations of this Section shall survive completion and final payment or termination of the Agreement.

#### §12.2.2 After Substantial Completion

§12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within three (3) years after the date of Substantial Completion of all the Work or any longer period provided in an Extended Warranty, is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Town to do so. The Town shall give such notice promptly after discovery of the condition. If the Contractor fails to commence correction of nonconforming Work within five (5) business days after receipt of prior reasonable notice by the Town, the Town may correct the nonconforming Work in accordance with Section 2.4. Contractor is obligated to reimburse Town for all corrective costs and damages incurred as a result of Contractor's failure to correct nonconforming Work. This obligation shall survive completion and final payment or termination of the Contract.

§12.2.2.2 The three-year period for correction of Work or any longer period provided in an Extended Warranty shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§12.2.2.3 The three-year period for correction of Work or any longer period provided in an Extended Warranty shall be extended for corrected Work performed by the Contractor pursuant to this Section 12.2.

§12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Town.

§12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Town or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### §12.3 Acceptance of Nonconforming Work

If the Town prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Town may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If payments due to the Contractor are insufficient to cover the adjustment, Contractor shall pay the difference to the Town.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### §13.1 Governing Law

The Agreement and the Contract Documents shall be governed by the law of the State of Florida without regard to conflicts of law provisions.

### §13.2 Successors and Assigns

§13.2.1 The Town and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### §13.3 Rights and Remedies

§13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§13.3.2 No action or failure to act by the Town, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing. The invalidity of any part or provisions of the Contract Documents shall not affect the validity or enforceability of any other part of the Contract Documents. Any waiver by the Town of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach, and any waiver by the Town of any right to terminate the Contract shall not be held to be a waiver of any breach of the Contract Documents, but the Town retains all its rights to recover damages therefor.

### §13.4 Tests and Inspections

§13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Town, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§13.4.2 If the Architect, Town, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Town may on its own arrange for such additional testing, inspection, or approval, or the Architect will, upon written authorization from the Town, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Town, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Town's expense.

§13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures, additional testing, and compensation for the services and expenses of the Architect, Architect's consultants, Town's consultants, including special and threshold inspectors or other engineers, shall be at the Contractor's expense. Town may deduct such amounts from the balance due the Contractor.

§13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### §13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as provided in the Contract.

### §13.6 Time Limits on Claims

The Town and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§13.7 It shall be incumbent upon the Contractor to have permit revisions issued and executed by the Building Department in a timely manner so as not to delay the construction process, and the Contractor shall bear the cost of such revisions.

§13.8 The Construction work Saturdays, Sundays or after normal hours, if approved, shall be at no additional cost to the Town.

### §13.9 Maintenance

Various materials and finishes of materials exposed to the Florida environment will begin to deteriorate over time. Materials such as rooftop equipment, piping, conduits, etc., as well as finishes for stainless steel, wood, aluminum, etc. are all subject to deterioration. The Contractor is to provide the Town a maintenance program for various products on the project. All maintenance required prior to Substantial Completion or partial occupancy or Turnover will be performed by Contractor as part of the Work. Contractor shall not be responsible for maintenance following Substantial Completion or partial occupancy or Turnover.

### §13.10 Maintenance Records

After Substantial Completion (but before Final Payment) or upon occupancy, the Contractor shall meet with and arrange for each installer of parts of Work requiring regular maintenance to meet with Town's representative and the property manager(s) for the Project or other individuals as may be designated by Town, at the Project site, to provide basic instructions needed for proper operation and maintenance of that part of Work. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds. Completion of all training is an express condition precedent to Final Payment.

### §13.11 No Agency Relationship

It is understood that Contractor is not herein appointed the agent of Town but is and shall remain an independent contractor. Accordingly, all aspects of Contractor's performance of the Agreement, except as specifically provided in the Agreement, shall be under the direction and control of Contractor.

### §13.12 Third Parties

No provision in the Agreement shall create or give to third parties any claim or right of action against Town.

### §13.13 Place of Work

Contractor, under regulations prescribed by Town, shall use only established roadways, and such temporary roadways as may be approved by Town. When materials or equipment are transported in performance of the Work, vehicles shall not be loaded beyond the load limit as established by federal, state or local law regulations. When it is necessary to cross curbing and/or sidewalks, protection against damage shall be provided by Contractor, and any damage caused will be immediately repaired by Contractor, at Contractor's cost, and if not repaired by Contractor within five days after notice in writing, Town may make such repairs and charge the amount of such repairs to the Contractor. All existing sidewalks, curbs and pavements disturbed, broken, removed, or otherwise damaged by Contractor, during the

performance of the Work under the Agreement, shall be replaced by the Contractor at its sole expense. Replaced or repaired sidewalks, curbs, and pavements shall be constructed of similar materials and by similar methods to the original construction. Replaced or repaired sidewalks, curbs and payment shall be smoothly blended into the existing Work and shall not present depressions or humps and shall be acceptable to Town.

#### §13.14 Value Engineering.

Contractor has assisted and will continue to assist Town and Architect in suggesting alternates to the items specified in an exhibit attached hereto to be incorporated in the Contract Documents, but the ultimate decision is that of the Town and Architect to determine the cost, suitability, fitness and appropriateness for use of the items suggested by the Contractor. All cost savings attributable to Value Engineering shall belong to Town.

#### §13.15 Public Records/Ownership and Access to Records and Audits.

§13.15.1 Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Work performed for the Town which are conceived, developed or made by Contractor during the term of this Agreement (“Work Product”) belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

§13.15.2 Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of four (4) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

§13.15.3 Upon request from the Town’s custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

§13.15.4 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

§13.15.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

§13.15.6 Any compensation due to Contractor shall be withheld until all records are received as provided herein.

§13.15.7 Contractor’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

**§13.15.8 Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: Sandra McCready, MMC**  
**Mailing address: 9293 Harding Avenue**  
**Surfside, FL 33154**  
**Telephone number: 305-861-4863**  
**Email: smccready@townofsurfsidefl.gov**

§13.16 **Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

§13.17 **Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

§13.18 **Boycotts.** The Contractor is not currently engaged in, and will not engage in, a boycott, as defined in Section 3-1.1 of the Town of Surfside Code of Ordinances.

#### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

##### §14.1 Termination by the Town for Cause

###### §14.1.1 The Town may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is in substantial breach of a provision of the Contract Documents;
- .5 admits in writing its inability to pay its debts generally as they become due, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency;
- .6 submits an Application for Payment, sworn statement, waiver of lien, affidavit or document that is intentionally falsely filed; or
- .7 has a construction lien filed against any part of the Work or the site of the project for work performed under the Agreement for which the Contractor has been paid by the Town and not promptly bonded or insured over by the Contractor in accordance with Florida Statutes after five (5) days written notice to the Contractor.

§14.1.2 When any of the reasons described in Section 14.1.1 exist, the Town, may, without prejudice to any other remedy it may have and after giving the Contractor seven (7) day's written notice, terminate the Agreement and take possession of the site and all materials, tools, equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Town may deem expedient.

§14.1.3 When the Town terminates the Contract for one of the reasons stated in Section 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§14.1.4 The Town's right to terminate the Contract, pursuant to this Section, shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

§14.1.5 Should Town Terminate for Cause and should a court of competent jurisdiction subsequently determine that the Termination for Cause was improper, then in that event, the Termination shall be considered a Termination for Convenience as set forth in Paragraph 14.3 below.

##### §14.2 Suspension by the Town for Convenience

§14.2.1 The Town may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Town may determine.



§14.2.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### §14.3 Termination by the Town for Convenience

§14.3.1 The Town may within seven (7) calendar day's prior written notice terminate the Contract for the Town's convenience and without cause.

§14.3.2 Upon receipt of notice from the Town of such termination for the Town's convenience, the Contractor shall

- .1 cease operations as directed by the Town in the notice;
- .2 take actions necessary, or that the Town may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§14.3.3 In case of such termination for the Town's convenience, the Town shall pay the Contractor for Work properly executed; costs incurred by reason of the termination. In the event of Termination for Convenience, the Town shall not be liable to the Contractor for lost profits on any Work not performed, home office overhead, or any other type of consequential, special or indirect damages and Contractor hereby waives same. All costs of performance claimed by Contractor must be fully supported by the Contractor's invoices and other documentation acceptable to the Town, and shall be subject to the Town's audit. The Contractor shall make its records available at reasonable times and places for the Town's audit. Payments to the Contractor shall be reduced by any setoffs, damages, claims to which the Town is entitled under this Contract.

§14.3.4 The Town's right to terminate the Contract shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

## ARTICLE 15 CLAIMS AND DISPUTES

### §15.1 Claims

#### §15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Town and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Town to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Submittal of a request for Change Order shall not be considered notice of a Claim required by this Article.

#### §15.1.2 Time Limits on Claims

The Town and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Town and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### §15.1.3 Notice of Claims

§15.1.3.1 Claims by either the Town or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor for an increase in the Contract Sum or the Contract Time must be made within five (5) days after occurrence of the event giving rise to such Claim.

§15.1.3.2 Claims by either the Town or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### §15.1.4 Continuing Contract Performance

§15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Town shall continue to make payments in accordance with the Contract Documents.

§15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### §15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### §15.1.6 Claims for Additional Time

§15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include a Time Impact Analysis and probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§15.1.6.2 If exceptional and unusual adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### §15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Town for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all of Contractor's consequential damages due to Town's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### §15.2 Initial Decision

§15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Contract. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to resolution of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Town. Contractor must continue with its Work when a Claim is pending before the Initial Decision Maker.

§15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision

Maker in rendering a decision. The Initial Decision Maker may request the Town to authorize retention of such persons at the Town's expense.

§15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision is not binding on the parties and is subject to binding dispute resolution.

§15.2.6 In the event of a Claim against the Contractor, the Town may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Town may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

### §15.3 Mediation

§15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§15.3.2 In the event that the parties agree in writing to mediation, such mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The written agreement to mediate shall be filed with the person or entity administering the mediation. If the mediation process is initiated concurrently with the filing of binding dispute resolution, including litigation, proceedings, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### §15.3.5 Litigation

Litigation of Claims, disputes or other matters in question between the Town and Contractor arising out of or relating to this Contract or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the state courts of the 11<sup>th</sup> Judicial Circuit of Miami-Dade County, Florida. Contractor and Town consent to the venue of the State Courts of Miami-Dade County, Florida and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

§15.3.6 In the event of any litigation arising out of or relating to this Agreement or the Contract Documents, the prevailing party shall recover from the non prevailing party, all reasonable attorney's fees, paralegal fees and Court costs incurred by the prevailing party.

## §16 Miscellaneous

### §16.1 Modification

No change or modification of the Contract shall be valid unless in writing and signed by all parties hereto, excluding Construction Change Directives which do not require the signature of the Contractor. No waiver of any of the provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

#### §16.2 Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. All indemnities, representations, and waivers made by Contractor in favor of Town shall survive completion of the Work, the making of final payment, and any termination of the Agreement.

#### §16.4 Severability and Waiver

The partial or complete invalidity of any one or more provisions of this Contract or any portion of the Contract Documents shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions the Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

