



City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, FL 33410

**AGREEMENT
FOR
DESIGN AND CONSTRUCTION OF AQUATICS CENTER BUILDING
(AT THE BURNS ROAD COMMUNITY CENTER)**

AGREEMENT NO. RFP2021-064CS

THIS AGREEMENT is made and entered into this ____ day of _____, 2021 (the “effective date”) by and between the **City of Palm Beach Gardens**, a Florida municipal corporation (“the City”), whose address is 10500 North Military Trail, Palm Beach Gardens, Florida 33410, and _____, a _____ company (the “Contractor”), whose principal address is _____.

WHEREAS, the City desires to retain the services of the Contractor to perform certain construction works for the Design and Construction of an Aquatics Center Building at the Burns Road Community Center, in accordance with the City’s Request for Proposals, RFP2021-064CS, Design and Construction of Aquatics Center Building, and the Contractor’s response thereto, which are attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, the terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in City’s Request for Proposals, RFP2021-064CS, Design and Construction of Aquatics Center Building, and the Contractor’s response to the Invitation to Bid, including all addenda, final replies, and documentation required thereunder.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. DEFINITIONS.

For the purposes of this Agreement and the various covenants, conditions, terms, and provisions, which follow, the Definitions set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 **CHANGE ORDER:** A written document ordering a change in the contract price or time or a material change in the work issued subsequent to this Agreement, as

determined by the Project Manager.

- 1.2 CITY: The City of Palm Beach Gardens, a Florida municipal corporation.
- 1.3 CONSULTANT: A registered architect, professional engineer, professional land surveyor, civil engineer, and/or registered landscape architect who has contracted with or who is employed by the Contractor to provide professional services for the design or construction of the Project and who is licensed by the State of Florida to provide said services.
- 1.4 CONTRACT: This Agreement between the City and the Contractor for this Project, all as defined herein. As used herein, the term Contract shall mean the same as Agreement.
- 1.5 CONTRACT DOCUMENTS: The Contractor's proposal, including plans, specifications, drawings, and/or other written or graphic materials which are to be developed by the Consultant as part of the record of this Agreement, this Agreement, the performance and payment bond, the design documents, the construction documents, the Notice to Proceed, the Purchase Order, and any additional documents the submission of which are required by this Agreement.
- 1.6 COUNCIL: The City Council, which is the governing body of the City of Palm Beach Gardens, Florida.
- 1.7 CONTRACTOR: _____, is the Contractor selected to perform the work pursuant to this Agreement, and is the person, firm/entity, or corporation primarily liable for the acceptable performance of, and payment of all legal debts pertaining to the Project. All references in the Contract Documents to third parties under contract or control of the Contractor shall be deemed to be a reference to the Contractor. The Contractor shall be responsible for the provision, installation, and performance of all equipment and materials, and the Contractor is in no way relieved of the responsibility for the performance of all equipment furnished.
- 1.8 DESIGNATED REPRESENTATIVE: An authorized representative of the Contractor assigned to represent the Contractor on this Project.
- 1.9 FIELD ORDER: A written order issued by the Project Manager, which orders minor changes in the Project but which does not involve a change in the total cost or time for performance.
- 1.10 FINAL COMPLETION: The date certified by the City that all work is fully and finally complete under this Agreement.
- 1.11 INSPECTOR: An authorized representative of the Consultant assigned to make necessary inspections of materials furnished by the Contractor and of the work

- performed by the Contractor.
- 1.12 MATERIAL: Materials incorporated in this Project or used or consumed in the performance of the work.
 - 1.13 NOTICE OF COMPLETION: The date certified by the Consultant that all conditions of the permits and regulatory agencies have been met, all construction, reconstruction or rehabilitation, including corrective work, has been performed, and all administrative requirements of the Contract Documents have been completed, and the City has received from the Contractor a release of all liens, release of surety, certificate of indemnification by the Contractor, release of claims by the Contractor, and corrected as-built drawings.
 - 1.14 NOTICE TO PROCEED: A written Notice to Proceed issued by the Project Manager.
 - 1.15 PLANS AND/OR DRAWINGS: The official graphic representations of this Project which, upon written approval of the Project Manager, shall become a part of the Contract Documents, as well as the preliminary plans and drawings and renderings of the Project and the preliminary outline specifications and plans for the design-build services for the Project, which shall be prepared by the Contractor, and shall be made a part of the Contract Documents upon approval by the Project Manager. The plans and specifications shall include the design development documents and construction documents to be approved by the Project Manager as provided in this Agreement.
 - 1.16 PROJECT: The Project is the Design and Construction of an Aquatics Center Building at the Burns Road Community Center, as described in and in accordance with the Contract Documents, complete with all appurtenances required to perform the work, including without limitation, construction services and labor, materials, and equipment necessary or used or incorporated in the construction, in accordance with the Contract Documents and as is required or reasonably inferred from them. The Project includes the work, services, and labor, and the goods, materials, tools, supervision, and equipment to be provided, and the cleanup, removal, and disposal of all debris, trash, and other material so as to leave the facilities in a clean and ready-to-use condition.
 - 1.17 PROJECT INITIATION DATE: The date upon which the contract time commences.
 - 1.18 PROJECT MANAGER: Unless otherwise explicitly stated all contract duties, contract responsibilities, and contract communications of the City shall be made through the City's Deputy Community Services Administrator or designee. The foregoing sentence shall not apply to the City construction inspections made to assure compliance with applicable regulatory law and which the City conducts in a governmental regulatory capacity.

- 1.19 SUBCONTRACTOR: The person, contractor, or corporation having a direct contract with the Contractor, including one who furnishes material worked to a special design according to the Contract Documents for this Project, but does not include one who merely furnishes material not so worked.
- 1.20 SUBSTANTIAL COMPLETION: The date certified by the City that all conditions of the permits and regulatory agencies have been met, and all construction, reconstruction, or rehabilitation (except minor corrective work) has been performed in accordance with the Contract Documents, and the site is able to be used for its intended use.
- 1.21 SURETY: The surety company or individual which is bound by a contract bond with and for the Contractor who is primarily liable, and which surety company or individual is responsible for the Contractor's acceptable performance of the work under the contract and for the payment of all debts pertaining thereto per Section 255.05, *Florida Statutes*.

ARTICLE 2. INTENTION OF THE CITY.

It is the intent of the Contract Documents to describe a functionally complete Project to be constructed by the Contractor in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result, shall be supplied whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws, or regulations in effect at the time of the date of the execution of this Agreement.

ARTICLE 3. CONTRACT DOCUMENTS.

- 3.1 The Contract Documents shall be followed in strict accordance as to work, material, and dimensions except when the Project Manager may authorize an exception in writing.
- 3.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Project Manager. The Contractor shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Project Manager.
- 3.3 The Contractor shall maintain two (2) copies of the Contract Documents, which shall be preserved and always kept accessible to the Project Manager or his/her

authorized representative.

3.4 This Contract incorporates by reference, and in the following order of authoritative precedent, the following documents:

3.4.1. The Contract and the Plans and Specifications, including those prepared by the City for construction and planning purposes; and

3.4.2. The Contractor's bid, including any addenda or revisions.

ARTICLE 4. OWNERSHIP OF DESIGN MATERIALS AND DOCUMENTS.

Intentionally Omitted.

ARTICLE 5. SCOPE OF WORK.

5.1 The Contractor hereby agrees to complete the Project described in Exhibit "A", including furnishing professional services (architectural, mechanical, electrical, plumbing, civil, surveying, etc.), labor, materials, equipment, and other services necessary to perform all of the work for successful completion of the Municipal Renovations and Space Expansion Project; including any additional drawings and addenda thereto, to be constructed in accordance with the requirements and provisions of the Contract Documents.

5.2 The Contractor agrees to meet with the City at reasonable times and with reasonable notice.

5.3 Intentionally Omitted.

5.4 Prior to the Final Completion of construction services under this Agreement, there shall be established a record set of plans and specifications, in CADD and PDF formats, which shall bear the approval of the Contractor and the Architect. In addition, prior to the commencement of construction services under this Agreement, the Contractor shall submit to the Project Manager a CPM Schedule for the planning and execution of the Construction Phase of the Project. The CPM Schedule shall be updated bimonthly and submitted to the Project Manager as part of each pay request.

ARTICLE 6. COMPLETION DATE.

- 6.1 This Project is scheduled to be done in conjunction with the Construction of a New Main Pool, which adjoins the site for this work. The Project must be completed and ready to be open to the public by early November 2022. Contractors bidding this project must have the resources to complete the project within the time frame as stated in Article 6.2 of this Agreement. This timeline assumes change orders that are typical during a project of this size. The Project Manager shall instruct the Contractor to commence the Project by written instructions in the form of a Notice to Proceed or Purchase Order issued by the City. The Project shall be commenced within seven (7) calendar days after the Project initiation date specified in the Notice to Proceed or Purchase Order. The Notice to Proceed will not be issued until receipt by the City of all required documents, including a task and delivery-oriented project timeline, and after execution of this Agreement by both parties.
- 6.2 The Project shall be substantially completed by the Contractor in no more three hundred and thirty-five (335) calendar days. Final completion shall be thirty (30) calendar days after the date of substantial completion. Upon failure of the Contractor to substantially complete the Project within the specified period of time (plus approved extensions, if any), the Contractor shall pay to the City any monetary losses, including fines, that the City experiences for each calendar day (plus any approved extensions) after the time specified for substantial completion. After substantial completion, should the Contractor neglect, refuse, or fail to complete the remaining work within thirty (30) calendar days from the substantial completion date described in this Agreement or any approved extension thereof, the Contractor shall pay to the City any monetary losses, including fines, that the City experiences for each calendar day after the time above (plus any approved extensions, if any) for completion and readiness for final payment on the Final Completion Date. These amounts are not penalties but liquidated damages to the City. Liquidated damages are hereby fixed and agreed upon between the parties, as stated in Exhibit "A", recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the City as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of the Contractor to complete the Contract on time.
- 6.3 The City is authorized to deduct liquidated damage amounts from the monies due the Contractor for work under this Agreement or as much thereof as the City may, at its own option, deem just and reasonable.
- 6.4 The Contractor shall be responsible for reimbursing the City, in addition to liquidated damages, for all costs incurred by the City, including, without limitation, costs of storage, maintenance, repair, and insurance in administering the construction of the Project beyond the completion date specified in this Agreement, or beyond an approved extension of time granted to the Contractor, whichever date is later. Such costs shall be deducted from the monies due the Contractor as

provided in Article 8 of this Agreement.

- 6.5 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded for the City of Palm Beach Gardens.

ARTICLE 7. THE CONTRACTOR' S RESPONSIBILITY.

- 7.1 The parties acknowledge and agree that the City is purchasing, and the Contractor is bound to deliver the design and construction of the Aquatics Center Building, which shall be designed and constructed in accordance with the Contract Documents and comply with all applicable laws and technical codes.

- 7.2 It is the Contractor's responsibility to have and maintain appropriate certificate(s) of competency, valid for the work to be performed and for all persons working on the Project for whom a certificate of competency is required.

Pursuant to the Public Bid Disclosure Act, each license a contractor has to pay the City before or during construction or the percentage method or unit method of all licenses required by the City and payable to the City by virtue of this construction as part of the Contract is as follows:

All fees payable to the City have been or will be paid for by the City.

Local Business Tax Receipts (formerly Occupational Licenses) are required pursuant to Chapter 205, *Florida Statutes*.

- 7.3 The Contractor shall be fully responsible for the actions of all persons working in conjunction with the construction of the Project.
- 7.4 The Contractor shall be fully responsible for all acts or omissions of its consultants and subcontractors and of persons directly employed by the Contractor's consultants and subcontractors and of persons for whose acts any of them may be liable to the same extent the Contractor is responsible for the acts and omissions of persons directly employed by the Contractor. Nothing in this Agreement shall create any contractual relationship between any consultant or subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any monies due to any consultant or subcontractor.
- 7.5 The Contractor agrees to bind specifically every subcontractor and consultant to the applicable terms and conditions of this Agreement for the benefit of the City.
- 7.6 Unless otherwise provided herein, the Contractor shall provide and pay for all design services, land surveying services, materials, labor, tools, equipment, transportation, and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent, and whether or

not incorporated or to be incorporated in the Project.

- 7.7 The Contractor shall at all times enforce strict discipline and good order among its employees, consultants, and subcontractors at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the work assigned to him or her.
- 7.8 The Contractor shall maintain suitable and sufficient guards and barriers, and at night suitable and sufficient lighting for the prevention of accidents and thefts.
- 7.9 The Contractor shall keep itself fully informed of, and shall take into account and comply with, all existing and future state and national laws and municipal and local laws/ordinances and regulations in any manner affecting those engaged or employed in the Project, or the materials used or employed in the Project, or in any way affecting the conduct of the Project, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and of all provisions required by law to be made a part of this Agreement, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or contract for this Project is in violation of any such law, ordinance, regulation, order, or decree, the Contractor shall forthwith report the same to the Project Manager in writing. The Contractor shall cause all its agents, employees, subcontractors, and consultants to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees, at no additional cost to the City.
- 7.10 In the event of a change after the effective date of this Agreement in any national and state laws and local or municipal codes, ordinances, and regulations, which in any manner affects the Project, the Contractor shall advise the Project Manager, in writing, and the Project Manager, with concurrence of the City, shall initiate a change order, the purpose of which shall be to bring the Project into compliance with all laws, ordinances, codes, and regulations as amended or enacted, if necessary.
- 7.11 The Contractor shall pay all applicable sales, consumer, use, and other taxes required by law. The Contractor is responsible for reviewing the pertinent state, federal, and local statutes, laws, rules, regulations, guidelines, and directions involving such taxes and complying with all requirements.

ARTICLE 8. COMPENSATION AND METHOD OF PAYMENT.

8.1 Amount and Method of Compensation

- 8.1.1 The City agrees to pay the Contractor as compensation for its services under the terms of this Agreement a maximum amount not-to-exceed sum, mutually agreed to by the City's Project Manager and the Contractor and as set forth in the Contract Documents for each segment of the work.

The fee for the services to be performed by the Contractor shall be for the actual cost of the work and not to exceed the maximum sum stated in this Section.

8.1.1.1 The maximum not-to-exceed sum to be paid by the City to the Contractor under this Agreement for the Project described in the Contract Documents, is as follows:

The total contract amount is _____

It is understood that the Contractor shall perform all services set forth in this Agreement for no more than the total compensation amount set forth in this paragraph, except as allowed under Article 8 of this Agreement.

8.1.1.2 Within thirty (30) days prior to the commencement of construction, the Contractor shall submit to the Project Manager a Schedule of Values for each item comprising the fee described above. Partial payments shall be based upon such Schedule of Values. Final payments on each Contract Document must be approved by the Project Manager.

8.2 Method of Billing and Payment

- 8.2.1 The Contractor shall submit billings, which are identified by the specific Contract Document number on a monthly basis and in a timely manner. The Project Manager shall verify completion of the various stages as noted and authorize payment. The Contractor may submit a request for payment thirty (30) days after beginning design and every thirty (30) days thereafter. Payment will be based on quantities certified by the Contractor. The Contractor's requisition shall show a complete breakdown of the Project components, the quantities completed, and the amount due, together with such supporting evidence as may be required by the Project Manager. When applicable, the requisition for payment shall be accompanied by a completed Statement of Compliance.
- 8.2.2 Requests for final payment shall be accompanied by paid invoices and other back-up material as may be necessary by the City to substantiate the final fee of the Contractor. In no instance shall final billing exceed the amount allocated in the Contract Document. An updated construction schedule shall be submitted at least monthly to the City and its Consultants.
- 8.2.3 The City agrees that it will pay the Contractor within forty-five (45) calendar days of receipt of the Contractor's proper statement, as provided above, accompanied by an updated construction schedule and as-built drawings,

subject however to other provisions provided for in this Agreement. All payments shall be made in accordance with Florida Prompt Payment Act, Section 218.74, *Florida Statutes*.

- 8.2.4 Five percent (5%) of all monies earned by the Contractor shall be retained by the City until the Project is totally completed as specified and accepted by the Project Manager. Any interest earned on retainage shall accrue to the benefit of the City.
- 8.2.5 Upon receipt of written notice from the Contractor that the Project is ready for Final Inspection and Acceptance, the Project Manager shall, within ten (10) days, make an inspection thereof. If the Project Manager finds the Project acceptable under the Contract Documents and the Project fully performed, a Final Certificate of Payment shall be issued by the Project Manager, over his/her own signature, stating that the work required by this Agreement has been completed and is accepted under the terms and conditions thereof.
- 8.2.6 Before issuance of the Final Certificate for Payment, the Contractor shall deliver to the Project Manager a complete release of all liens arising out of this Agreement or receipts in full in lieu thereof, and an Affidavit certifying that all suppliers and subcontractors have been paid in full and that all other indebtedness connected with the Project has been paid, and a consent of the surety to final payment as determined by the City. All warranties, guarantees, operational manuals, and instructions in operation shall be delivered to the City at this time. As-built drawings shall be completed prior to final payment being made.
- 8.2.7 The City may withhold final payment or any progress payment to such extent as may be necessary on account of:
 - 8.2.7.1 Defective work not remedied.
 - 8.2.7.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
 - 8.2.7.3 Failure of the Contractor to make payments properly to subcontractors or consultants or for material or labor.
 - 8.2.7.4 Damage to another subcontractor, supplier, materialmen, party, or person not remedied.
 - 8.2.7.5 Liquidated damages pursuant to Article 6 hereof.
 - 8.2.7.6 As-built drawings not being in a current and acceptable state.

- 8.2.7.7 Any other breach of this agreement by the Contractor.
- 8.2.8 When the above grounds are removed or resolved or the Contractor provides a surety bond or a consent of surety satisfactory to the City, which will protect the City in the amount withheld, payment may be made in whole or in part, as applicable.
- 8.2.9 If after the Project has been substantially completed and full completion thereof is materially delayed through no fault of the Contractor, and the Project Manager so certifies, the City shall, upon certification of the Project Manager, and without terminating the Contract, make payment of the balance due for that portion of the Project fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 8.2.10 The making and acceptance of the final payment shall constitute a waiver of all claims by the City, other than those arising from faulty or defective work, failure of the Project to comply with requirements of the Contract Documents or terms of any warranties required by the Contract Documents. It shall also constitute a waiver of all claims by the Contractor, except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for payment.
- 8.2.11 Payment will be made to the Contractor by direct deposit or ACH at:
- _____

ARTICLE 9. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK.

- 9.1 Without invalidating this Agreement and without notice to any surety, the City reserves and shall have the right to make such changes from time to time in the character or quantity of the Project as may be considered necessary or desirable to complete fully and acceptably the proposed construction work in a satisfactory manner. Any extra or additional work within the scope of this Project may be accomplished by means of appropriate field orders and supplemental instructions or change orders subject to Articles 33 and 34 herein.

ARTICLE 10 THE CITY'S RESPONSIBILITIES

- 10.1 The City will assist the Contractor by placing at its disposal any available information pertinent to the Project, including previous reports, laboratory tests, and inspections of samples, materials, and equipment; property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed, and other land-use restrictions.

- 10.2 The City will arrange for access to and make all provisions for the Contractor to enter upon public property as required for the Contractor to perform its services.

ARTICLE 11 RESOLUTION OF DISPUTES

- 11.1 In order to prevent all disputes and litigation, it is agreed by the parties hereto that the Project Manager shall decide all questions, difficulties, and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount, and value of any work done and materials furnished under or by reason of this Agreement, and the Project Manager's estimates and decisions upon all claims, questions, and disputes shall be final and conclusive upon the parties hereto. This Article does not preclude either or both parties from seeking any and all remedies available at law or in equity. The parties hereto may also, if mutually agreed, seek mediation to resolve any dispute related to this Contract.

ARTICLE 12 ASSIGNMENT

- 12.1 Neither party to this Agreement shall assign this Agreement or subcontract it as a whole without the written consent of the other party, nor shall the Contractor assign any monies due or to become due to it hereunder without the prior written consent of the Project Manager.

ARTICLE 13 PROJECT MEETINGS

- 13.1 The Contractor shall schedule periodic work progress meetings and specially called meetings as needed with the Project Manager relating to the construction services under this Agreement. The Contractor shall record the minutes of such meetings, include significant proceedings and decision(s) within the minutes, and reproduce and distribute copies of minutes within five (5) business days after each meeting, plus incorporate comments received or exceptions taken by those present who have reviewed and commented on the minutes.

ARTICLE 14 SECURITY

- 14.1 The Contractor shall provide a project security program to protect work, stored products, and construction equipment from theft and vandalism, and to protect premises from entry by unauthorized persons. In the event any such materials, equipment, and supplies are lost, stolen, damaged, or destroyed prior to final inspection and acceptance, the Contractor shall replace same without cost to the City.

ARTICLE 15 INSPECTION OF PROJECT

- 15.1 The Project Manager or designee shall, at all times, have access to the Project, and the Contractor shall provide proper facilities for such access.

- 15.1.1 Should the Contract Documents, instructions, any laws, ordinances, or any public authority require any work for the Project to be specially tested or approved, the Contractor shall give to the Project Manager timely notice of readiness of the work for inspection. If the testing or approval is to be made by an authority other than the City, timely notice shall be given of the date fixed for such testing. Inspections shall be made promptly, and where practicable, at the source of supply. If any work for the Project is covered up without approval or consent of the Project Manager, it shall, if required by the Project Manager, be uncovered for examination, and properly restored at the Contractor's expense.
- 15.1.2 Re-examination and re-testing of any work for the Project may be ordered by the Project Manager; and if so ordered, such work shall be uncovered by the Contractor. If work is found defective, the Contractor shall bear all direct, indirect, and consequential expenses of such removal or correction. If such work is found to be in accordance with the Contract Documents, the City shall pay the cost of re-examination, re-testing, and replacement.
- 15.2 The payment of any compensation, regardless of its character or form, or the giving of any gratuity or the granting of any valuable favor by the Contractor to any inspector other than its consultant, is forbidden, and any such act on the part of the Contractor will constitute a breach of this Agreement.

ARTICLE 16 SUPERINTENDENCE AND SUPERVISION

- 16.1 The orders of the City are to be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case. The Contractor shall maintain a competent resident supervisor, who shall serve as the Designated Representative, and any necessary assistants on the Project site throughout the duration of the Project. The Designated Representative shall serve as the Superintendent on site and shall be responsible for continuous field supervision, coordination, and completion of the work. The Designated Representative shall not be changed except with the consent of the Project Manager, unless the Designated Representative proves to be unsatisfactory to the Contractor and ceases to be in its employ. The Project Representative shall represent the Contractor, and all direction given to the Designated Representative shall be as binding as if given to the Contractor. Directions will be confirmed in writing to the Contractor. Other directions will be so confirmed on written request in each case.
- 16.2 The Contractor's Designated Representative shall prepare, on a daily basis and keep on the Project site, a bound log setting forth at a minimum for each day: the weather conditions and how any weather conditions affected progress of the work; work performed; equipment utilized for the work; any idle equipment and reasons for idleness; visitors to the Project site; labor utilized for the work; and any materials

delivered to the Project site. The daily log shall be available for inspection by the Project Manager at all times during the Project.

- 16.3 If the Contractor, in the course of the Project, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors or omissions in the Contract Documents, including drawings (plans) and specifications, it shall be the Contractor's duty to immediately inform the Project Manager in writing, and the Project Manager will promptly verify the same. Any work done prior to or after such discovery shall be done at the Contractor's sole risk.
- 16.4 The Contractor shall coordinate, supervise, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. the Contractor shall be solely responsible for the design, means, methods, techniques, safety, sequences, and procedures of construction. the Contractor shall give efficient supervision to the work, using the Contractor's best skill, attention, and judgment.

ARTICLE 17 THE CITY'S RIGHT TO TERMINATE AGREEMENT

- 17.1 The following shall give the City the right to terminate this Agreement with the Contractor:
 - 17.1.1 The Contractor fails to begin the design and/or construction of the Project within the time specified, or fails to perform the Project with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the Project, or performs the work unsuitably, or causes it to be rejected as defective and unsuitable, or discontinues the prosecution of the Project.
 - 17.1.2 If the Contractor becomes insolvent, is declared bankrupt, commits any act of bankruptcy or insolvency, makes an assignment for the benefit of creditors, or as a result of any other cause whatsoever resulting in the Contractor not carrying on the Project in an acceptable manner, the Project Manager may give notice in writing to the Contractor and its Surety of such delay, neglect, or default, specifying the same. If the Contractor, within a period of ten (10) calendar days after such notice, does not proceed in accordance therewith, then the City may, upon written certificate from the Project Manager of the fact of such delay, neglect or default and the Contractor's failure to comply with such notice, terminate the services of the Contractor, exclude the Contractor from the site and take the prosecution of the Project out of the hands of the Contractor, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable.

- 17.2 In the event of an occurrence under Section 17.1 above, the Contractor shall not be entitled to receive any further payment until the Project is finished.
- 17.3 In the event of an occurrence under Section 17.1 above, the City may enter into a separate agreement for the completion of the Project according to the terms and provisions of the Contract Documents or use such other methods as in the City's opinion is required for the completion of the Project in an acceptable manner.
- 17.4 In the event of an occurrence under Section 17.1 above, all damages, costs, and charges incurred by the City shall be deducted from any monies due or which may become due to the Contractor. Actions may be instituted to recover on the posted bonds. In case the damages and expenses so incurred by the City are less than the sum which would have been payable under this Agreement if it had been completed by the Contractor, then the Contractor shall be entitled to receive the difference. If such damages and costs exceed the unpaid balance, then the Contractor shall be liable and shall pay to the City the amount of said excess.
- 17.5 If after Notice of Termination is given to the Contractor it is determined for any reason that the Contractor was not in default or breach of this Agreement, the rights and obligations of the City and the Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 17.6 below.
- 17.6 The performance of work under this Agreement may be terminated in writing by the Project Manager for convenience upon not less than ten (10) calendar days' written notice to the Contractor (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, the Contractor shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by the Contractor relating to commitments, which had become the Contractor's prior to the date of termination. Payment shall include services actually performed in full prior to the termination date, but shall exclude all lost profits, indirect or special, or other damages for the remainder of the Project.
- 17.7 Upon receipt of the Notice of Termination pursuant to Articles 17.1 or 17.6 above, the Contractor shall promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver or otherwise make available to the Project Manager all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required by the Contract Documents, whether completed or in process.
- 17.8 If a Court of competent jurisdiction finds that the City wrongfully terminated this Contract, then in such event, this Contract shall be deemed terminated for convenience as provided for in Section 17.6, and the Contractor shall not be entitled to damages or loss of profits, but shall include all items provided for in Section 17.6 herein.

ARTICLE 18 THE CONTRACTOR' S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 18.1 If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of the Contractor or of anyone employed by the Contractor, or if the Project Manager should fail to review and approve or state in writing reasons for non-approval of any estimate for payment within twenty (20) calendar days after it is presented, or if the City fails to pay the Contractor within forty-five (45) calendar days after presentation by the Contractor of any proper invoice accompanied by the required update of the CPM, then the Contractor may, upon seven (7) calendar days' written notice to the City and the Project Manager, stop work or terminate this Agreement and recover from the City payment for all work executed and any expense sustained plus reasonable termination expenses.

ARTICLE 19 PLANS AND WORKING DRAWINGS

- 19.1 The City and the Contractor will review and revise construction plans prior to submittal for permitting. All approved plans, general and detail, are to be deemed a part of this Agreement, and the plans and specifications and Agreement are to be considered together and are intended to be mutually complementary so that any work shown on the plans, though not specified in the specifications, and any work specified in the specifications, though not shown on the plans, is to be executed by the Contractor as part of this Agreement, to the extent the work is reasonably inferable from the plans. All things which in the opinion of the Project Manager may reasonably be inferred from this Agreement and plans as developed by the Contractor and approved by the Project Manager are to be executed by the Contractor under the terms of this Agreement; and the Project Manager shall determine whether the detail plans conform to the Contract Documents, except as may be otherwise determined by the Project Manager. All plans, specifications, and related technical documentation should be in the form of a CADD drawing file and paper copy.

ARTICLE 20 THE CONTRACTOR TO CHECK DRAWINGS AND DATA

- 20.1 The Contractor shall take measurements and verify all dimensions, conditions, quantities and details shown on the drawings, schedules, or other data received from the Project Manager, and shall notify the Project Manager of all errors, omissions, conflicts, and discrepancies found therein. Failure to discover or correct errors, conflicts, or discrepancies shall not relieve the Contractor of full responsibility for unsatisfactory work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at the Contractor's own expense. The Contractor will not be allowed to take advantage of any error or omission.

ARTICLE 21 WARRANTY

21.1 The Contractor warrants to the City that all materials and equipment furnished for the Project shall be new, unless otherwise specified, and that all work for the Project shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All work for the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

ARTICLE 22 DELIVERY AND STORAGE OF MATERIALS AND PARTIAL PAYMENT THEREFORE

22.1 The City may, at its sole option, allow partial payment for materials delivered and stored either on or off site for use on the Project.

22.2 Material stored on the job site shall be verified as to quantity and condition by the Project Manager or designee prior to receipt of any payment. Safeguarding the material shall be the responsibility of the Contractor. Any materials that are lost, stolen, damaged, or otherwise deemed unacceptable by the Project Manager shall be replaced by the Contractor at no additional cost to the City.

22.3 Materials stored off the job site for which partial payment is sought shall be stored in a bonded warehouse. The material shall be inspected by the Project Manager who will verify quantities and condition of all materials. Safeguarding the material shall be the responsibility of the Contractor.

ARTICLE 23 GENERAL QUALITY OF WORK

23.1 Articles, materials, and equipment specified or shown on drawings shall be new and shall be applied, installed, connected, erected, used, cleaned, and conditioned for proper forming, as per the manufacturer's directions, and as approved by the Project Manager. The Contractor shall, if required, furnish satisfactory evidence as to kind and quality of the materials.

23.2 The Contractor shall apply, install, connect, and erect manufactured items or materials according to the recommendations of the manufacturer when such recommendations are not in conflict with the Contract Documents. The Contractor shall furnish copies of the manufacturer's recommendations to the Project Manager before proceeding with the work.

ARTICLE 24 DEFECTIVE WORK

24.1 The Project Manager shall have the authority to reject or disapprove work for the Project that the Project Manager finds to be defective. If required by the Project Manager, the Contractor shall promptly, as directed, correct all defective work or

remove it from the Project site and replace it with non-defective work. The Contractor shall bear all direct, indirect, and consequential costs of such removal or correction.

- 24.2 If within one (1) year after substantial completion any work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly without cost to the City, after receipt of written notice from the City to do so, unless the City has given the Contractor a written acceptance of such conditions. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that the Contractor might have under the Contract Documents, including Article 21 hereof, or applicable state law.
- 24.3 Should the Contractor fail or refuse to remove or correct any defective work performed for the Project, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of this Agreement within the time indicated in writing, the City shall have the authority to cause the unacceptable or defective work to be removed or corrected, or make such repairs as may be necessary to be made at the Contractor's expense. Any expense incurred by the City in making these removals, corrections, or repairs that the Contractor has failed or refused to make shall be paid for out of any monies due or which may become due to the Contractor, or may be charged against the bond or guaranty. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs promptly, fully, and in an acceptable manner shall be sufficient cause for the City to declare this Agreement forfeited, in which case the City, at its option, may purchase materials, tools, and equipment and employ labor or may contract with any other individual, contractor, or corporation, or may proceed with its own forces to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting Contractor, and the amount thereof deducted from any monies due, or which may become due to the Contractor, or shall be charged against the bond or guaranty. Any special work performed, as described herein, shall not relieve the Contractor in any way from its responsibility for the work performed by it.
- 24.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered or obligate the City to final acceptance.

ARTICLE 25 SUBCONTRACTS

- 25.1 The Contractor shall, after award and prior to the start of construction, notify the Project Manager in writing of the names of the subcontractors proposed for the Project and identify the portion of the work for the Project each will perform. The Contractor shall have a continuing obligation to notify the Project Manager of any change in the subcontractors. Notification of the names of the subcontractors shall not relieve the Contractor from the prime responsibility of full and complete satisfactory performance of all contractual obligations. The City may require the Contractor to solicit subcontractors from the City's Vendors List. The Contractor

shall give first priority for award of all key subcontracts to local (Palm Beach Gardens) contractors.

ARTICLE 26 SEPARATE CONTRACTS

- 26.1 The City reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this work with theirs.
- 26.2 If any part of the Contractor's work depends on the proper execution of the work of any other contractors, the Contractor shall inspect and promptly report to the Project Manager any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractors' work as fit and proper for the reception of contractors' work, except as to defects which may develop in other contractors' work after the execution of the contractors' work.
- 26.3 To ensure the proper execution of its subsequent work, the Contractor shall inspect the work already in place and shall at once report to the Project Manager any discrepancy between the executed work and the requirements of the Contract Documents.
- 26.4 No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of any delays due to work of other contractors, unless such delays result in the de-mobilization of the Contractor's work crew and there is an attendant cost to re-mobilize.

ARTICLE 27 USE OF COMPLETED PORTIONS

- 27.1 The City will inform the Contractor prior to the completion of negotiations if any portion of the Project will be utilized prior to normal construction completion. However, the City shall have the right to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such possession and use delay the Project, the Contractor shall be entitled to a reasonable extension of time, as determined by the City.
- 27.2 In the event the City takes possession, the following shall occur:
 - 27.2.1 The Project Manager shall give notice to the Contractor at least fifteen (15) calendar days in advance of intent to occupy a designated area.
 - 27.2.2 The Contractor shall bring the designated area to point of Substantial Completion. When the Contractor considers that the designated area of the Project is substantially complete, the Contractor shall notify the Project Manager in writing and shall prepare for submission to the Project

Manager a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete work on the designated area in accordance with the Contract Documents. The Project Manager shall conduct an inspection to determine that the designated portion of the Project is substantially complete. The Project Manager and the Contractor shall agree on the time within which the Contractor shall complete the items listed.

27.2.3 Upon issuance and acceptance of the Certificate of Substantial Completion, the City will assume full responsibility for maintenance, utilities, and subsequent damages of the City and public adjustment. The Contractor shall remain responsible for all items listed to be completed or corrected as submitted to the Project Manager as required in substantial completion process.

27.2.4 If the City finds it necessary to use a portion or portions of the Project prior to Substantial Completion thereof, such use shall not commence prior to a time mutually agreed upon by the Project Manager and the Contractor. This insurance shall not be canceled or lapsed on account of such partial use. Consent of the Contractor and of the insurance company or companies to such use shall not be unreasonably withheld.

ARTICLE 28 CONSTRUCTION AREA

28.1 The Contractor shall use areas approved by the City for deliveries and personnel. Contract limits of construction area are indicated on the drawings. Equipment, material, and personnel shall be in conformance with this Contract.

28.2 To provide for maximum safety and security, the Contractor shall erect and maintain all necessary barricades and any other temporary walls and structures, as required, and boarding to protect life and property during the period of construction.

ARTICLE 29 LANDS FOR WORK

29.1 The City shall provide, as indicated in the Contract Documents, the lands upon which the Project is to be performed, rights-of-way, and easements for access thereto, and such other lands as are designated for the use of the Contractor. No claim for damages or other claim other than for an extension of time shall be made or asserted against the City by reason of any delay arising as a result of any failure of the City to provide such lands on the date needed by the Contractor. The provisions of Article 36 hereof shall apply.

ARTICLE 30 LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS

30.1 The Contractor shall conform to all applicable laws, regulations, or ordinances with

regard to labor employed, hours of work, and the Contractor's general operations. The Contractor shall also conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on highways without the written consent of the proper authorities.

ARTICLE 31 DAMAGE TO EXISTING FACILITIES, EQUIPMENT, OR UTILITIES

- 31.1 Existing utilities have been shown on the drawings provided to the Contractor insofar as information is reasonably available; however, it will be the Contractor's responsibility to verify such information and to preserve all existing utilities whether shown on the drawings or not. If utility conflicts are encountered by the Contractor during construction, the Contractor shall give sufficient notice to the owners of the utilities so that they may make the necessary adjustments.
- 31.2 The Contractor shall exercise care and take all precautions during excavation and construction operations to prevent damage to any existing facilities, equipment, or utilities. Any damage caused by the Contractor shall be reported immediately to the Project Manager, and such work shall be repaired and/or replaced by the Contractor in a manner approved by the City. All costs to repair and/or replace any damage to existing facilities, equipment, or utilities shall be the sole responsibility of the Contractor, and such repair or replacement shall be performed expeditiously without cost to the City.
- 31.3 The Contractor shall provide the type of required protection for finished work at all times and protect adjacent work during cleaning operations and make good any damage resulting from neglect of this precaution.
- 31.4 Protection of work shall include protecting work that is factory finished, during transportation, storage, and during and after installation. Where applicable and as required, the Contractor shall close off areas where certain work has been completed to protect it from any damages caused by others during their operations.
- 31.5 The Contractor shall store materials and shall be responsible for and shall maintain partly or wholly finished work during the continuance of the Contract and until the final acceptance of the structure. If any materials or part of the work should be lost, damaged, or destroyed by any cause or means whatsoever, the Contractor shall satisfactorily repair and replace the same at the Contractor's own cost. The Contractor shall maintain suitable and sufficient guards and barriers, and at night, suitable and sufficient lighting for the prevention of accidents.
- 31.6 To all applicable Sections where preparatory work is part of work thereon, the Contractor shall carefully examine surfaces over which its finished work is to be installed, laid, or applied before commencing with the work. The Contractor shall not proceed with said work until defective surfaces on which work is to be applied are corrected satisfactorily to the Project Manager. Commencement of work shall be considered acceptance of surfaces and conditions.

ARTICLE 32 CONTINUATION OF THE WORK

- 32.1 The Contractor shall carry on the Project and adhere to the progress schedule during all disputes or disagreements with the City, subject to the limitations of Article 34.4. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

ARTICLE 33 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS

- 33.1 The Project Manager shall have the right to approve and issue field orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in contract execution, providing the field order involves no change in the total cost of the Project or the time of performance.
- 33.2 The Project Manager shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning this Agreement or its performance, provided they make no major changes in contract execution and involve no change in the total cost of the Project or the time of performance.

ARTICLE 34 CHANGE ORDERS (CHANGES IN QUANTITIES OF WORK OR CONTRACT PRICE)

- 34.1 Changes in the quantity or character of work within the scope of this Project, which are not properly the subject of field orders or supplemental instructions, to include all changes resulting in changes in the total cost of the Project or the time of performance, shall be authorized only by change orders approved and issued by the City.
- 34.2 The Contractor shall not start work on any alteration requiring an increase in price or extension of time for completion until a change order setting forth the adjustments is approved by the City.
- 34.3 All changes to construction contracts shall be approved in advance in accordance with the value of the change order or the calculated value of the time extension. All contract change orders in excess of Sixty-Five Thousand Dollars (\$65,000.00) shall be approved by the City Council. All change orders where the time for completion is extended by more than sixty (60) calendar days, in any one change or cumulatively for the same project, beyond the most recent Council approved contract completion time shall be approved by the City Council.
- 34.4 In the event satisfactory adjustment cannot be reached for any item requiring a change order, the City reserves the right, at its own option, to either terminate this Agreement as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Project, or submit the matter in dispute to the Project Manager as set forth herein. During the pendency of the dispute

resolution, the Contractor shall proceed with the work set forth within the change order if the estimated dollar amount of the change order is less than Ten Thousand Dollars (\$10,000.00).

- 34.5 On approval of any change order increasing the price, the Contractor shall ensure that the applicable Performance and Payment Bonds, Insurances, and Guarantees are each increased so that it reflects the total amount of the Project as increased.
- 34.6 Change orders may be issued unilaterally by the City.

ARTICLE 35 VALUE OF CHANGE ORDER WORK

35.1 The value of any work covered by a change order or of any claim for an increase or decrease in the Contract sum shall be determined in one of the following ways:

- 35.1.1 Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved, subject to the provisions of Article 36 herein.
- 35.1.2 By mutual acceptance of a lump sum, which includes a contractor's fee for overhead and profit and includes any subcontractor fees.
- 35.1.3 On the basis of the "cost of the work" determined as provided, plus a contractor's fee for overhead and profit, which is determined as provided in the applicable provisions of this Agreement.

35.2 The term "cost of work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Project. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any other costs whatsoever:

35.2.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Project under schedules of job classifications agreed upon by the City and the Contractor. Payroll costs for employees not employed full-time on the Project shall be apportioned on the basis of their time spent on the Project. Payroll costs shall include, but not be limited to, salaries and wages, plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the Project site. The expenses of performing the work after regular working hours, on Sunday, or legal holidays shall be included in the above to the extent authorized by the City. Insurance and benefits shall be based on single time.

35.2.2 Cost of all materials and equipment furnished and incorporated in the

Project, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the City deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the City. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they may be obtained.

- 35.2.3 Payments made by the Contractor to subcontractors for work performed by subcontractors. The term subcontractor shall include architects and engineers employed for services specifically related to the Project. If required by the Project Manager, the Contractor shall obtain competitive bids from subcontractors acceptable to the Contractor and shall deliver such bids to the City who will then determine which bids will be accepted. If the subcontract provides that the subcontractors are to be paid on the basis of the cost of the work plus a fee, the subcontractors' cost of the work shall be determined in the same manner as the Contractor's cost of the work. Whenever a subcontractor is involved, a complete and separate breakdown shall be submitted by the subcontractor for its portion of the work. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 35.2.4 Costs of special consultants, including, but not limited to, testing laboratories, surveyors, lawyers, and accountants employed for services specifically related to the Project.
- 35.2.5 Supplemental costs, including the following:
 - 35.2.5.1 The proportion of necessary transportation, travel, and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Project.
 - 35.2.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site, and hand tools not owned by the workers that are consumed in the performance of the Project, and cost, less market value, of such items used but not consumed that remain the property of the Contractor.
 - 35.2.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with rental agreements approved by the City and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof, all in accordance with the

terms of said agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Project. Late charges, penalties, restocking charges, and similar assessments in said agreements will not be recognized by the City as a supplemental cost.

- 35.2.5.4 Sales, use, or similar taxes related to the Project, and for which the Contractor is liable, imposed by any governmental authority.
- 35.2.5.5 Deposits lost for causes other than the Contractor's negligence, royalty payments, and fees for permits and licenses.
- 35.2.5.6 The cost of utilities, fuel, and sanitary facilities at the site.
- 35.2.5.7 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Project.
- 35.2.5.8 Cost of premiums for additional bonds and insurance required because of changes in the Project. Evidence of any additional premiums from the bonding and/or insurance companies shall be submitted to the Project Manager.

35.3 The term "cost of the work" shall not include any of the following:

- 35.3.1 Payroll costs and other compensation of the Contractor's officers, executive, principals (of partnership and sole proprietorships), general managers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor whether at the Project site or in the Contractor's principal or branch office for general administration of the Project and not specifically included in the agreed-upon schedule of job classifications referred to in Article 35.2.1, all of which are to be considered administrative costs covered by the Contractor's fee.
- 35.3.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the Project site.
- 35.3.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Project and charged against the Contractor for delinquent payments.
- 35.3.4 Cost of premiums for all bonds and for all insurance whether or not the

Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Project. Evidence of coverage and premiums from the bonding and/or insurance companies shall be submitted to the Project Manager.

- 35.3.5 Costs due to the negligence of the Contractor or any subcontractors, any consultants, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction of defective or nonconforming work, disposal of materials or equipment wrongly supplied, and making good on any damage to property.
- 35.3.6 Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in Article 35.2.
- 35.4 The contractor's fee allowed to the Contractor for overhead and profit shall be determined as follows:
 - 35.4.1 A mutually acceptable fixed fee, which shall not exceed percentages, as set forth below, or if none can be agreed upon.
 - 35.4.2 A fee based on the following percentages of the various portions of the cost of the work:
 - 35.4.2.1 For costs incurred under Articles 35.2, 35.2.1, and 35.2.2, the Contractor's fees shall not exceed ten percent (10%).
 - 35.4.2.2 For costs incurred under Articles 35.2.3 or 35.2.4, the Contractor's fee shall not exceed ten percent (10%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and
 - 35.4.2.3 No fee shall be payable on the basis of cost itemized under Articles 35.2.5 and 35.3.
- 35.5 The amount of credit to be allowed by the Contractor to the City for any such change, which results in a net decrease in cost, shall be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.
- 35.6 Whenever the cost of any work is to be determined pursuant to Articles 35.1 through 35.2.4, the Contractor shall submit, in a form acceptable to the Project Manager, an itemized cost breakdown with the supporting data.

- 35.7 Where the quantity of work with respect to any item that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such work indicated in the Contract Documents, an appropriate change order may be issued to adjust the unit price, if warranted.
- 35.8 Whenever a change in the work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the Contractor shall promptly submit to the Project Manager an estimate substantiated by a complete itemized breakdown.
- 35.8.1 Breakdown shall list quantities and unit prices for materials, labor, equipment, and other items of cost.
- 35.8.2 Whenever a change involves the Contractor and one or more subcontractors or consultants and the change is an increase in the contract price, overhead, and profit percentages for the Contractor and each subcontractor or consultant shall be itemized separately.
- 35.9 Each change order shall state within the body of the change order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

ARTICLE 36 CHANGE OF CONTRACT TIME OR CONTRACT SUM

- 36.1 The contract time set forth in Article 6 or the fee to be paid to the Contractor may only be changed or modified by a change order. Any claim for an extension of the contract time or for an increase in the fee to be paid to the Contractor shall be based on written notice delivered by the party making the claim to the Project Manager promptly (but in no event later than seven (7) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim). Notice of the extent of the claim with supporting data shall be delivered within sixty (60) calendar days after such occurrence (unless the Project Manager allows, in writing, an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the contract time or for an increase in the fee to be paid to the Contractor shall be determined by the Project Manager in accordance with Article 9. No claim for an adjustment in the contract time or for an increase in the fee to be paid to the Contractor shall be valid if not submitted in strict accordance with the requirements of this Article.
- 36.2 The contract time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of the Contractor if a claim is made therefor as provided in Article 36.1. Such delays shall include, but not be limited to, acts of neglect by the City, or by any employee of the City, or any separate contractor employed by the City, fires, floods, labor disputes, epidemics,

abnormal weather conditions, or acts of nature.

ARTICLE 37 NO DAMAGES FOR DELAY

- 37.1 No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of any delays. The Contractor shall not be entitled to an increase in the Contract Sum or payment or compensation of any kind from the City for direct, indirect, consequential, impact, or other costs, expenses, or damages, including, but not limited to, costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. The Contractor shall be entitled only to extensions of the contract time as the sole and exclusive remedy for such resulting in delays in accordance with and to the extent specifically provided above.
- 37.2 Notwithstanding the above, the Contractor shall be entitled to recover through the Change Order process any actual additional costs incurred due to delays caused by the City.

ARTICLE 38 SUBSTANTIAL COMPLETION

- 38.1 When the Contractor considers that the Project, or a designated portion thereof which is acceptable to the City, is substantially complete, the Contractor shall notify the Project Manager in writing and shall prepare for submission to the Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.
- 38.2 The Project Manager shall conduct an inspection to determine that the Project or designated portion thereof is substantially complete. The Project Manager will then instruct the Contractor to prepare and deliver to the Project Manager a Certificate of Substantial Completion, which shall establish the date of Substantial Completion. After review of the Certificate by the Project Manager, the City will either accept or reject the Certificate. The Project Manager, with the concurrence of the Contractor, will fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the City through the Project Manager and the Contractor for its written acceptance of the responsibilities assigned to them in such Certificate.

ARTICLE 39 SHOP DRAWINGS

- 39.1 The Contractor shall submit Shop Drawings for all equipment, apparatus,

- machinery, piping, wiring, fabricated structures, and manufactured articles. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with the Contract Documents.
- 39.2 The Contractor shall submit to the Project Manager a complete list of preliminary data on items for which the Shop Drawings are to be submitted. Approval of this list by the Project Manager shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of the Shop Drawings.
 - 39.3 After the approval of the list of items required in Article 39.2 above, the Contractor shall promptly request the Shop Drawings from the various manufacturers and suppliers.
 - 39.4 The Contractor shall thoroughly review and check the Shop Drawings, and each and every copy shall show the Contractor's approval thereon.
 - 39.5 If the Shop Drawings show or indicate departures from the Contract requirements, the Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve the Contractor from its responsibility to comply with the Contract Documents.
 - 39.6 No work called for by the Shop Drawings shall be done until the Drawings have been approved by the Project Manager. Approval shall not relieve the Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.
 - 39.7 No approval will be given to partial submittal of the Shop Drawings for items that interconnect and/or are interdependent. It is the Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them, and then make one (1) submittal to the Project Manager along with the Contractor's comments as to compliance, noncompliance, or features requiring special attention.
 - 39.8 If catalog sheets or prints of the manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.
 - 39.9 The Contractor shall submit to the Project Manager the number of copies required by the Project Manager. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.
 - 39.10 The Project Manager's approval of the Shop Drawings will be general and shall not relieve the Contractor of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the work, nor for the furnishing of the

materials or work required by the Contract and not indicated on the Drawings. No work called for by the Shop Drawings shall be done until the Drawings have been approved by the Project Manager. Approval shall not relieve the Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

- 39.11 The Contractor shall keep one set of the Shop Drawings marked with the Project Manager's approval at the Project site at all times.

ARTICLE 40 FIELD ENGINEERING

- 40.1 The Contractor shall provide and pay for field engineering services required for the Project. This work shall include the following elements:

40.1.1 Survey work required in execution of the Project.

ARTICLE 41 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS

- 41.1 The entire responsibility for establishing and maintaining a line and grade in the field lies with the Contractor. The Contractor shall maintain an accurate and precise record of the location and elevation of all pipelines, conduits, structures, manholes, handholds, fittings, and the like and shall deliver these records in good order to the Project Manager as the work is completed. These records shall serve as a basis for record drawings. The cost of all such field layout and recording work must be included in the prices bid for the appropriate items.

- 41.2 The Contractor shall maintain in a safe place at the site, one (1) record copy of all drawings (plans), specifications, addenda, written amendments, change orders, and written interpretations and clarifications in good order, annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, shall be available to the Project Manager for reference. Upon completion of the Project, these record documents, samples, and Shop Drawings shall be delivered to the Project Manager.

- 41.3 At the completion of the Project, the Contractor shall turn over to the City an electronic set of drawings in PDF format (one single document), which accurately reflect the "as-built" conditions of the new facility. All changes made to the construction documents, either as clarifications or as changes, shall be reflected in the plans. These "as-built" drawings shall be signed and sealed by a registered Florida engineer or architect and shall be delivered and found to be acceptable by the City prior to final payments.

ARTICLE 42 SAFETY AND PROTECTION

- 42.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. The Contractor

shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- 42.1.1 All employees on the Project and other persons who may be affected thereby.
 - 42.1.2 All the work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and
 - 42.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- 42.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss, and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury or loss to any property referred to in Sections 42.1.2 and 42.1.3 above, caused directly or indirectly, in whole or in part, by the Contractor, any subcontractor or consultant, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. The Contractor's duties and responsibilities for the safety and protection of the Project shall continue until such time as all the Project is completed, and the Project Manager has issued a notice to the Contractor that the Project is acceptable except as otherwise provided in Article 27, Use of Completed Portions.
- 42.3 The Contractor shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's Designated Representative unless otherwise designated in writing by the Contractor to the City.

ARTICLE 43 PAYMENT FOR TESTS BY THE CONTRACTOR

- 43.1 Except when otherwise specified in the Contract Documents, the expense of all initial tests and test reports shall be borne by the City. Any costs associated with re-testing due to failed tests shall be borne by the Contractor.

ARTICLE 44 PROJECT SIGNAGE

- 44.1 The Contractor shall furnish and erect signs at the Project site, as directed by the Project Manager. The Contractor may install signage at the site subject to approval by the Project Manager.

ARTICLE 45 CLEANING UP AND REMOVAL OF EQUIPMENT

- 45.1 The Contractor shall at all times keep the Project site free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the Project, the Contractor shall remove all its waste materials and rubbish from and about the Project, as well as its tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up at the completion of the Project, the City may do so, and the cost thereof shall be charged to the Contractor.
- 45.2 The City's Right to Clean Up
If a dispute arises between the Contractor and separate contractors as to the responsibility for cleaning up, the City may clean up and charge the cost thereof to the contractors responsible therefore as the Project Manager shall determine to be just.
- 45.3 Removal of Equipment
In case of termination of this Agreement before completion for any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of the Contractor's equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

ARTICLE 46 BONDS, INDEMNIFICATION, AND INSURANCE

Within fifteen (15) calendar days of the execution of this Agreement, the Contractor shall furnish a Performance and Payment Guaranty consisting of either:

- 46.1 Performance and Payment Bond (Surety)
- 46.1.1 A Performance and Payment Bond (separate Performance Bond and separate Payment Bond) of the form and containing all the provisions of the Performance and Payment Bond (Performance Bond and Payment Bond forms), attached hereto and made a part hereof.
- 46.1.2 The Bonds shall be in the amount of one hundred ten percent (110%) of the Contract amount guaranteeing to the City the completion and performance of the Project covered in this Agreement, as well as full payment of all suppliers, materialmen, laborers, or subcontractors employed pursuant to this Project. Such Bonds shall be with a surety company, which is qualified pursuant to Section 46.3, Qualifications of Surety.
- 46.1.3 Such Bonds shall be in effect for one (1) year after completion and acceptance of the Project with liability equal to one hundred ten percent (110%) of the Contract price, or an additional Bond shall be conditioned that the Contractor shall, upon notification by the City, correct any

defective or faulty work or materials which appear within one (1) year after completion of the Contract.

46.1.4 The Payment and Performance Bond required herein shall be in conformance with Section 255.051, *Florida Statutes*, and shall be on such forms provided by the City.

46.1.5 The City will allow the Contractor to charge an amount not to exceed two percent (2%) of the Project Amount as shown in Article 8.1.1.1, as the cost to secure the Performance and Payment Bonds required for this Project.

46.2 Performance and Payment Guaranty

46.2.1 In lieu of a Performance and Payment Bond, the Contractor may furnish an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by the City for one (1) year after completion and acceptance of the Project.

46.3 Qualifications of Surety

46.3.1 A Performance Bond and separate Payment Bond shall be executed by a surety company shown on the United States Treasury approved list of companies and also authorized to do business in the State of Florida. Both Bonds shall show the City as obligee.

46.3.2 The surety company shall have at least the following minimum ratings in the latest version of A.M. Best's Insurance Report:

Amount of Bond	Policyholder's Ratings	Best's Financial Size Category
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

46.4 Indemnification of the City

46.4.1 The Contractor shall indemnify and hold harmless the City, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the

Contractor and other persons employed or utilized by the Contractor in the performance of the Contract. The indemnification herein is limited to the greater of the Insurance of the Contractor for such claim or Five Million Dollars (\$5,000,000.00), whichever is greater. Regardless of the foregoing, this provision shall be limited by Section 725.06, *Florida Statutes*.

- 46.4.2 The indemnification provided above shall obligate the Contractor to defend at its own expense to and through appellate, supplemental, or bankruptcy proceeding, or to provide for such defense, at the CITY Attorney's option, any and all claims of liability and all suits and actions of every name and description that may be brought against the City which may result from the operations and activities under this Agreement, whether performed by the Contractor, its subcontractors, its consultants, or by anyone directly or indirectly employed by any of the above.
- 46.4.3 The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of insuring this indemnity shall be complied with as set forth in Article 46.4.

46.5 Insurance

The Contractor shall provide, pay for, and maintain in force at all times during the Project, such insurance, including Workers' Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, and shall provide, pay for, and maintain in force at all times during the Project, Professional Liability Insurance to assure to the City the protection contained in the foregoing indemnification and save harmless clauses undertaken by the Contractor. The Comprehensive General Liability Policy shall clearly identify the foregoing indemnification and save harmless clauses by the additional named insured endorsement under this Article.

Such policy or policies shall be issued by companies authorized to do business in the State of Florida and have a resident agent licensed in Florida. The Contractor shall specifically protect the City by naming the City as an additional named insured under the Comprehensive General Liability Insurance Policy hereinafter described. The Professional Liability Policy or certificate and the bond shall reference this Project.

46.5.1 Professional Liability (Errors and Omissions)

Professional Liability (Errors and Omissions) Insurance - \$1,000,000 with a deductible not to exceed \$50,000 per claim. The certificate of insurance shall reference any applicable deductible.

46.5.2 Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) shall include

Employer's Liability with limits of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) each disease, and One Million Dollars (\$1,000,000.00) aggregate by disease.

46.5.3 Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability shall include:

- a. Premises and/or Operations on an occurrence basis.
- b. Independent contractors.
- c. Products and/or Completed Operations Liability on an occurrence basis.
- d. Explosion, Collapse, and Underground Coverages.
- e. Broad Form Property Damage.
- f. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- g. Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

46.5.4 Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include:

Owned vehicles.
Non-owned and hired vehicles.

46.5.5 Builder's Risk Insurance
Builder's Risk Insurance – Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value of the structure(s), building(s) or addition(s). Where contract calls for install of machinery or equipment, the policy must be endorsed to provide coverage on "All Risk" basis during transit and installation. The policy must be issued with a deductible of not more than \$50,000 per claim.

Builders Risk/Installation Floater -The Contractor shall take out and maintain, as applicable, during the life of this Contract, "all risk" type builders risk insurance satisfactory to the City for the completed value of the Project, which shall protect the Contractor and the City as their interests may appear, for the following hazards to the work, encompassing structures in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said structures, as well as materials and equipment suitably stored

at the site and the Contractor's construction equipment, materials, and temporary structures:

- a. Fire and lightning, vandalism, and malicious mischief.
- b. Extended coverage including windstorm, hail, flood, explosion, riot, civil commotion, aircraft, vehicle, and smoke damage.

46.5.6 Employer's Liability Insurance

Bodily Injury by Accident \$1,000,000 Each Accident
Bodily Injury by Disease \$1,000,000 Policy Limit
Bodily Injury by Disease \$1,000,000 Each Employee

46.5.7 Contractor Pollution Liability Insurance - \$1,000,000 per claim.

46.5.8 Notice of Cancellation, Expiration, and/or Restriction: The policy(ies) shall be endorsed to provide the City with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Project Manager, c/o Risk Management Coordinator, City of Palm Beach Gardens, 10500 North Military Trail, Palm Beach Gardens, Florida 33410.

46.5.9 The Contractor shall furnish to the Project Manager Certificate(s) of Insurance evidencing the insurance coverages required herein prior to final award by the City Council. Such certificate(s) shall reference this Agreement. The City reserves the right to require a certified copy of such policies upon request. All certificates shall state that the City shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.

46.5.10 The official title of the Owner is "City of Palm Beach Gardens." This official title shall be used in all insurance or other legal documentation. The City is to be included as "Additional Insured" with respect to liability arising out of operations performed for the City by or on behalf of the Contractor or acts or omissions of the Contractor in connection with such operation.

ARTICLE 47 MISCELLANEOUS

47.1 Royalties and Patents

All fees, royalties, and claims for any invention, or pretended invention, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of this Project or appurtenances, are hereby included in the prices stipulated in this Agreement for the Project.

47.2 Rights of Various Interests

Whenever work being done by the City's forces or by other contractors is

contiguous to work covered by this Agreement, the respective rights of the various interests involved shall be established by the Project Manager to secure the completion of the various portions of the work in general harmony.

47.3 Ownership of Documents

Drawings, specifications, designs, models, photographs, computer CADD discs, reports, surveys, and other data provided in connection with this Agreement are and shall become and remain the property of the City whether the Project for which they are made is executed or not. At the completion of the Project, as a part of the Project closeout, copies of all drawings on CADD shall be transmitted by the Contractor to the Project Manager in addition to the as-built drawings (Mylars).

47.4 Records

The Contractor shall keep such records and accounts and require any and all architects, consultants, and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records will be available at all reasonable times for examination and audit by the City and for the required retention period of the Florida Public Records Act (Chapter 119, *Florida Statutes*), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the City to be applicable to the Contractor's records, the Contractor shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by the Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance and recovery of any payment upon such entry.

47.5 No Contingent Fee

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, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate this Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

47.6 Representative of the City and the Contractor

47.6.1 It is recognized that questions in the day-to-day conduct of the Project will arise. All communications pertaining to the day-to-day conduct of the

Project shall be addressed to the Project Manager.

47.6.2 The Contractor shall inform the Project Manager in writing of the representative of the Contractor to whom matters involving the day-to-day conduct of the Project shall be addressed.

47.7 All Prior Agreements Superseded; Amendments

The Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

47.8 Notices

Whenever either party desires to give notice unto the other, it shall be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

47.8.1 As to the City: **City of Palm Beach Gardens**
10500 North Military Trail
Palm Beach Gardens, Florida 33410
Attn: City Manager
Facsimile: (561) 799-4111

47.8.2 With a copy to: **City of Palm Beach Gardens**
10500 North Military Trail
Palm Beach Gardens, Florida 33410
Attn: City Attorney
Email: mlohman@pbgfl.com

47.8.3. As to the Contractor: _____
Attn:
Email:

47.9 Truth-In-Negotiation Certificate

Signature of this Agreement by the Contractor shall act as the execution of a truth-

in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original Contract Price and any additions thereto shall be adjusted to exclude any significant sums, by which the City determines the Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

47.10 Interpretation

The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph, Section, or Article where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

47.11 Condition Precedent to Agreement
Intentionally Omitted.

47.12 Environmental Regulations

The City reserves the right to consider a contractor's history of citations and/or violations of environmental regulations in investigating a contractor's responsibility, and further reserves the right to declare a contractor not responsible if the history of violations warrants such determination in the opinion of the City. The Contractor shall notify the City immediately of notice of any citation or violation that the Contractor may receive during the time of performance of this Agreement.

47.13 Applicable Law and Venue

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Palm Beach County, Florida.

47.14 Public Entity Crime Statement

The Contractor acknowledges the existence of Section 287.133(2)(a), *Florida Statutes* ("Public Entity Crimes Act"), which provides, in part, that a person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City; may not submit a bid on a contract with the City for the

construction or repair of a public building or public work; may not submit bids on leases of real property to the City; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City; and may not transact business with the City in excess of the threshold amount provided in Section 287.017, *Florida Statutes*, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List. Violation of this Section by the Contractor shall result in termination of this Agreement by the City without penalty.

47.15 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other by virtue of the fact that it may have been physically prepared by one party or its attorneys.

47.16 Severance

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the City or the Contractor elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

47.17 Waiver

No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

47.18 Drug-Free Workplace

Execution of this Agreement by the Contractor shall serve as the Contractor's certification that it either has or that it will establish a drug-free workplace consistent with Chapter 112.0455, *Florida Statutes*.

47.19 Conflicts

Neither the Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

The Contractor agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against the City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of the City in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or

legal proceeding regarding this Agreement.

In the event the Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, the Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this Article.

ARTICLE 48 SALES TAX INFORMATION

- 48.1 The Owner Direct Special Conditions (Sales Tax Information) are incorporated herein by reference.

ARTICLE 49 PUBLIC RECORDS

- 49.1 Pursuant to Chapter 119, *Florida Statutes*, the Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Palm Beach Gardens in order to perform the service. Upon request from the City of Palm Beach Gardens' custodian of public records, the Contractor shall provide the City of Palm Beach Gardens with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law. The 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 contract term and following completion of the contract. Upon completion of the Project, the Contractor shall transfer, at no cost, to the City of Palm Beach Gardens all public records in possession of the Contractor or keep and maintain public records required by the City of Palm Beach Gardens in order to perform the service. If the Contractor transfers all public records to the City of Palm Beach Gardens upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Palm Beach Gardens, upon request from the City of Palm Beach Gardens' custodian of public records, in a format that is compatible with the information technology systems of the City of Palm Beach Gardens.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE CITY CLERK LOCATED AT 10500 NORTH MILITARY TRAIL, PALM BEACH GARDENS, FLORIDA 33410, PHONE NUMBER (561) 799-4122,

EMAIL ADDRESS: PSNIDER@PBGFL.COM.

(The remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand this Agreement and all Contract Documents and attachments hereto and have caused this Agreement to be executed by their duly authorized officers on the date hereinabove first written.

CITY OF PALM BEACH GARDENS, FLORIDA

By: _____
Rachelle A. Litt, Mayor

ATTEST:

By: _____
Patricia Snider, CMC, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
R. Max Lohman, City Attorney

By: _____
XX, XX

EXHIBITS